

## MEMORANDUM

**TO:** PLANNING COMMISSION

**FROM:** TERESA McCLISH, COMMUNITY DEVELOPMENT DIRECTOR

**BY:** MATTHEW DOWNING, ASSISTANT PLANNER

**SUBJECT:** CONSIDERATION OF PLOT PLAN REVIEW CASE NO. 14-003;  
MODIFICATION OF EXISTING OPEN-SPACE EASEMENT; LOCATION  
– 465 CANYON WAY; APPLICANT – TED MALLEY

**DATE:** MAY 6, 2014

### RECOMMENDATION:

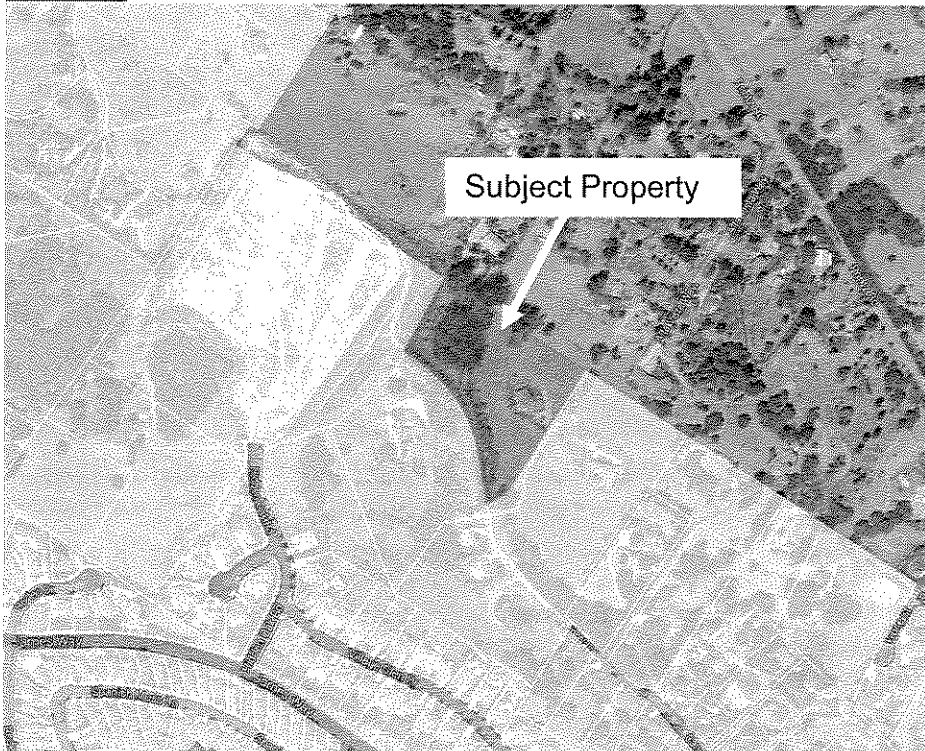
It is recommended that the Planning Commission adopt the attached Resolution recommending the City Council approve Plot Plan Review Case No. 14-003 and accept a modified Open Space Easement at 465 Canyon Way.

### IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

None.

### BACKGROUND:

#### Location



The subject property is Lot 40 of Tract 2265, commonly known as the Village Glen Subdivision. On December 21, 1999, the Planning Commission adopted Resolution No. 99-1727, approving Vesting Tentative Tract Map No. 2265 and Planned Unit Development No. 97-563, subject to specific conditions of approval. Condition of approval #24 required the recordation of open space easements on each of the four large residential lots within the subdivision, including the subject property. This open space easements designated building envelopes for each of these sites and prohibited specific actions from being performed outside of the envelopes. The applicant has submitted an application for plot plan review to modify the building envelope for Lot 40.

**ANALYSIS OF ISSUES:**

The proposed project will amend the open space easement on the subject property to change the configuration of the designated building envelope. The subject property currently has a building envelope that is generally square (Attachment 1). The proposed building envelope would result in a more rectangular building site (Attachment 2). The proposed building envelope would allow for additional development on the Lot but would significantly reduce the amount of grading required on portions of the hillside behind the existing residence. The change in the building envelope would result in increased visual presence of new construction on the hillside. With the existing building envelope, new construction would be located behind the existing residence, when the property is viewed from Canyon Way. Under the proposed building envelope, new construction would be located on the side of the existing residence when viewed from Canyon Way. Even in light of the increase visual presence, staff supports the modification to the open space easement due to the significantly reduced grading of the hillside resulting from the proposed building envelope.

