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## Staff Report

**Date:** December 13, 2016

**To:** City Council

**From:** Valerie J. Barone, City Manager

**Reviewed by:** Victoria Walker, Director of Community and Economic Development

**Prepared by:** Kevin Marstall, Current Development Manager  
[Kevin.marstall@cityofconcord.org](mailto:Kevin.marstall@cityofconcord.org)  
(925) 671-3257

**Subject:** **Considering adoption of Resolution No. 16-82 ordering summary vacation of 8,060 sq. ft. of excess public right-of-way located at 2111 Kirker Pass Road, Concord, California, 94521, APN 117-070-027.**

**In accordance with the California Environmental Quality Act (CEQA) of 1970, as amended, the project qualifies for a Categorical Exemption pursuant to CEQA Guidelines Section 15305, "Minor Alterations In Land Use Limitations" and therefore no further environmental review is required.**

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### Report in Brief

On April 19, 2016, Thomas & Mindee Spear submitted an application for vacation of 8,060 square feet of excess public right-of-way located adjacent and westerly of their parcel located at 2111 Kirker Pass Road. This is a portion of a public right-of-way that was offered for dedication to Contra Costa County in 1971 to provide access for a subdivision of property. This right-of-way offer of dedication was transferred to the City with the subsequent annexation of the area.

The Planning Commission reviewed the proposed summary vacation of the offer of dedication and determined that it is consistent with the *Concord 2030 General Plan*. The offer of dedication for street and highway purposes for this portion of public right-of-way is no longer needed.

## City Council Agenda Report

Considering adoption of Resolution No. 16-82 ordering summary vacation of 8,060 sq. ft. of excess public right-of-way located at 2111 Kirker Pass Road, Concord, California, 94521, APN 117-070-027  
December 13, 2016

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### **Recommended Action**

The Planning Commission and staff recommend that the City Council adopt Resolution No. 16-82 ordering summary vacation of 8,060 sq. ft. of excess public right-of-way located at 2111 Kirker Pass Road, APN 117-070-027.

### **Background**

On October 15, 1971, a Parcel Map was filed with Contra Costa County, as shown in Book 18 of Parcel Maps, Page 50. That Parcel Map included an Offer of Dedication of a 52 foot wide strip of land to Contra Costa County. The Offer of Dedication for Street and Highway purposes was accepted by Contra Costa County and recorded on January 11, 1972 in Book 6561 of Official Records, Page 95 under Recorder's Serial Number 2194. The Offer of Dedication affected the southwesterly 26 feet of 2111 Kirker Pass Road owned by Thomas & Mindee Spear ("Applicant"), APN 117-070-027, see Location Map, as described in Exhibit A and shown on Exhibit B, constituting a total of 8,060 square feet.

The Offer of Dedication also included a 26 ft. wide dedication on the adjacent property, currently owned by St. Demetrios Greek Orthodox Church, for a total of 52 ft. This 52' wide right-of-way was intended for the construction of a public road that would have provided access to a potential subsequent residential subdivision.

In October 2015 the Applicant first approached the City regarding the possible vacation of their 26' wide portion of the right-of-way which is part of a parcel, and they subsequently applied for this vacation in April 2016. Also in 2015, St. Demetrios applied for and received approval for a Parcel Map, to divide their parcel into two (2) parcels. The subdivision was conditioned to require the private access road for the subdivision be located entirely within the area offered for dedication on the St. Demetrios parcel. St. Demetrios has also had conversations with the City of Concord regarding the vacation of the offer of dedication for the westerly 26 ft. of right-of-way on their property, though no application has been received to date.

### **Analysis**

City of Concord Administrative Directive No. 93 provides a process for individuals to submit an application to vacate or abandon City streets, alleys, public services easements (utilities) and other non-fee interests which the City may have in real property.

As part of that process, the proposal to vacate the public property is to be presented to the Planning Commission for consideration, which then forwards its recommendation for action by the City Council. Section 65402 of the California Government Code also requires the Planning Commission to make a finding of consistency with the General Plan in any instance in which a public street is vacated.

