

RESOLUTION NO. 2013-035

A RESOLUTION OF NECESSITY BY THE CITY COUNCIL OF THE CITY OF ROHNERT PARK, CALIFORNIA, AUTHORIZING THE ACQUISITION AND CONDEMNATION OF REAL PROPERTY IDENTIFIED AS LANDS OF COBT LLC, CBI LLC, AND MCDONALD'S CORPORATION, A DELAWARE CORPORATION, APN 045-055-007

WHEREAS, the City of Rohnert Park ("City") proposes to acquire approximately 16,050 square feet of perpetual easement and right of way and a 2,332 square foot temporary construction easement (the "Property") as more fully described and depicted in Exhibits A and B attached hereto and incorporated herein by this reference for the Wilfred Avenue/Golf Course Drive West Widening Project ("the Project"); and

WHEREAS, pursuant to section 1245.235 of the Code of Civil Procedure, the City scheduled a hearing for February 26, 2013, at 5:00 pm at the Council Chambers, located at 130 Avram Avenue, Rohnert Park, CA 94928 and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters set forth herein; and

WHEREAS, said hearing has been held by the City and each affected property owner was afforded an opportunity to be heard on said matters; and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to section 1240.040 of the Code of Civil Procedure.

THE CITY COUNCIL OF THE CITY OF ROHNERT PARK DOES FIND, DETERMINE, RESOLVE, AND ORDER AS FOLLOWS:

SECTION 1. The City Council hereby finds, based upon the substantial evidence contained in the record, including the written and oral staff reports presented to the City Council with respect to the proposed acquisition of the Property for the Project, as well as all other written and oral testimony submitted at the February 12, 2013 hearing, as follows:

A. That the interests to be acquired by the City consist of approximately 16,050 square feet of perpetual easement and right of way and 2,332 square feet of temporary construction easement (the "Property") as more fully described and depicted in Exhibits A and B attached hereto and incorporated herein by this reference. The temporary construction easement is for a period of six (6) months, to commence upon fourteen (14) days written notice from the City, and shall terminate six (6) months after such commencement, but in no event shall extend beyond completion of construction of the Project. City will, where reasonably necessary, reconstruct or perform any warranty or conformance works, including conforming driveways, walkways, lawn, landscaped and hardscaped areas, irrigation systems and sidewalks, as part of the Project.

B. That the public interest, convenience and necessity require the Project and all public uses and purposes appurtenant thereto. The Project and these public uses and purposes are further described in the City of Rohnert Park's Agenda Staff Report, attached as Exhibit C and incorporated herein by this reference.

C. That the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

D. That the Property is necessary for the Project and such taking is authorized by Section 19, of Article I of the California Constitution, Sections 37350.5 and 40401 *et seq.* and 40404 of the California Government Code, Sections 1810 and 5100 *et seq.* and 5115 of the California Streets & Highways Code, Sections 5301 *et seq.* of the California Public Resources Code, Sections 1230.010 *et. seq.* and 1240.140 of the California Code of Civil Procedure, and other applicable law.

E. That all conditions and statutory requirements to exercise the power of eminent domain to acquire the Property described herein have been complied with by the City.

F. That the offer required by section 7267.2 of the Government Code was made to the owner or owners of record.

G. That the City of Rohnert Park has complied with Code of Civil Procedure section 1245.235 regarding the provision of necessary notice of the hearing on this Resolution.

H. That the Project was previously approved by the City pursuant to a Notice of Exemption on September 25, 2012, that the City filed a notice of exemption with the County Clerk on September 26, 2012, who posted it that same day through October 29, 2012, that the condemnation action proposed in this Resolution was anticipated in the Project's approval and is a subsequent action toward implementing the Project, and that the acquisition efforts proposed do not involve any substantial changes to the Project, nor would they cause new or more severe impacts.

SECTION 2. Based upon the foregoing facts, findings and conclusions, the City Council hereby declares its intention to acquire the Property in accordance with all applicable laws of the State of California governing proceedings in eminent domain.

SECTION 3. If any portion of the area of the Property has been appropriated to some public use, the public use in furtherance of the Project is a more necessary and paramount public use, pursuant to Code of Civil Procedure section 1240.610 or, alternatively, will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future, pursuant to Code of Civil Procedure section 1240.510.

SECTION 4. The law firm of Burke, Williams & Sorensen, LLP, is authorized and directed to bring an action in the Superior Court of the State of California, County of Sonoma, against all owners and claimants of the Property described herein for the purpose of acquiring the Property for the public use of the Project and to do all things necessary to prosecute such an action to its final determination in accordance with applicable law. The authorized attorneys are instructed to make an application to the court for an order fixing the amount of security by way of money

I, JoAnne Buerger, City Clerk of the City of Rohnert Park, do hereby certify that the foregoing Resolution was duly passed and adopted by the City Council of the City of Rohnert Park at a regular meeting of the City Council held on the 26th day of February, 2013 by the following vote:

YESES: COUNCIL MEMBERS: (4) Ahanotu, Mackenzie, Callinan and Mayor Stafford

NOES: COUNCIL MEMBERS: (0) None

ABSENT: COUNCIL MEMBERS: (1) Belforte

ABSTAIN: COUNCIL MEMBERS: (0) None

deposits as the court may direct and for an order permitting the City to take possession and use of the Property for the use and purposes herein described.

SECTION 5. The City Manager is authorized to engage the services of any consultant deemed necessary to complete the acquisition of the Property and to sign and verify any and all complaints or other instruments necessary to maintain and complete an action in eminent domain.

SECTION 6. This Resolution shall take effect immediately upon its adoption.

SECTION 7. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 26th day of February, 2013.