**ALTERNATIVES:**

The following alternatives are provided for the Planning Commission's consideration:

- Adopt the attached Resolution recommending the City Council approve Plot Plan Review Case No. 14-003;
- Modify and adopt the attached Resolution recommending the City Council approve Plot Plan Review Case No. 14-003;
- Do not adopt the attached Resolution and instead provide direction for staff to return with an appropriate resolution recommending the City Council deny Plot Plan Review Case No. 14-003; or
- Provide direction to staff.

**ADVANTAGES:**

The proposed project would result in a modified building envelope for the subject property, which would allow for further development with much less grading than would be necessary with the configuration of the existing building envelope. Additionally, conditions of approval have been included in the attached Resolution that require the applicant to make an offer of dedication for pedestrian access along the Canyon Way

property boundary, which is identified in the Conservation/Open Space Element of the General Plan under C/OS3, which states:

*“Plan for a well-maintained system of footpaths and non-vehicular trails that provide access to areas of non-urban environment”.*

**DISADVANTAGES:**

The modified building envelope would result in more visual presence of future construction on the hillside next to the existing residence.

**ENVIRONMENTAL REVIEW:**

Staff has reviewed the proposed project in accordance with the California Environmental Quality Act (CEQA) and has determined that the project is categorically exempt per Section 15305 of the CEQA Guidelines regarding minor alterations in land use limitations that do not result in any changes in land use or density.

**PUBLIC NOTIFICATION AND COMMENTS:**

Tonight’s agenda and staff report were posted at City Hall and on the City’s website on May 2, 2014. No comments have been received by staff.

Attachments:

1. Map of the existing building envelope for Lot 40 of Tract 2265
2. Map of the proposed building envelope for Lot 40 of Tract 2265

## RESOLUTION NO.

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ARROYO GRANDE RECOMMENDING THE CITY COUNCIL APPROVE PLOT PLAN REVIEW CASE NO. 14-003; LOCATED AT 465 CANYON WAY (LOT 40 OF TRACT 2265); APPLIED FOR BY TED MALLEY

**WHEREAS**, on December 21, 1999 the Planning Commission of the City of Arroyo Grande adopted Resolution No. 99-1727, approving Vesting Tentative Tract Map No. 2265 and Planned Unit Development No. 97-563; and

**WHEREAS**, conditions of approval for the project required the recordation of open space easements in favor of the City of Arroyo Grande over portions of four (4) lots located in Tract 2265; and

**WHEREAS**, the open space easements designated building envelopes for each of the subject lots and restricted activities on areas outside of these envelopes; and

**WHEREAS**, changes to the location of the building envelopes are subject to review and approval of the Community Development Director; and

**WHEREAS**, the Community Development Director determined a plot plan review was necessary to evaluate the proposed modification to the building envelope for Lot 40 of Tract 2265 and required the approval of the City Council, following a recommendation by the Planning Commission; and

**WHEREAS**, the applicant submitted an application for plot plan review for the modification of the building envelope for Lot 40 of Tract 2265; and

**WHEREAS**, the Planning Commission has reviewed the project in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the Arroyo Grande Rules and Procedures for Implementation of CEQA and has determined that the project is exempt per Section 15305 of the CEQA Guidelines regarding minor alterations in land use limitations that do not result in any changes in land use or density; and

**WHEREAS**, the Planning Commission of the City of Arroyo Grande has reviewed the project at a regular meeting on May 6, 2014; and

**WHEREAS**, the Planning Commission finds, after due study, deliberation and public hearing, the following circumstances exist:

#### **Plot Plan Review Findings:**

1. The proposed project is consistent with the goals, objectives, policies, and programs of the Arroyo Grande General Plan.

**RESOLUTION NO.**

**PAGE 2**

*The proposed modification to the building envelope for the subject property is consistent with the goals, objectives, policies, and programs of the Arroyo Grande General Plan and results in substantially reduced grading necessary for further development on the subject property. Additionally, the resulting building envelope maintains the original intent of the open space easement, which was to preserve the natural environment surrounding the subject property by prohibiting structures, grading, or filling outside of said easement, by reducing the grading necessary for further development on the subject property.*

2. The proposed project conforms to applicable performance standards and will not be detrimental to the public health, safety, or general welfare.