## City Council Agenda Report

Considering adoption of Resolution No. 16-82 ordering summary vacation of 8,060 sq. ft. of excess public right-of-way located at 2111 Kirker Pass Road, Concord, California, 94521, APN 117-070-027  
December 13, 2016

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Section 8334(a) of the California Streets and Highway Code allows for the summary vacation of an excess right-of-way of a street or highway that is no longer required for street or highway purposes. Pursuant to Section 8335, the City may summarily vacate the right-of-way by resolution by City Council.

The Transportation and Circulation Element of the General Plan sets forth the provisions for vehicular, transit, pedestrian and bicycle modes and has identified the roadway network required for circulation. The right of way for which the offer of dedication was made is not included in the Transportation and Circulation Element of the General Plan, and does not serve a public benefit. The subject 26 ft. of right-of-way is currently unimproved and used only by the Applicant to access the rear of their property. The counterpart westerly 26 ft. of right-of-way owned by St. Demetrios Church accommodates a private unimproved access road that serves only St. Demetrios' property, and for which a tentative Parcel Map has been approved which is conditioned to construct an access road located entirely within the westerly 26 ft.

Staff has reviewed the request for summary vacation of the roadway right-of-way with the City Engineer and the City Attorney's office. On November 2, 2016, the Planning Commission reviewed the proposed request and determined that the summary vacation of the right of way is consistent with the *2030 Concord General Plan* and recommended that the City Council approve the vacation of the subject right of way.

### **Financial Impact**

There is no fiscal impact to the City created by ordering the summary vacation of the excess right-of-way. This 8,060 square foot right-of-way parcel has no development value and would only prove useful to the adjacent property owner (Applicant).

### **Environmental Determination**

In accordance with the California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as Categorical Exempt pursuant to Section 15305, "Minor Alterations in Land Use Limitations" and therefore no further environmental review is required.

### **Public Contact**

The Planning Commission held a noticed Public Meeting on October 19, 2016 and continued the meeting to November 2, 2016, where action was taken (Attachment 5). Prior to the Planning Commission hearing, notification was also mailed to the utility agencies that had been given a 30-day opportunity to request that the City reserve any existing utility easement. No such request was received.

The City Council Agenda was posted.

City Council Agenda Report

Considering adoption of Resolution No. 16-82 ordering summary vacation of 8,060 sq. ft. of excess public right-of-way located at 2111 Kirker Pass Road, Concord, California, 94521, APN 117-070-027

December 13, 2016

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**Attachments**

1. Resolution No. 16-82
2. Location Map
3. Planning Commission Resolution No. 16-27 PC

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD,  
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Ordering Summary Vacation of 8,060  
sq. ft. of Excess Public Right-of-Way Located at 2111  
Kirker Pass Road, Concord, California, 94521, APN  
117-070-027.**

**Resolution No. 16-82**

**WHEREAS**, an Offer of Dedication to Contra Costa County for Street and Highway purposes was recorded January 11, 1972 in Book 6561 of Official Records, Page 95 under Recorder’s Serial Number 2194; and

**WHEREAS**, on May 26, 1987, the City Council of the City of Concord adopted Resolution 87-83 annexing approximately 127 acres of property, including the subject parcel APN 117-070-027, otherwise commonly known as 2111 Kirker Pass Road; and

**WHEREAS**, on April 19, 2016, Thomas & Mindee Spear submitted an application for Vacation of Excess Public Right-of-Way; and

**WHEREAS**, on June 27, 2016, the application was deemed complete for processing; and

**WHEREAS**, pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as Categorically Exempt pursuant to Section 15305, “Minor Alterations in Land Limitations” and therefore no further environmental review is required; and

**WHEREAS**, pursuant to Streets and Highway Code Sections 8334(a) and 8335, the City Council may summarily vacate an excess right-of-way of a street or highway not required for street or highway purposes; and

**WHEREAS**, the City of Concord has determined that said offer of dedication is no longer required for street or highway purposes and is in excess of the City’s needs; and