Pam Stafford
Pam Stafford, Mayor

ATTEST:

JoAnne M. Buerger
JoAnne Buerger, City Clerk

APPROVED AS TO FORM:

Michelle Marchetta Kenyon
Michelle Marchetta Kenyon, City Attorney
Alexandra M. Barnhill, Asst. City Atty

AHANOTU: AYE BELFORTE: ABSENT MACKENZIE: AYE CALLINAN: AYE STAFFORD: AYE
AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)

ATTACHMENTS

LEGAL DESCRIPTION (Exhibit A's)

PLAT MAP (Exhibit B's)

CITY'S STAFF REPORT (Exhibit C)

RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

October 26, 2012
JN: 50-100964
Page 1 of 1

EXHIBIT "A"
LEGAL DESCRIPTION
RIGHT OF WAY AND UTILITY
EASEMENT
APN 045-055-007

That certain parcel of land situated in the County of Sonoma, State of California, being a portion of Lot 162, Santa Rosa Farms No. 2, filed on March 7, 1910 in Book 21 of Maps, at Page 14, in the Office of the County Recorder of said Sonoma County and being a portion of Lot 162 as described in the Grant Deed, from McDonald's Corporation to COBT, LLC., in Document Number: 2007136386 of Official Records, at said County Recorder's Office, more particularly described as follows:

BEGINNING at the intersection of the easterly right of way line of Dowdell Avenue as shown on said San Rosa Farms No. 2 (21 M 14) with the northerly right of way line of Wilfred Avenue as shown on said map (21 M 14);

Thence, easterly along said northerly right of way of Wilfred Avenue South 89°35'41" East 555.29 feet to the westerly right of way line of Redwood Drive (102' wide);

Thence, northerly along said westerly right of way line North 00°06'04" East 58.76 feet;

Thence, leaving said westerly right of way line and westerly North 89°53'56" West 15.02 feet;

Thence, South 45°14'48" West 27.76 feet;

Thence, North 89°35'41" West 3.42 feet;

Thence, South 00°24'19" West 12.50 feet;

Thence, North 89°35'41" West 32.08 feet;

Thence, North 00°24'19" East 3.00 feet;

Thence, North 89°35'41" West 13.00 feet;

Thence, North 00°24'19" East 14.50 feet;

Thence, North 89°35'41" West 10.00 feet;

Thence, South 00°24'19" West 17.50 feet;

Thence, North 89°35'41" West 116.14 feet;

Thence, South 87°54'00" West 80.07 feet;

Thence, North 89°35'41" West 76.76 feet;

Thence, North 00°24'19" East 3.00 feet;

Thence, North 89°35'41" West 14.00 feet;

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RIGHT OF WAY
EASEMENT
APN 045-055-007

October 26, 2012
JN: 50-100964
Page 2 of 2

Thence, North 00°24'19" East 18.00 feet;

Thence, North 89°35'41" West 10.00 feet;

Thence, South 00°24'19" West 21.00 feet;

Thence, North 89°35'41" West 121.96 feet;

Thence, North 00°24'19" East 16.00 feet;

Thence, North 89°35'41" West 16.99 feet;

Thence, North 36°59'22" West 7.53 feet;

Thence, North 89°33'33" West 3.44 feet;

Thence, North 00°25'42" East 8.01 feet;

Thence, North 89°35'41" West 18.00 feet to said easterly right of way line of Dowdell Avenue as shown on said map (21 M 14).


Thence, southerly along said easterly right of way line South 00°26'27" West 53.00 feet to the **POINT OF BEGINNING**.

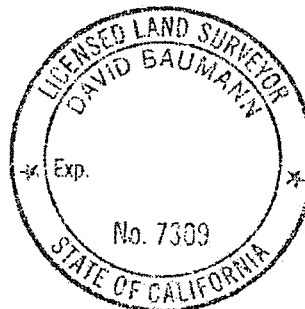
CONTAINING 16,050 Square Feet, more or less.

BASIS OF BEARINGS The bearings and distances contained herein are based upon the Record of Survey filed December 16, 2011 in Book 747 of Maps at Pages 50-53, in said County Recorder's Office.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.


David Baumann, P.L.S. 7309
License Expires March 31, 2013

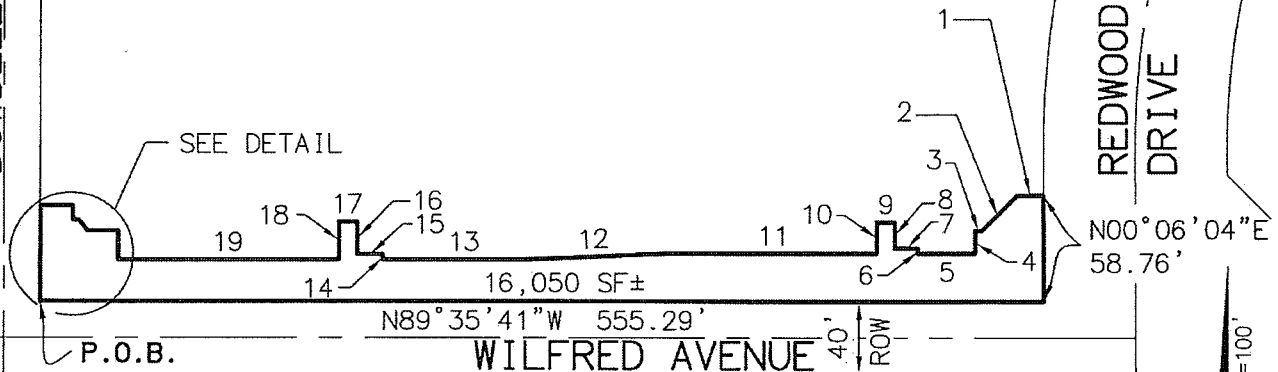


162
SANTA ROSA FARMS NO. 2
21 M 14

APN 045-055-007
COBT, LLC.
DOCUMENT NUMBER:
2007136386

DOWDELL AVENUE

REDWOOD
DRIVE

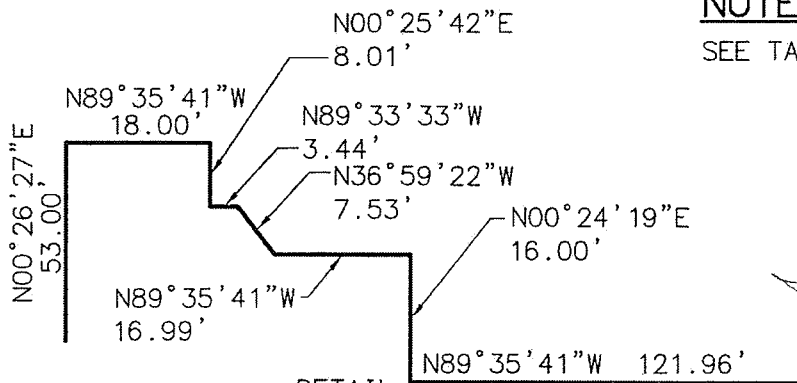


APN 045-075-001

APN 045-075-002

NOTE

SEE TABLE ON SHEET 2



DETAIL
NOT TO SCALE

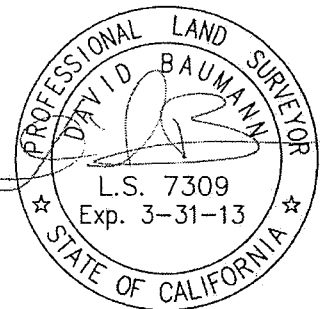


EXHIBIT "B"