*The proposed project conforms to conditions of approval for Tract 2265 by allowing for changes to the location of the building envelope on the subject property and will not be detrimental to the public health, safety, or general welfare by maintaining restrictions on the use of property outside of the building envelope and reducing grading necessary for further development of the subject property.*

3. The physical location or placement of the use on the site is compatible with the surrounding neighborhood.

*The modified location of the building envelope for the subject property is compatible with the surrounding neighborhood by substantially reducing grading necessary for further development of the subject property.*

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Arroyo Grande hereby recommends the City Council approve Plot Plan Review Case No. 14-003, with the above findings and subject to the conditions as set forth in Exhibit "A", attached hereto and incorporated herein by this reference; and further recommends the City Council authorize the Mayor to execute a First Amendment to Open-Space Agreement Granting an Open Space Easement to the City of Arroyo Grande, as presented to the Planning Commission on May 6, 2014 and as shown in Exhibit "B", attached hereto and incorporated herein by this reference as though set forth in full.

On motion by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and by the following roll call vote, to wit:

**AYES:**

**NOES:**

**ABSENT:**

the foregoing Resolution was adopted this 6<sup>th</sup> day of May, 2014

ATTEST:

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DEBBIE WEICHINGER  
SECRETARY TO THE COMMISSION

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LISA SPEROW, VICE CHAIR

AS TO CONTENT:

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TERESA MCCLISH  
COMMUNITY DEVELOPMENT DIRECTOR

EXHIBIT 'A'  
CONDITIONS OF APPROVAL  
PLOT PLAN REVIEW 14-003  
465 CANYON WAY

COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

GENERAL CONDITIONS

1. The applicant shall ascertain and comply with all Federal, State, County and City requirements as are applicable to this project.
2. The applicant shall comply with all conditions of approval for Plot Plan Review 14-003.
3. The project shall occur in substantial conformance with the First Amendment to Open Space Agreement Granting an Open Space Easement to the City of Arroyo Grande presented to the Planning Commission at their meeting of May 6, 2014 and marked Exhibit "B".
4. The applicant shall agree to indemnify and defend at his/her sole expense any action brought against the City, its present or former agents, officers, or employees because of the issuance of said approval, or in any way relating to the implementation thereof, or in the alternative, to relinquish such approval. The applicant shall reimburse the City, its agents, officers, or employees, for any court costs and attorney's fees which the City, its agents, officers or employees may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his/her obligations under this condition.
5. Development shall conform to the Residential Rural (RR) zoning district standards except as otherwise approved.

SPECIAL CONDITIONS

6. **Prior to the issuance of any building permit**, the applicant shall record a non-exclusive pedestrian access easement that coincides with the property's respective portion of the Canyon Way private drive, on a form approved by the City Attorney..

BUILDING AND LIFE SAFETY DIVISION AND FIRE DEPARTMENT CONDITIONS

GENERAL CONDITIONS:

BUILDING CODES

7. All construction shall comply with the current California Codes, including the specifically adopted City of Arroyo Grande provisions.

RECORDING REQUESTED  
BY WHEN RECORDED  
RETURN TO:

City Clerk  
City of Arroyo Grande  
300 East Branch Street  
Arroyo Grande, CA 93420

FOR RECORDER'S USE ONLY  
NO RECORDING FEE - PUBLIC AGENCY -

**FIRST AMENDMENT TO OPEN-SPACE AGREEMENT GRANTING AN OPEN SPACE  
EASEMENT TO THE CITY OF ARROYO GRANDE**

**LOT 40 OF TRACT NO. 2265  
CITY OF ARROYO GRANDE, CALIFORNIA**

This First Amendment to Open-Space Agreement Granting an Open Space Easement to the City of Arroyo Grande (the "First Amendment") is entered into on this 16th day of APRIL, 2014, by and between Ted P. Malley, an individual (the "Owner") and the City of Arroyo Grande, a municipal corporation (the "City").