**WHEREAS**, utilities have been notified, given an opportunity to maintain any existing easement and have made no such request of the City; and

**WHEREAS**, pursuant to Government Code Section 65402, prior to the summary vacation of a public right-of-way, the Planning Commission must make a finding that the vacation is consistent with Concord 2030 General Plan; and

1           **WHEREAS**, the Planning Commission, after giving all public notices required by State law  
2 and the Concord Municipal Code, held a duly noticed public hearing October 19, 2016 and November  
3 2, 2016 on the subject proposal; and

4           **WHEREAS**, on November 2, 2016 the Planning Commission, after consideration of all  
5 pertinent plans, staff reports, oral and written, documents, materials, and testimony, determined that  
6 the summary vacation of the right-of-way at 2111 Kirker Pass Road is consistent with Concord 2030  
7 General Plan and recommended that the City Council approve the vacation of the subject right-of-  
8 way; and

9           **WHEREAS**, on December 13, 2016 the City Council held a duly noticed public hearing on  
10 the subject proposal; and

11           **WHEREAS**, at such public hearing, the City Council considered the staff report, oral and  
12 written, documents, and testimony and materials presented by all those wishing to be heard.

13           **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES**  
14 **RESOLVE AS FOLLOWS:**

15           **Section 1.** The recitals above and all attachments hereto are incorporated by reference and  
16 constitute findings.

17           **Section 2.** The subject proposal is categorically exempt from CEQA pursuant to CEQA  
18 Guidelines Section 15305, “Minor Alterations in Land Limitations” and therefore no further  
19 environmental review is required. No unusual circumstances are present.

20           **Section 3.** Finds that the right-of-way offered for dedication is in excess of the City’s needs  
21 for street or highway purposes.

22           **Section 4.** Finds that there is no immediate or future need for the portion of excess right-of-  
23 way as further described in attached Exhibits “A” and “B”, that it may be summarily vacated as  
24 excess right-of-way, pursuant to Streets and Highways Code, Section 8334 (a).

25           **Section 5.** Finds that the proposed vacation is consistent with the Concord 2030 General Plan.

26           **Section 6.** This resolution shall become effective immediately upon its passage and adoption.

27 //

1           **PASSED AND ADOPTED** by the City Council of the City of Concord on December 13,  
2 2016, by the following vote:

3 **AYES:**           Councilmembers-

4 **NOES:**           Councilmembers-

5 **ABSTAIN:**       Councilmembers-

6 **ABSENT:**        Councilmembers-

7           I HEREBY CERTIFY that the foregoing Resolution No. 16-82 was duly and regularly adopted  
8 at a special meeting of the City Council of the City of Concord on December 13, 2016.

9  
10  
11 \_\_\_\_\_  
Joelle Fockler, MMC  
City Clerk

12 **APPROVED AS TO FORM:**

13  
14 \_\_\_\_\_  
15 Susanne Meyer Brown  
City Attorney

16 Exhibits:  
17                   A – Legal Description  
18                   B – Plat Map

## EXHIBIT "A"

### Property to be Vacated

APN 117-070-027

All that certain real property situated in the City of Concord, County of Contra Costa, State of California, described as follows:

Being a portion of Parcel 'B', as said Parcel is shown on Parcel Map MS 76-71, filed October 15, 1971, in Book 18 of Parcel Maps, at Page 50, Contra Costa County Records, further described as follows:

BEGINNING at the most westerly corner of said Parcel 'B', said Point of Beginning also lies on the Easterly line of Parcel 'A', as shown on said map;

THENCE leaving said Point of Beginning, along the Northwesterly line of said Parcel 'B', North 45° 38' 30" East, 26.00 feet:

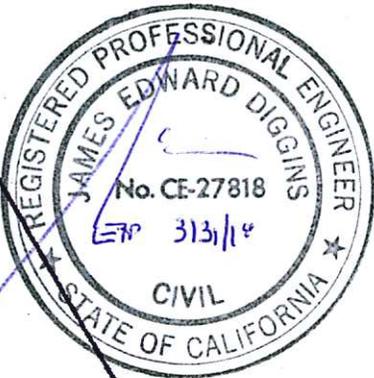
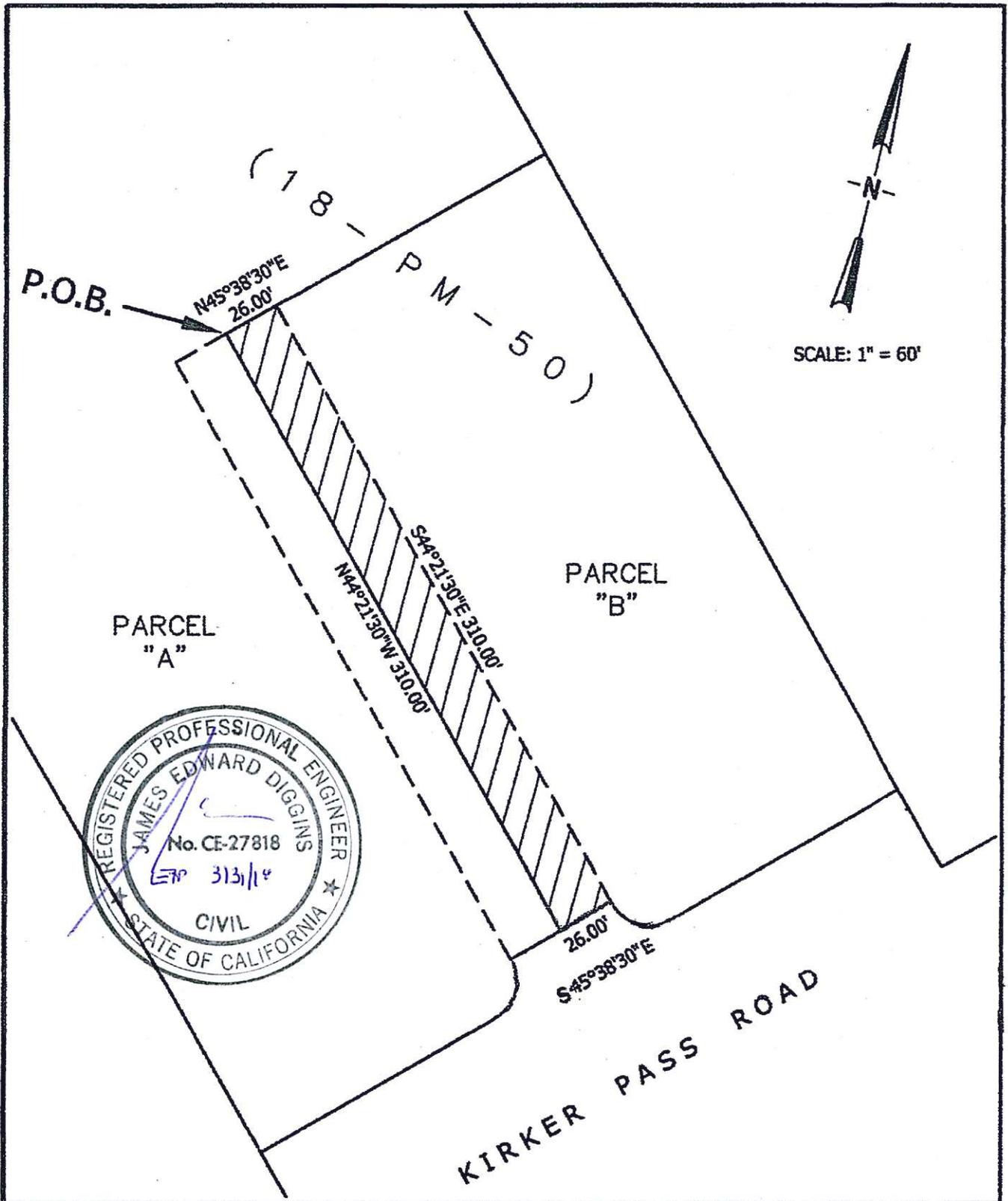
THENCE South 44° 21' 30" East, 310.00 feet, to a point on the northwesterly right-of way line of Kirker Pass Road, as shown on said map:

THENCE along said Right-of-Way line, South 45° 38' 30" West, 26.00 feet, to a point on the line common to Parcels 'A' and 'B', as shown on said map (18 PM 50)

THENCE along said common line, North 44° 21' 30" West, 310.00 feet, to said Point of Beginning.