PLAT TO ACCOMPANY A
LEGAL DESCRIPTION FOR
WILFRED AVENUE WIDENING

CITY OF ROHNERT PARK
COUNTY OF SONOMA
STATE OF CALIFORNIA

RBF
CONSULTING
A Baker Company

500 YGNACIO VALLEY ROAD, SUITE 300
WALNUT CREEK, CALIFORNIA 94596-3847
925.906.1480 • FAX 925.906.1465 • www.RBF.com

SHEET 1 OF 2 SHEETS

OCTOBER 31, 2012

JOB NO. 50-100964

H:\PDATA\50100964\CADD\MAPPING\EXHIBITS\WILFRED AVE\WILFRED EX21-A.DWG JERRY MILLER 1/23/13 1:12 pm

LINE DATA TABLE		
NO.	BEARING	LENGTH
1	N89°53'56"W	15.02'
2	N45°14'48"E	27.76'
3	N89°35'41"W	3.42'
4	N00°24'19"E	12.50'
5	N89°35'41"W	32.08'
6	N00°24'19"E	3.00'
7	N89°35'41"W	13.00'
8	N00°24'19"E	14.50'
9	N89°35'41"W	10.00'
10	N00°24'19"E	17.50'
11	N89°35'41"W	116.14'
12	N87°54'00"E	80.07'
13	N89°35'41"W	76.76'
14	N00°24'19"E	3.00'
15	N89°35'41"W	14.00'
16	N00°24'19"E	18.00'
17	N89°35'41"W	10.00'
18	N00°24'19"E	21.00'
19	N89°35'41"W	121.96'

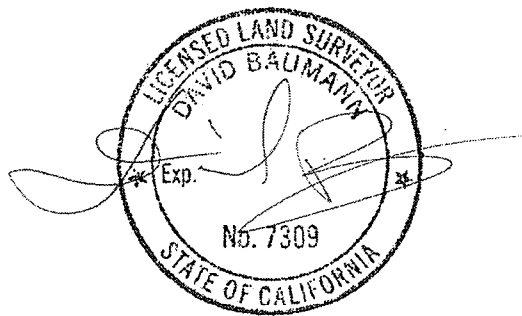


EXHIBIT "B"

SKETCH TO ACCOMPANY A
LEGAL DESCRIPTION FOR
WILFRED AVENUE WIDENING

CITY OF ROHNERT PARK
COUNTY OF SONOMA
STATE OF CALIFORNIA

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SHEET 2 OF 2 SHEETS

OCTOBER 31, 2012

JOB NO. 50-100964

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Walnut Creek, California 94596

October 26, 2012
JN: 50-100964
Page 1 of 1

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION
EASEMENT
APN 045-055-007

That certain parcel of land situated in the County of Sonoma, State of California, being a portion of Lot 162, Santa Rosa Farms No. 2, filed on March 7, 1910 in Book 21 of Maps, at Page 14, in the Office of the County Recorder of said Sonoma County and being a portion of Lot 162 as described in the Grant Deed, from McDonald's Corporation to COBT, LLC., in Document Number: 2007136386 of Official Records, at said County Recorder's Office, more particularly described as follows:

PARCEL 1

COMMENCING at the intersection of the easterly right of way line of Dowdell Avenue as shown on said San Rosa Farms No. 2 (21 M 14) with the northerly right of way line of Wilfred Avenue as shown on said map (21 M 14);

Thence, easterly along said northerly right of way of Wilfred Avenue South 89°35'41" East 555.29 feet to the westerly right of way line of Redwood Drive (102' wide);

Thence, northerly along said westerly right of way line North 00°06'04" East 58.76 feet;

Thence, leaving said westerly right of way line and westerly North 89°53'56" West 15.02 feet;

Thence, South 45°14'48" West 27.76 feet;

Thence, North 89°35'41" West 3.42 feet;

Thence, South 00°24'19" West 7.50 feet to the **TRUE POINT OF BEGINNING**;

Thence, South 00°24'19" West 5.00 feet;

Thence, North 89°35'41" West 32.08 feet;

Thence, North 00°24'19" East 3.00 feet;

Thence, North 89°35'41" West 13.00 feet;

Thence, North 00°24'19" East 14.50 feet to a point hereinafter referred to as Point "A";

Thence, South 89°35'41" East 2.50 feet;

Thence, South 00°24'19" West 12.50 feet;

Thence, South 89°35'41" East 42.58 feet to the **TRUE POINT OF BEGINNING**.

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TEMPORARY CONSTRUCTION
EASEMENT
APN 045-055-007

October 26, 2012
JN: 50-100964
Page 2 of 3

That certain parcel of land situated in the County of Sonoma, State of California, being a portion of Lot 162, Santa Rosa Farms No. 2, filed on March 7, 1910 in Book 21 of Maps, at Page 14, in the Office of the County Recorder of said Sonoma County and being a portion of Lot 162 as described in the Grant Deed, from McDonald's Corporation to COBT, LLC., in Document Number: 2007136386 of Official Records, at said County Recorder's Office, more particularly described as follows:

PARCEL 2

COMMENCING at previously described Point "A", Thence, North 89°35'41" West 10.00 feet to the **TRUE POINT OF BEGINNING**;

Thence, South 00°24'19" West 17.50 feet;

Thence, North 89°35'41" West 116.14 feet;

Thence, South 87°54'00" West 80.07 feet;

Thence, North 89°35'41" West 76.76 feet;

Thence, North 00°24'19" East 3.00 feet;

Thence, North 89°35'41" West 14.00 feet;

Thence, North 00°24'19" East 18.00 feet to a point hereinafter referred to as Point "B";

Thence, South 89°35'41" East 2.50 feet;

Thence, South 00°24'19" West 16.00 feet;

Thence, South 89°35'41" East 88.15 feet;

Thence, North 87°54'00" East 80.07 feet;

Thence, South 89°35'41" East 113.75 feet;

Thence, North 00°24'19" East 12.50 feet;

Thence, South 89°35'41" East 2.50 feet to the **TRUE POINT OF BEGINNING**.

