



Agenda Item No. 12d.

Staff Report

Date: February 9, 2017

To: Mayor Hoertkorn and Council Members

From: Richard Simonitch, Public Works Director

Subject: Accept Grant of Easement and Easement Agreement with Marin Art and Garden Center for public sidewalk purposes on Laurel Grove Avenue

Recommendation

Accept and authorize the Town Manager to execute the Grant of Easement and Easement Agreement for public sidewalk purposes on Laurel Grove Avenue from Marin Art and Garden Center.

Background

The creation of this public access easement and easement agreement is required to construct a continuous public sidewalk on Laurel Grove Avenue to Sir Francis Drake Boulevard (SFD) from the crosswalk near the Marin Art and Garden Center (MAGC) driveway on Laurel Grove Avenue. This project is mostly funded under a "safe pathways to school" grant administered by TAM. During the development of the project topography and right of way it was determined that an easement was required over the northwest corner of the MAGC Parcel to keep the new sidewalk out of the existing roadway.

By connecting with an existing crosswalk, the new sidewalk will provide a safe, defined walkway carrying students on the south side of Laurel Grove Ave from an existing crosswalk to the east side of SFD on their way to school on the west side. Current pedestrian traffic must utilize the bike lane along Laurel Grove Avenue.

Discussion

The easement agreement wording is based on language provided by the Town Attorney to the Town's consultant, and the plats and descriptions have been reviewed by the Town Engineer/Surveyor and found to be technically correct. Once the easement agreement is accepted, it will be recorded and construction of the sidewalk can begin this summer as scheduled.

With Council approval, the Town Manager will execute the Grant of Easement and Easement Agreement for public sidewalk across the Marin Art and Garden Center parcel.

Fiscal, resource and timeline impacts

None.

Alternative actions

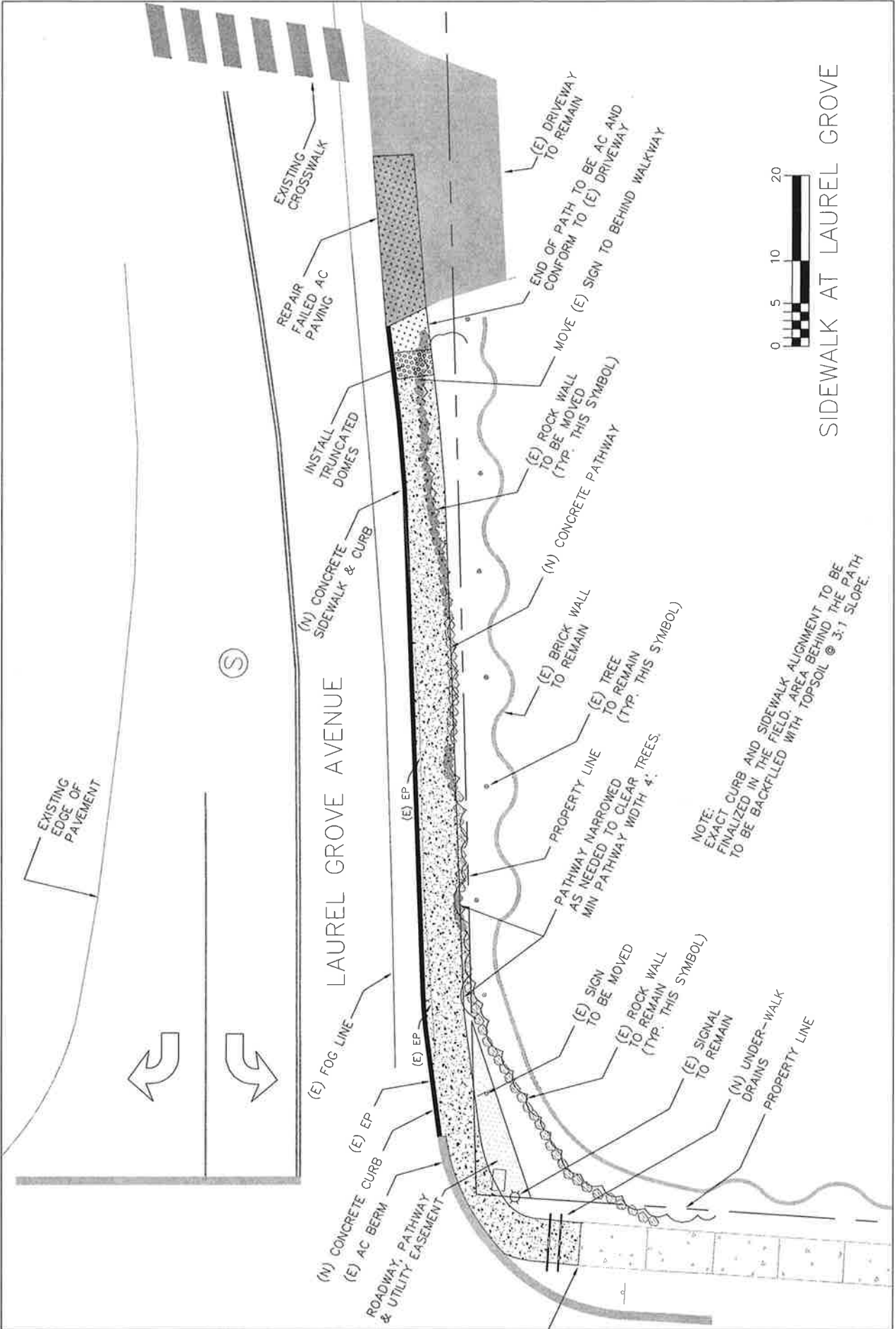
None recommended.