Containing an area of 8,060 square feet of land, more or less.



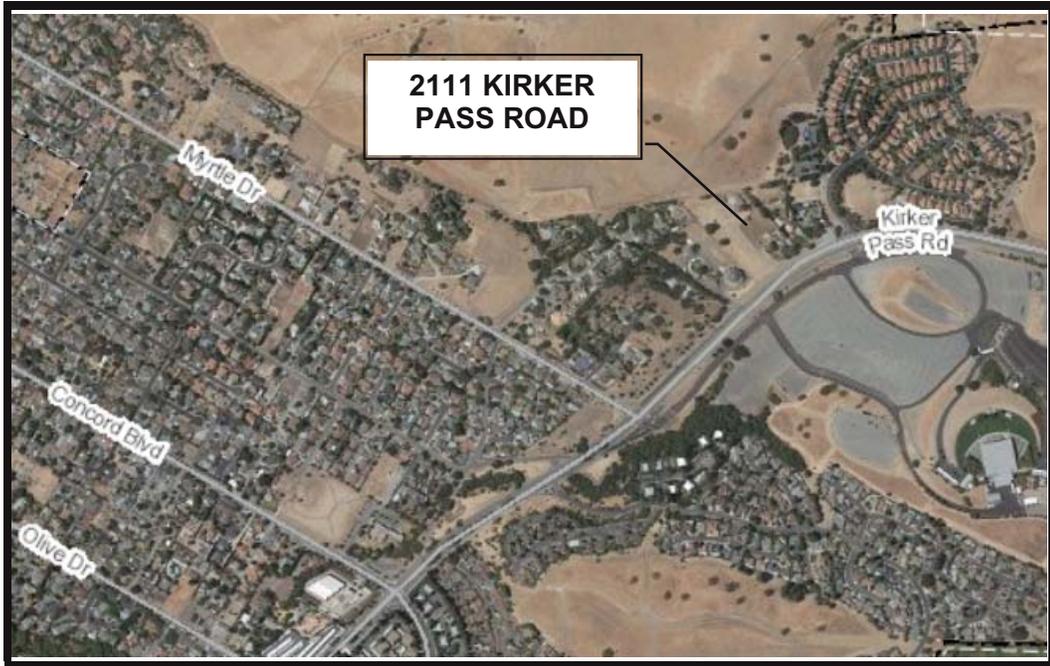


**EXHIBIT "B"**  
**PLAT TO ACCOMPANY**  
**LEGAL DESCRIPTION**  
**PROPERTY TO BE VACATED**



**DeBolt Civil Engineering**  
 811 San Ramon Valley Boulevard  
 Danville, California 94526  
 925/837-3780

Date: 3/25/2016  
 Scale: 1" = 60'  
 By: JED/adv  
 Job No.: 16156



**LOCATION MAP**  
No Scale

BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD,  
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

A RESOLUTION BY THE PLANNING  
COMMISSION RECOMMENDING SUMMARY  
VACATION OF EXCESS PUBLIC RIGHT-OF-  
WAY OF 8,060 SQ. FT. LOCATED AT 2111  
KIRKER PASS ROAD (APN 117-070-027) AND  
FINDING THAT SUMMARY VACATION IS  
CONSISTENT WITH THE 2030 GENERAL PLAN.