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TEMPORARY CONSTRUCTION
EASEMENT
APN 045-055-007

October 26, 2012
JN: 50-100964
Page 3 of 3

That certain parcel of land situated in the County of Sonoma, State of California, being a portion of Lot 162, Santa Rosa Farms No. 2, filed on March 7, 1910 in Book 21 of Maps, at Page 14, in the Office of the County Recorder of said Sonoma County and being a portion of Lot 162 as described in the Grant Deed, from McDonald's Corporation to COBT, LLC., in Document Number: 2007136386 of Official Records, at said County Recorder's Office, more particularly described as follows:

PARCEL 3

COMMENCING at previously described Point "B", Thence, North 89°35'41" West 10.00 feet to the **TRUE POINT OF BEGINNING**;

Thence, South 00°24'19" West 21.00 feet;

Thence, North 89°35'41" West 121.96 feet;

Thence, North 00°24'19" East 5.00 feet;

Thence, South 89°35'41" East 119.46 feet;

Thence, North 00°24'19" East 16.00 feet;


Thence, South 89°35'41" East 2.50 feet to the **TRUE POINT OF BEGINNING**.

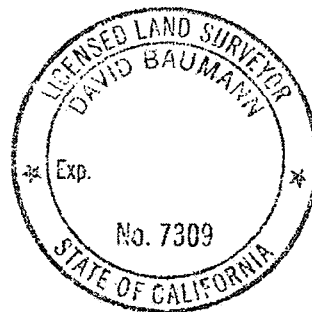
CONTAINING **PARCEL 1:** 218 Square Feet, more or less.
PARCEL 2: 1,464 Square Feet, more or less.
PARCEL 3: 650 Square Feet, more or less.

BASIS OF BEARINGS The bearings and distances contained herein are based upon the Record of Survey filed December 16, 2011 in Book 747 of Maps at Pages 50-53, in said County Recorder's Office.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.


David Baumann, P.L.S. 7309
License Expires March 31, 2013

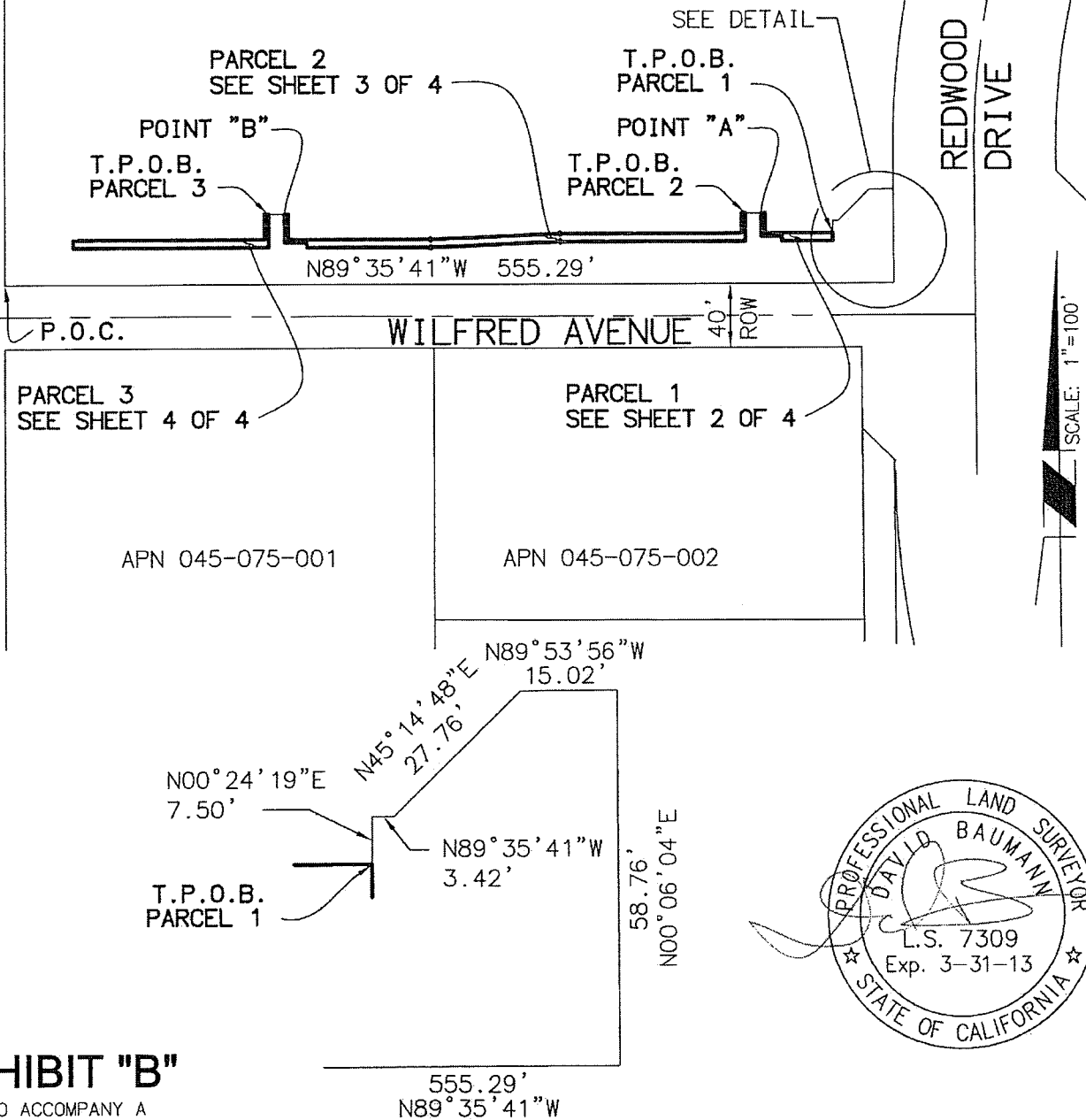


162
SANTA ROSA FARMS NO. 2
21 M 14

APN 045-055-007
COBT, LLC.
DOCUMENT NUMBER:
2007136386

DOWDELL AVENUE

REDWOOD
DRIVE



SCALE: 1"=100'

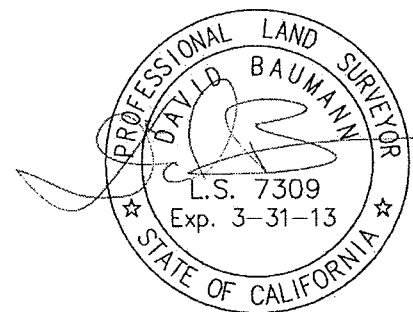


EXHIBIT "B"

PLAT TO ACCOMPANY A
LEGAL DESCRIPTION FOR
WILFRED AVENUE
TEMPORARY CONSTRUCTION EASEMENT
CITY OF ROHNERT PARK
COUNTY OF SONOMA
STATE OF CALIFORNIA