Environmental review (if applicable)

N/A

Attachments

1. Plat showing proposed sidewalk and easement location
2. Easement Agreement signed by MAGC



SIDEWALK AT LAUREL GROVE

RECORDING REQUESTED BY:
CITY CLERK, TOWN OF ROSS
RECORD WITHOUT FEE PER G.C. 27383

When recorded, mail to:
CITY CLERK
TOWN OF ROSS
P.O. BOX 320
ROSS CA 94957

APN 072-231-23

EASEMENT AGREEMENT

MA This EASEMENT AGREEMENT ("**Agreement**") is made this 19th day of ~~December~~ January 2016, by MARIN ART AND GARDEN CENTER, a nonprofit organization ("**Grantor**"), and TOWN OF ROSS, a municipal corporation ("**Grantee**"), collectively ("**Parties**").

RECITALS

This Agreement is entered into with reference to the following facts:

- A. Grantor owns that certain real property identified as Assessor Parcel Number 072-231-23, located at the northeast corner of Sir Francis Drake Boulevard and Laurel Grove Avenue, in the Town of Ross, California ("Grantor's Parcel"). The portion of Grantor's Parcel adjacent to the corner of Laurel Grove Avenue is not improved with a public sidewalk.
- B. Grantee desires to improve Grantor's Parcel with a public sidewalk.
- C. Grantor has agreed to convey an easement (the "Easement") to Grantee on that portion of the Grantor's Parcel described more particularly and in the location depicted on **Exhibit A-1** and **Exhibit A-2** (the "Property"), attached hereto and incorporated herein, in exchange for Grantee's covenant to construct and maintain a public sidewalk on the property, all in accordance with the terms hereof.
- D. The grant of the Easement and the construction of a sidewalk thereon pursuant to this Agreement are in the best interests of the Grantee and the Grantor, and the health, safety, and welfare of residents and taxpayers of the Town of Ross, and are in accord with the public purposes and provisions of applicable state and local laws.

AGREEMENT

NOW, THEREFORE, in consideration of the promises contained herein, Grantor hereby declares as follows:

1. Grant of Easement. The Grantor does hereby grant and convey to the Grantee an easement for the construction and maintenance of a public sidewalk (the "Easement") on the real property described in Exhibit A-1 and Exhibit A-2 attached hereto and hereby incorporated (the "Property"). The Easement shall constitute a binding servitude upon the Property for the benefit of the Grantee, and to that end the Grantor hereby covenants on behalf of itself and its heirs, successors, and assigns, with the Grantee, its successors and assigns, such covenants being deemed to run as a binding servitude, in perpetuity, upon the property, to do and to refrain from doing upon the Property such activities that will impede the use of the Easement for sidewalk purposes, and hereby declare and impose the restrictions described herein upon the use and enjoyment of the Property.

2. Public's Rights: Grantee Right to Enter. Grantor acknowledges that the Easement shall be used for public sidewalk purposes and that members of the public shall have the right to use the sidewalk at all times. The Grantee shall also have the right to enter onto the Property and the property immediately adjacent to the Property that is owned by Grantor to perform any maintenance thereon as may be necessary to keep the Easement in good condition and repair. All costs of maintenance performed by the Grantee hereunder shall be paid by the Grantee.