Resolution No. 16-27PC

**WHEREAS**, an Offer of Dedication to Contra Costa County for Street and Highway purposes was recorded January 11, 1972 in Book 6561 of Official Records, Page 95 under Recorder's Serial Number 2194; and

**WHEREAS**, on May 26, 1987, the City Council of the City of Concord adopted Resolution 87-83 annexing approximately 127 acres of property, including the subject parcel APN 117-070-027, otherwise commonly known as 2111 Kirker Pass Road; and

**WHEREAS**, on April 19, 2016, Thomas & Mindee Spear submitted an application for Vacation of Excess Public Right-of-Way; and

**WHEREAS**, on June 27, 2016, the application was deemed complete for processing; and

**WHEREAS**, pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, the project is classified as Categorically Exempt pursuant to Section 15305, "Minor Alterations to Land Limitations" and therefore no further environmental review is required; and

**WHEREAS**, pursuant to Streets and Highway Code Section 8334(a), the City Council may summarily vacate an excess right-of-way of a street or highway not required for street or highway purposes.

**WHEREAS**, the City of Concord has determined that said offer of dedication is no longer required for street or highway purposes and is in excess of the City's needs; and

**WHEREAS**, utilities have been notified, given an opportunity to maintain any existing easement and have made no such request of the City; and

**WHEREAS**, pursuant to Government Code Section 65402, prior to the summary vacation of a

1 public right-of-way, the Planning Commission must make a finding that the vacation is consistent  
2 with Concord 2030 General Plan.

3 **WHEREAS**, the Planning Commission, after giving all public notices required by State law  
4 and the Concord Municipal Code, held a duly noticed public hearing on October 19, 2016 the subject  
5 proposal; and

6 **WHEREAS**, the Planning Commission considered testimony and information received at the  
7 public hearing and the oral and written reports from City staff dated October 19, 2016, as well as other  
8 documents contained in the record of proceedings relating to the proposed project, which are  
9 maintained at the offices of the City of Concord Planning Division; and

10 **WHEREAS**, on October 19, 2016 the Planning Commission continued the hearing until  
11 November 2, 2016; and

12 **WHEREAS**, on November 2, 2016 the Planning Commission, after consideration of all  
13 pertinent plans, documents and testimony, determined that the summary vacation of the right-of-way  
14 at 2111 Kirker Pass Road is consistent with Concord 2030 General Plan and recommended that the  
15 City Council approve the vacation of the subject right-of-way.

16 **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:** that the Planning Commission  
17 does hereby: 1) Find the Vacation of Right-of-way consistent with the City’s 2030 General Plan, and  
18 further makes the following findings:

19 Vacation of Right-of-Way.

20 **Section 1.** Finds that the right of way offered for dedication is in excess of the City’s needs  
21 for street or highway purposes.

22 **Section 2.** Finds that there is no immediate or future need for the portion of excess right-of-  
23 way as further described in attached Exhibits “A” and “B”, and recommends to City Council that it  
24 may be summarily vacated as excess right-of-way, pursuant to Streets and Highways Code, Section  
25 8334 (a).

26 **Section 3.** Finds that the proposed vacation is consistent with the Concord 2030 General Plan.

27 **Section 4.** This resolution shall become effective immediately upon its passage and adoption.  
28

**PASSED AND ADOPTED** this 2nd day of November, 2016, by the following vote:

**AYES:** Commissioners Aliano, Barbour, Anderson, Laub, Obringer

**NOES:** None

**ABSTAIN:** None

**ABSENT:** None

*Frank Abajo for*  
\_\_\_\_\_  
Laura Simpson, AICP  
Planning Manager

Exhibits:  
A – Legal Description  
B – Plat Map

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**EXHIBIT "A"**

**Property to be Vacated**

**APN 117-070-027**

All that certain real property situated in the City of Concord, County of Contra Costa, State of California, described as follows:

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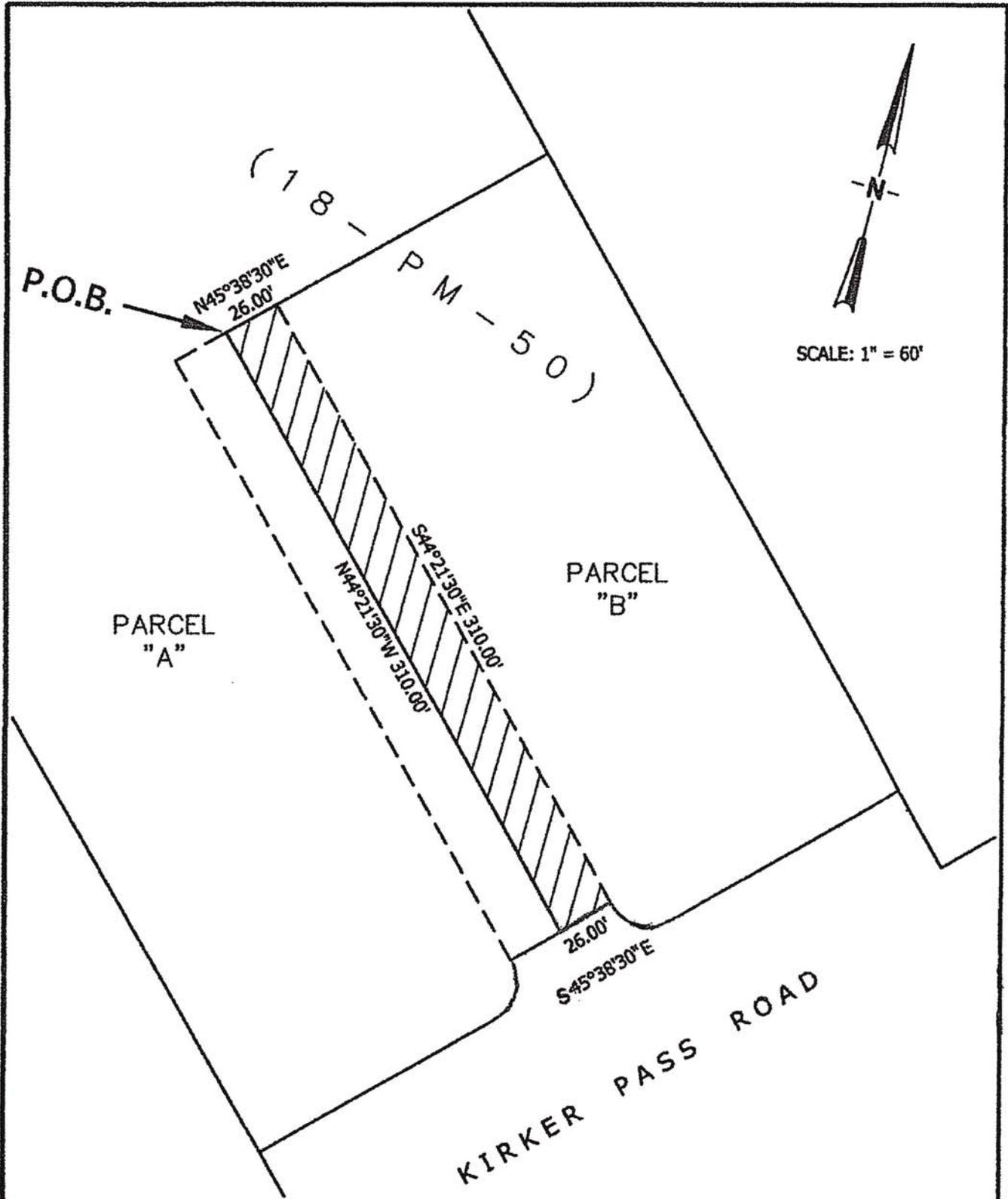
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THENCE along said common line, North 44° 21' 30" West, 310.00 feet, to said Point of Beginning.

Containing an area of 8,060 square feet of land, more or less.



**EXHIBIT "B"**  
**PLAT TO ACCOMPANY**  
**LEGAL DESCRIPTION**

**PROPERTY TO BE VACATED**



**DeBolt Civil Engineering**  
 811 San Ramon Valley Boulevard  
 Danville, California 94526  
 925/837-3780

Date: 3/25/2016  
 Scale: 1" = 60'  
 By: JED/adv  
 Job No.: 16156