DETAIL
NOT TO SCALE

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A Baker Company

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SHEET 1 OF 4 SHEETS

OCTOBER 31, 2012

JOB NO. 50-100964

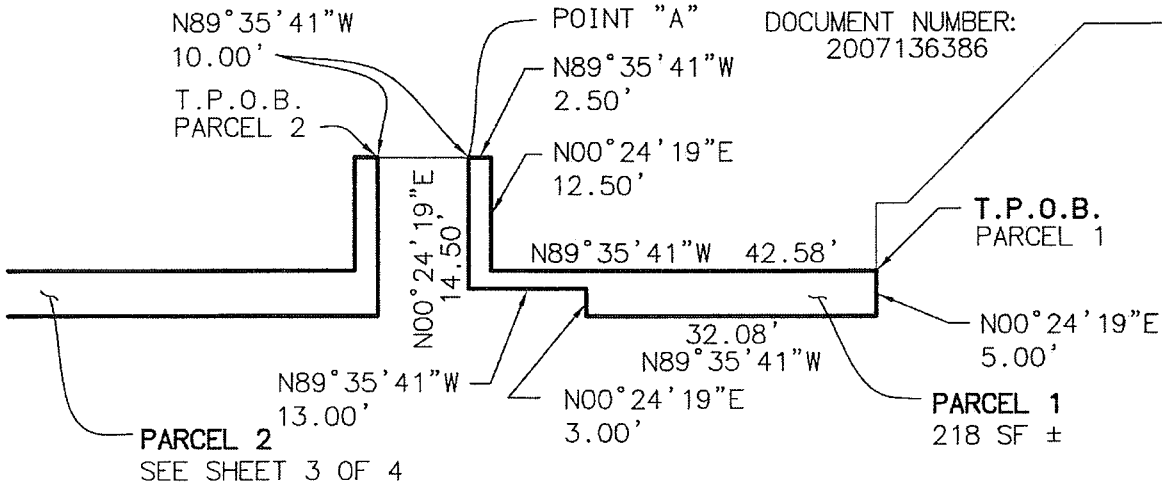
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162
SANTA ROSA FARMS NO. 2
21 M 14

APN 045-055-007
COBT, LLC.

DOCUMENT NUMBER:
2007136386

SCALE: 1"=20'



WILFRED AVENUE

REDWOOD DRIVE

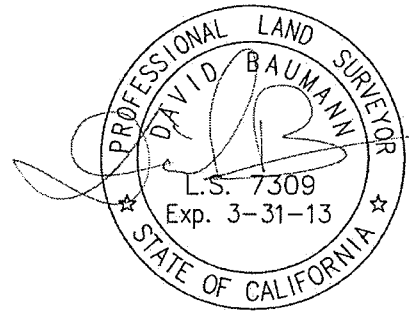


EXHIBIT "B"

PLAT TO ACCOMPANY A
LEGAL DESCRIPTION FOR
WILFRED AVENUE
TEMPORARY CONSTRUCTION EASEMENT
CITY OF ROHNERT PARK
COUNTY OF SONOMA
STATE OF CALIFORNIA

SHEET 2 OF 4 SHEETS

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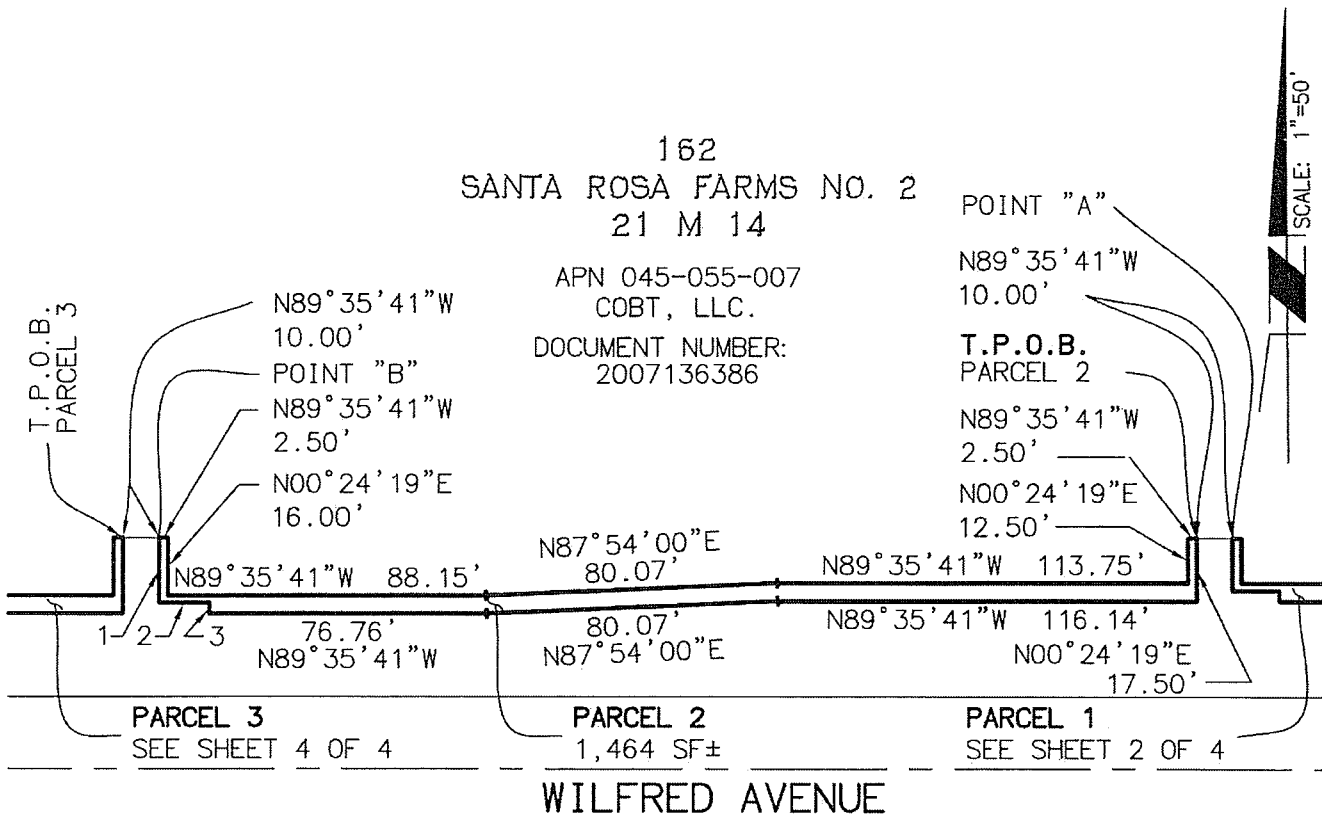
OCTOBER 31, 2012