3. Construction of Sidewalk. The Grantee hereby agrees to undertake the construction of the sidewalk on the Easement within one year of the date hereof. The cost of developing and constructing the sidewalk shall be borne by Grantee, and Grantee shall maintain the Easement in clean condition during the construction of the sidewalk.

4. Maintenance. Grantee shall be solely responsible for the repair and maintenance of the sidewalk on the Easement after it is constructed and hereby covenants to keep and maintain the Easement in a clean condition at all times.

5. Running with the Land. The easements, rights of way, covenants, conditions and restrictions provided herein are interests in the Property. All rights and obligations provided in this Agreement shall be appurtenant to and shall run with the Property and the benefits and burdens of this Agreement shall bind and benefit all parties having or acquiring any right, title or interest in all or any portion of the Property.

6. Attorneys' Fees. Should Grantor or Grantee institute any action or proceeding to enforce this Agreement, or for damages by reason of any alleged breach of this Agreement, or for a declaration of rights hereunder, the prevailing party in any such action or proceeding shall be entitled to receive from the non-prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the prevailing party in connection with such action or proceeding.

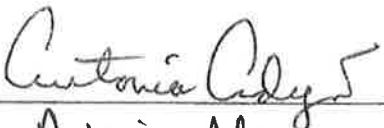
7. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect, provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to any party hereunder.

8. Entire Agreement. This Agreement, including the exhibits attached hereto, contains the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties hereto pertaining to such subject matter. Furthermore, this Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties hereto.

9. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Easement Agreement as of the day and year set forth above.

GRANTOR:



Antonia Adezio
Executive Director

GRANTEE: Town of Ross, a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Town Counsel

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Marin County)

On 1/19/2017, before me, Sokunrath Sun,
(insert name and title of the officer)

Notary Public, personally appeared Antonia Adzizio,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)

Signature SOKUNRATH SUN



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Marin County)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Signature _____

EXHIBIT A-1

LEGAL DESCRIPTION OF PROPERTY

EASEMENT FOR PUBLIC SIDEWALK PURPOSES

The following parcel of land, being a portion of the lands of the Marin Art & Garden Center, described in the deed recorded in Book 1676 of Official Records, Page 17, Marin County Records, and as shown on the Record of Survey recorded August 8, 2008 in Book 2008 of Maps, Page 150, Marin County Records, and being more particularly described as follows:

Beginning at a point being the most westerly corner of said lands, said point also being the intersection of the southeasterly line of Laurel Grove Avenue with the northeasterly line of Sir Francis Drake Boulevard, as shown on said Record of Survey; thence, along the southwesterly boundary of said lands, S 29° 10' 13" E, 6.50 feet; thence, leaving said southwesterly boundary, along a line, N 38° 15' 16" E, 21.98 feet, to a point on the northwesterly boundary of said parcel, said point also being on the southeasterly line of Laurel Grove Avenue; thence, along said northwesterly boundary, S 55° 23' 00" W, 20.38 feet, to the point of beginning.

Said parcel contains 66 square feet, more or less.