JOB NO. 50-100964

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162
SANTA ROSA FARMS NO. 2
21 M 14

APN 045-055-007
COBT, LLC.
DOCUMENT NUMBER:
2007136386



LINE DATA TABLE

NO.	BEARING	LENGTH
1	N00°24'19"E	18.00'
2	N89°35'41"W	14.00'
3	N00°24'19"E	3.00'

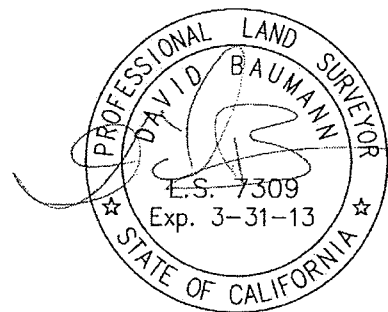


EXHIBIT "B"

PLAT TO ACCOMPANY A
LEGAL DESCRIPTION FOR
WILFRED AVENUE
TEMPORARY CONSTRUCTION EASEMENT
CITY OF ROHNERT PARK
COUNTY OF SONOMA
STATE OF CALIFORNIA



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OCTOBER 31, 2012

SHEET 3 OF 4 SHEETS
JOB NO. 50-100964

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DOWDELL AVENUE

162
SANTA ROSA FARMS NO. 2
21 M 14

APN 045-055-007
COBT, LLC.
DOCUMENT NUMBER:
2007136386

T.P.O.B.
PARCEL 3

N89°35'41"W
2.50'
N00°24'19"E
16.00'

N89°35'41"W 119.46'

N89°35'41"W 121.96'

PARCEL 3
650 SF±

N89°35'41"W
10.00'
POINT "B"

PARCEL 2
SEE SHEET 3 OF 4

N00°24'19"E
21.00'

SCALE: 1"=40'

WILFRED AVENUE

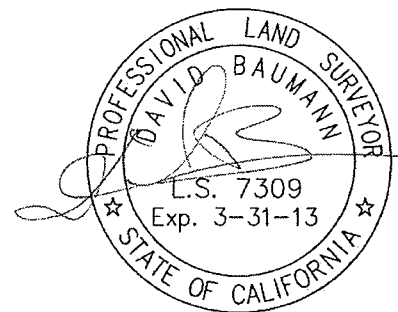


EXHIBIT "B"

PLAT TO ACCOMPANY A
LEGAL DESCRIPTION FOR
WILFRED AVENUE
TEMPORARY CONSTRUCTION EASEMENT
CITY OF ROHNERT PARK
COUNTY OF SONOMA
STATE OF CALIFORNIA

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SHEET 4 OF 4 SHEETS

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OCTOBER 31, 2012

JOB NO. 50-100964

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Mission Statement

*"We Care for Our Residents by Working Together to Build a
Better Community for Today and Tomorrow."*

**CITY OF ROHNERT PARK
CITY COUNCIL AGENDA REPORT**

Meeting Date: February 26, 2013

Department: City Manager's Office

Submitted By: Darrin Jenkins, Assistant City Manager/City Engineer

Prepared By: Patrick Barnes, Deputy City Engineer

Agenda Title: Resolution of Necessity for Authorizing Acquisition and Condemnation of Real Property Identified as lands of Cobt LLC, CBI LLC, and McDonald's Corporation, a Delaware Corporation, APN 045-055-007, for the Wilfred Avenue Improvement Project

RECOMMENDED ACTION: Staff recommends the City Council:

1. Conduct a hearing on the attached Resolution finding and determining that the public interest, convenience and necessity require the acquisition of certain property identified as lands of Cobt LLC, CBI LLC, and McDonald's Corporation, a Delaware Corporation, APN 045-055-007, for the Wilfred Avenue Improvement Project;
2. Review the evidence presented, including this staff report and public comments and close the hearing; and
3. Adopt the attached Resolution authorizing the commencement of eminent domain proceedings so as to acquire the interest in real property described therein (Note: This requires an affirmative supermajority [4/5] vote of the City Council).

BACKGROUND AND ANALYSIS: The subject of this resolution is the initiation of eminent domain to obtain legal possession of right-of-way along the north side of Wilfred Avenue, located in the City of Rohnert Park. Attached for ease of reference is a map titled Exhibit B to the Resolution.

The widening of Wilfred Avenue/Golf Course Drive West¹ is called for in the City's and County's respective general plans. The City of Rohnert Park entered into a Joint Exercise of Powers Agreement ("JEPA") with Sonoma County representatives, and the Federated Indians of Graton Rancheria ("Tribe") to facilitate the road widening of Wilfred Avenue (hereinafter Wilfred Avenue Improvement Project)¹. The Wilfred Avenue Improvement Project helps mitigate traffic impacts of proposed development and implements the City and County General Plan Transportation Elements.

¹ The City renamed Wilfred Avenue to Golf Course Drive West within the City limits to be consistent with the existing Golf Course Drive, recently connected to Wilfred Avenue underneath a new overpass on Highway 101.

Pursuant to California Government Code sections 6500 et seq., 7267.2, 37350.5, and 40401 et seq. and 40404, and California Code of Civil Procedure Section 1230.010 et seq., 1240.410 and 1240.020, and Section 19, Article I of the California Constitution, and other authorities, including authorization in the JEPA, the City is authorized to acquire the subject property by eminent domain, provided certain procedural steps are followed.

A portion of the necessary right of way for the Wilfred Avenue Improvement Project has been acquired through voluntary negotiations, which are continuing. At this time, negotiations have not been successful with a few property owners, including 16,050 square feet for a perpetual easement and 2,332 square feet for a temporary construction easement, which is the subject of this Resolution. Formal offers to acquire the necessary road right-of-way were made to the property owner by both the Tribe and the City – but the owner has not executed an agreement to voluntarily sell the easement. The background for the subject property is described in the attachments, which will be addressed by City staff at the hearing.

The temporary construction easement is for a period of six (6) months, to commence upon fourteen (14) days written notice from the City, and shall terminate six (6) months after such commencement, but in no event shall extend beyond completion of construction of the Project. City will, where reasonably necessary, reconstruct or perform any warranty or conformance works, including conforming driveways, walkways, lawn, landscaped and hardscaped areas, irrigation systems and sidewalks, as part of the Project.