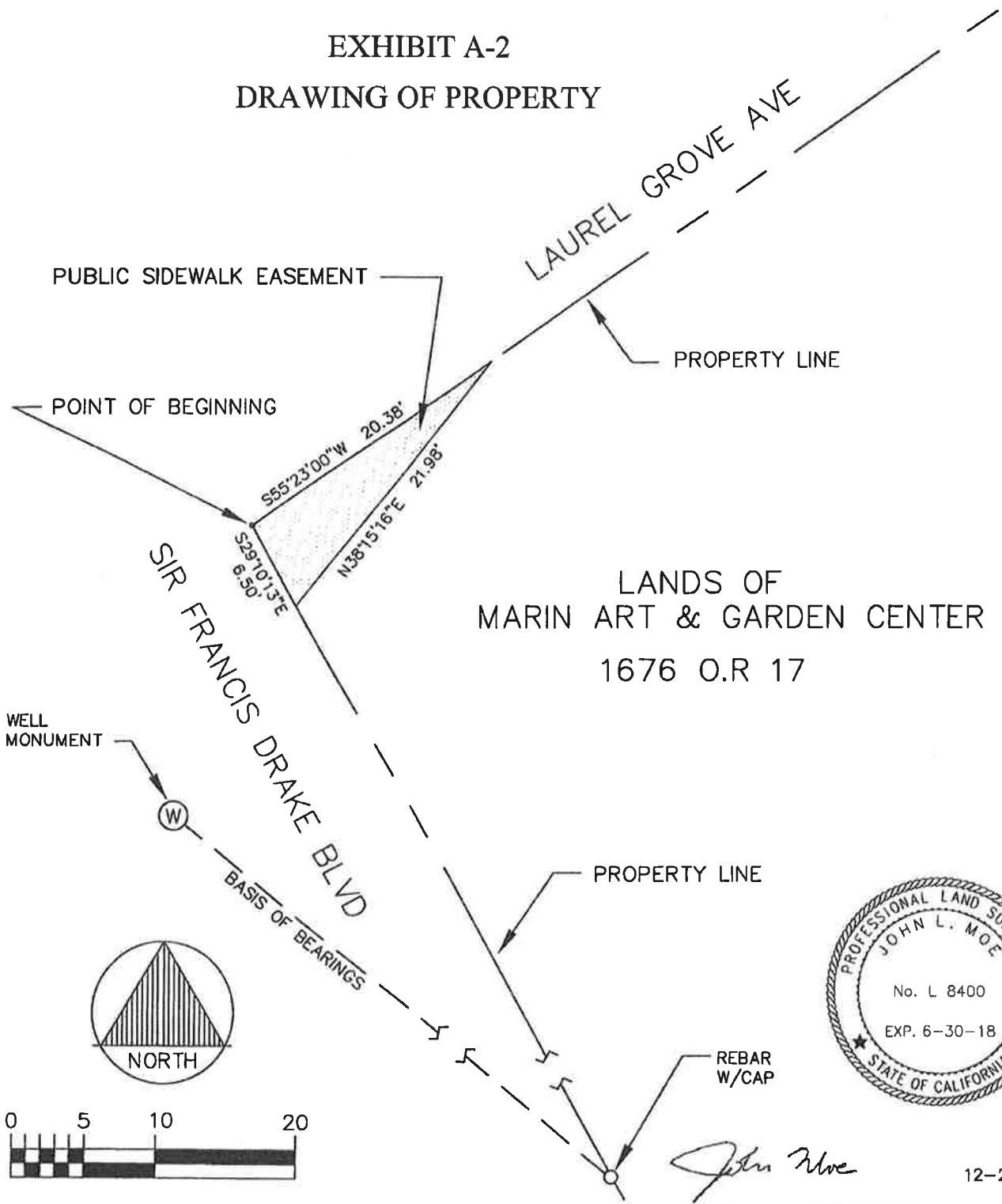
Basis of Bearings: The calculated line which bears N 38° 50' 09" W between set rebar w/cap at southwesterly corner of the Lands of the Marin Art & Garden Center and a standard well monument in Sir Francis Drake Blvd. as shown on said Record of Survey.



John Moe

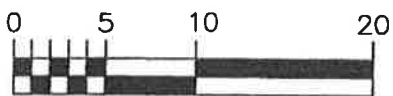
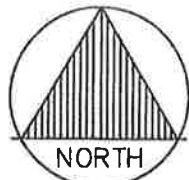
12-2-16

EXHIBIT A-2
DRAWING OF PROPERTY



LANDS OF
MARIN ART & GARDEN CENTER
1676 O.R 17

WELL
MONUMENT



John Moe

12-2-16

JOHN L. MOE, PLS L 8400 DATE

MOE
ENGINEERING, INC.
2950 MONTECITO AVE.
SANTA ROSA, CALIFORNIA 95404
(707) 544-6274

TITLE
PLAT TO ACCOMPANY LEGAL DESCRIPTION
EASEMENT
FOR
PUBLIC SIDEWALK PURPOSES

DATE	DECEMBER 2016
SCALE	1"=10'
DRAWN	RNI
JOB	2014-118
DRAWING	EASEMENT

CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by that certain Easement Agreement dated as of _____, 20__, by and between _____, and the Town of Ross (the "Town"), is hereby accepted by the undersigned officer on behalf of the Town pursuant to the authority conferred by Resolution No. _____ of the Town Council of the Town of Ross adopted on _____, and the Town consents to the recordation thereof by its duly authorized officer.

Dated as of: _____, 20__.

ATTEST:

City Clerk

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Marin County)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Signature _____