The property identified in the attached Resolution is owned by Cobt, LLC; CBI, LLC; and McDonald's Corporation, a Delaware Corporation. The use to which the property is currently put is vacant land. The property is zoned SP - Specific Plan/C-R-Regional Commercial. The lot is 4.58Acres (199,505 square feet) in size, and there are no improvements.

Due to the nature of negotiations with this property owner, staff is recommending acquiring the easement from the subject property mentioned above through the City's eminent domain powers. This will allow the acquisition process to proceed in a timely and orderly manner in order to meet project construction deadlines. A delay in obtaining all of the required right-of-way for this project within the current schedule may delay the project construction for an additional year.

On January 25, 2011, Edmund Wadeson of the Oxford Hotel Group, filed Planning Application No. PL2011-006SR/UP proposing a five (5) story, 163 room Oxford Suites Hotel and a McDonald's fast food restaurant on the subject property, in accordance with the City of Rohnert Park Municipal Code. On May 22, 2012, the City Council held a public hearing and subsequently adopted Resolution 2012-46 approving the proposed development, subject to certain conditions, including Condition 105, which requires that right-of-way along the frontage of Dowdell Avenue, Redwood Drive, and Golf Course Drive West shall be dedicated to the City for street, sidewalk and public utility easement.

The Wilfred Avenue Project Team worked with the Oxford Suites group to draw plat maps and legal descriptions for the conditioned dedication needed for the both the Wilfred Avenue Improvement Project and the proposed development of the Oxford Suites and McDonalds site. After prolonged negotiations on the mapping, the project team reached an impasse. Legal Descriptions and Plat Maps have been re-drawn to include only the area needed for the Wilfred Avenue Improvement project and to exclude additional area for future improvements, such as sidewalks, which would have been constructed by the grantor's proposed development.

The roadway for the Wilfred Avenue Improvement Project has been designed at a grade provided by the Oxford Suites and McDonalds site engineers to facilitate drainage of their future development. The roadway could have been designed closer to existing grade (lower), without consideration of the proposed development of Oxford Suites and McDonalds. The lower roadway would have required a smaller perpetual easement and an elimination of the need for a temporary easement, but would have greater private impacts, as it would not accommodate future development as shown on the Oxford Suites and McDonalds site plans. Retained in the project is the curb, drainage, storm drain, water pipes, and sewer pipes that will eventually serve the Oxford Suites and McDonalds site. These elements were also designed in consultation with the engineer for the Oxford Suites and McDonalds site when the developer of that site was cooperating with the City to create a project that would result in fewer private impacts to Oxford Suites and McDonalds. Redesigning the roadway and drainage to minimize the perpetual easement and eliminate the temporary easement would not be in the greatest public good, because it will cause significant delays in the project design and would be in no one's best interest, including those of Oxford Suites and McDonalds.

The City must make an offer to purchase to the property owner, which offer must be transmitted in writing, based upon an appraisal. The City tendered a statutory Offer to Purchase to the Property owner as required by law based upon an approved appraisal (Attachment 1). To date, the offer has not been accepted.

In order to meet construction timing obligations, it is now necessary that an action in eminent domain be commenced to acquire the property interests referenced herein. Prior to the filing of an eminent domain action, the City must hold a hearing on the proposed Resolution of Necessity, (Attachment 2) and provide the owner of the affected property an opportunity to be heard, provided that the owner has filed a request to be heard in writing with the City prior to the hearing.

In addition, the hearing must be duly noticed. Attached is a copy of the Notice of Hearing, which was delivered in accordance with the applicable statutes (Attachment 3).

After conducting the public hearing, if the City finds that the public necessity so requires, the City should adopt the attached Resolution of Necessity, authorizing condemnation proceedings for the purpose of acquiring the property which is described therein.

The findings, which need to be made, are as set forth in the Resolution of Necessity. Specifically, the City must find:

1. That the public interest, convenience and necessity require the acquisition of the proposed project. As proposed and more particularly provided for above and in the JEPA, the Wilfred Avenue Improvement Project will serve public purposes, for example, it will mitigate traffic, circulation and public safety impacts of the implementation of the City's general plan and nearby casino development;
2. That the Wilfred Avenue Improvement Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury. Wilfred Avenue is already in existence. As such, the widening of the currently-existing road will offer the least injury to private property as the construction of a new, wider road would require the acquisition of additional property. Additionally, constructing a new,

wider road at a different location at this point would be unreasonable and unnecessarily costly to the public.

3. That the property interest sought to be acquired is necessary for the Wilfred Avenue Improvement Project. This section of Wilfred Avenue will be widened to create two through lanes in each direction, an eastbound left turn lane, an eastbound right turn lane, and bike lanes, consistent with the City of Rohnert Park's General Plan. The improvements include storm water capture, flood mitigation, water quality treatment and require that existing utilities be relocated to accommodate the roadway and drainage improvements. Due to a grade difference between the proposed Golf Course West roadway and the grantor's parcels, a temporary construction easement is needed for construction equipment to properly construct and compact fill.

Questions relating to value are not relevant to this proceeding. This action begins a process where the property owner will be allowed to make their case to the court as to the value of their property. However, that does not mean that negotiations for the acquisition of the property interests are at an end. After the hearing, counsel and the City's right-of-way consultant will continue to negotiate with the owner and diligently pursue satisfactory conclusions to the right-of-way acquisitions.

ENVIRONMENTAL ANALYSIS:

With respect to environmental review, the Wilfred Avenue Improvement Project was previously approved by the City pursuant to a Notice of Exemption on September 25, 2012. The Notice of Exemption relied upon a statutory exemption in Government Code Section 12012.56 which acknowledges that federal environmental review had already been conducted for the Casino and its offsite impacts such as traffic. That exemption provides that the timely mitigation accomplished through an intergovernmental agreement, such as the JEPA, of any significant effect on the environment, including traffic and public safety impacts, and compensation therefore, which is attributable in whole or in part to the Casino is not a project for CEQA purposes. The City filed a notice of exemption with the County Clerk on September 26, 2012 who posted it that same day through October 29, 2012.

The acquisition of land for widening Wilfred Avenue by eminent domain, which proceedings are proposed to be initiated herein by adoption of a Resolution of Necessity, was anticipated in the approval of the Wilfred Avenue Improvement Project and is a subsequent action toward implementing said project. As a result, staff has determined that efforts to acquire the property described herein have already been analyzed and found to be statutorily exempt from CEQA. Adopting the Resolution of Necessity and initiating eminent domain proceedings does not involve any substantial changes to the Project, nor would such action cause new or more severe environmental impacts. For those reasons, neither the obligation to comply with CEQA nor is the statute of limitations on that prior action are re-triggered by this action toward implementing the project.

OPTIONS CONSIDERED: Project will not be constructed as planned.

FISCAL IMPACT/FUNDING SOURCE: In accordance with the JEPA, the Tribe is solely responsible for paying for all design, permitting, construction, review, inspection, project management, staff, legal, right of way acquisition, and operating and maintenance costs incurred for the construction of the Wilfred Avenue Improvement Project.

Department Head Approval Date: 2/20/2013

City Manager Approval Date: 2/20/2013

City Attorney Approval Date: 2/14/2013

Attachments *(list in packet assembly order):*

1. Offer Letter
2. Resolution of Necessity with Exhibits (legal description and plat map)
3. Notice of Hearing regarding intent of the City Council for the City of Rohnert Park to consider the adoption of a resolution of necessity to acquire property by eminent domain

February 8, 2013

Re: NOTICE OF HEARING REGARDING INTENT OF THE CITY
COUNCIL FOR THE CITY OF ROHNERT PARK TO CONSIDER
THE ADOPTION OF A RESOLUTION OF NECESSITY TO
ACQUIRE PROPERTY BY EMINENT DOMAIN

Dear Property Owners - COBT, LLC; CBI, LLC; and McDonald's Corporation:

YOU ARE HEREBY NOTIFIED, pursuant to Code of Civil Procedure Section 1230.010 *et seq.*, that the City Council for the City of Rohnert Park intends to consider the adoption of a Resolution of Necessity for acquisition by eminent domain of the following property interests: a perpetual easement and right of way containing approximately 16,050 square feet and a temporary construction easement containing approximately 2,332 square feet (the "Property"). The City's investigation shows COBT, LLC, AN OREGON LIMITED LIABILITY COMPANY; CBI, LLC, AN OREGON LIMITED LIABILITY COMPANY; AND MCDONALD'S CORPORATION, A DELAWARE CORPORATION, to be the vested owners of the Property. A description and depiction of the Property may be found in the proposed Resolution of Necessity enclosed herewith and incorporated as if set forth fully herein.

The hearing will be held on February 26, 2013 at 5:00 PM, or as soon thereafter as the City can hear said matter, at the Council Chambers, located at 130 Avram Avenue, Rohnert Park, CA 94928. If the resolution is adopted at this meeting, it will authorize the City to acquire the Property for construction of Wilfred Avenue as part of the Wilfred Avenue/Golf Course Drive West Widening Project (hereinafter, the "Project").

As the representatives of a person claiming or having an interest in and to the Property, you are hereby notified that you have a right to appear and be heard at said hearing on the following matters and issues, and to have the City give judicious consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity:

- a. Whether the public interest, convenience and necessity require the proposed Project;
- b. Whether the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. Whether the Property sought to be acquired by eminent domain and described in the resolution is necessary for the proposed Project;

Attachment 3

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d. Whether the offer required by Government Code Section 7267.2(a), together with the accompanying statement and summary of the basis for the amount established as just compensation, was actually made to you and whether said offer and statement/summary were in a form and contained all of the factual information required by Government Code Section 7267.2(a);

e. Whether the City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the "right to take") to acquire the property interests described herein, as well as any other matter regarding the right to take said property interests by eminent domain;

f. Whether the City has statutory authority to acquire the property interests by eminent domain;

g. Whether the necessary notification of the Notice of Hearing, as required by the California Code of Civil Procedure, Sec. 1245.235, was given in regard to the Property; and

h. Whether the Project was previously approved by the City pursuant to a Notice of Exemption on September 25, 2012, the City filed a notice of exemption with the County Clerk on September 26, 2012 who posted it that same day through October 29, 2012, the condemnation action proposed in this Resolution was anticipated in the Project's approval and is a subsequent action toward implementing the Project, and whether the acquisition efforts proposed involve any substantial changes to the Project or cause new or more severe impacts.

A copy of the proposed Resolution of Necessity is enclosed herewith.

The issue of compensation relative to the acquisition is not a matter being heard by the City at this time. Your nonappearance at this noticed hearing will not prevent you from claiming greater compensation as may be determined by a court of law in accordance with the laws of the State of California. This Notice of Hearing is not intended to foreclose future negotiations between you and the representatives of the City on the amount of compensation to be paid for your property interests.

If you desire to be heard, you **MUST FILE A WRITTEN REQUEST** as soon as possible following receipt of this notice by filing or delivering a written request indicating your intent to appear and be heard to the City of Rohnert Park, Attention: City Clerk, at 130 Avram Avenue, Rohnert Park, CA 94928. You may use the enclosure for the purpose of notifying the City of Rohnert Park of your intent and desire to be heard. Your failure to file a written request to appear and be heard may result in a waiver of your right to be heard. If you elect not to appear and not to be heard, you will only be foreclosed from raising in a court of law the issues that are the subject of this noticed hearing and that are concerned with the right to take the Property by eminent domain.

If you have any questions regarding this hearing, the offer, or have additional information regarding the value of your Property, you may contact the City's right of way consultant, Associated Right of Way Services, Inc. (ARWS). The ARWS

representative handling this acquisition is Joe Magdaleno. Mr. Magdaleno can be contacted at (800) 558-5151.

Sincerely,


Gabriel A. Gonzalez
City Manager

**REQUEST TO BE HEARD ON RESOLUTION OF NECESSITY
BY THE CITY COUNCIL OF THE CITY OF ROHNERT PARK, CALIFORNIA,
AUTHORIZING THE ACQUISITION OF PROPERTY FOR CONSTRUCTION OF
PUBLIC IMPROVEMENTS ON WILFRED AVENUE BETWEEN REDWOOD DRIVE
AND STONY POINT ROAD AS PART OF THE WILFRED AVENUE/GOLF COURSE
DRIVE WEST WIDENING PROJECT**

Name _____

Telephone _____

Address _____

Date _____

Signature _____

Mr. Darrin W. Jenkins
Assistant City Manager/City Engineer
City of Rohnert Park
130 Avram Avenue
Rohnert Park, CA 94928

Ms. Michelle Marchetta Kenyon
City Attorney
City of Rohnert Park
130 Avram Avenue
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Mr. Joe Magdaleno
Right of Way Consultant
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