Recitals

**WHEREAS**, Owner is the record owner of that certain real property located in the City of Arroyo Grande, County of San Luis Obispo, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

**WHEREAS**, the Property was created by Tract Map No. 2265, which was recorded in the Official Records of San Luis Obispo County on August 23, 2000 in Book 19, Page 31 of Maps as Document No. 2000-047633 (the "TM 2265");

**WHEREAS**, TM 2265 included, among other things, an offer of dedication to the public for an open space easement (the "Open Space Easement") over a portion of the Property leaving a "buildable area" of approximately one (1) acre in the area described and depicted in TM 2265 (the "Buildable Area");

**WHEREAS**, on September 13, 2000, City and Owner's predecessor in interest executed an Open-Space Agreement Granting and Open Space Easement to the City of Arroyo Grande (the "Open Space Agreement") which was recorded in the Official Records of San Luis Obispo County as Document No. 2001025583. The Open Space Agreement, among other things, imposed certain restrictions regarding the use of the Property;



WHEREAS, the City formally accepted the Open Space Easement on April 9, 2002 by Resolution No.3584 which was recorded in the Official Records of San Luis Obispo County on June 5, 2002 as Document No. 2002046270;

WHEREAS, Owner filed an application with City to adjust the location of the Buildable Area within the Open Space Easement; and

WHEREAS, by this First Amendment, Owner and City wish to modify the location of the Buildable Area and to set forth some additional terms and conditions regarding the Open Space Easement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.
2. Modification of location of Buildable Area within Open Space Easement. Owner and City agree that the location of the Buildable Area as described in TM 2265 is hereby relocated to the area described and depicted in Exhibit "B" attached hereto and incorporated herein by this reference. All references to the Building Area herein shall refer to the modified location described in this First Amendment.
3. Restrictions on the Use of the Property. Except for the Buildable Area, the restrictions imposed upon the use of the Property as set forth in the Open Space Agreement shall remain in full force and effect with the understanding that grading, filling or other improvements that have been constructed or placed to serve the existing residence or as necessary to serve any future buildings that may be constructed within the Buildable Area shall be allowed.
4. Incorporation of Terms and Conditions of Open Space. Except as modified herein, all terms and conditions of the Open Space Agreement, all of which are hereby incorporated herein by this reference as set forth in full, shall remain in full force and effect. In the event of a conflict between this First Amendment and the Open Space Agreement, the terms or condition of this First Amendment shall control.
5. Binding on Successors in Interest. All provisions of this First Amendment shall run with the land described herein and shall be binding on the parties hereto and their heirs, assigns and successors in interest.
6. Subordination. Owner shall cause Mortgage Electronic Registration Systems, Inc., as the nominee for Resource Lenders, Inc and beneficiary of record for that certain deed of trust recorded June 5, 2013 as Document No. 2013-032369 of Official Records San Luis

Obispo, to assent to this First Amendment and subordinate its respective interests to the restrictions and obligations imposed herein.

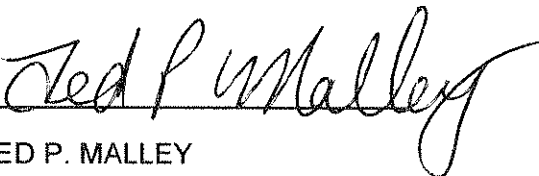
7. Agreement to be Recorded. Owner and City intend and consent to the recordation of this First Amendment in the office of the County Recorder of the County of San Luis Obispo.

**IN WITNESS WHEREOF**, the Parties hereto have executed this First Amendment as of the day and year first written above.

CITY OF ARROYO GRANDE

OWNER

\_\_\_\_\_  
STEVEN ADAMS, City Manager

  
\_\_\_\_\_  
TED P. MALLEY

ATTEST:

\_\_\_\_\_  
KELLY WETMORE, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
TIMOTHY J. CARMEL, City Attorney

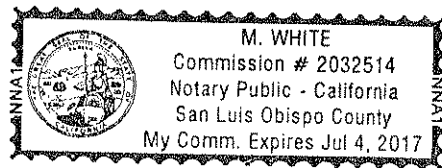
State of California  
County of San Luis Obispo

On April 16, 2014 before me, M. White, Notary Public, personally appeared Ted P. Malley 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 capacities and that 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 the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (SEAL)



State of California  
County of \_\_\_\_\_

On \_\_\_\_\_, 2014 before me, \_\_\_\_\_, 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 capacities and that 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 the foregoing paragraph is true and correct.

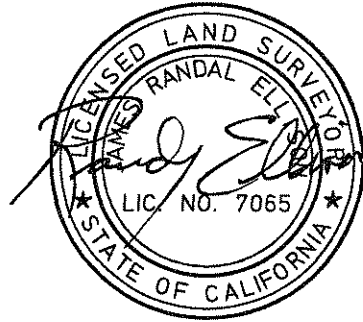
WITNESS my hand and official seal.

Signature \_\_\_\_\_ (SEAL)

EXHIBIT "A"  
LEGAL DESCRIPTION

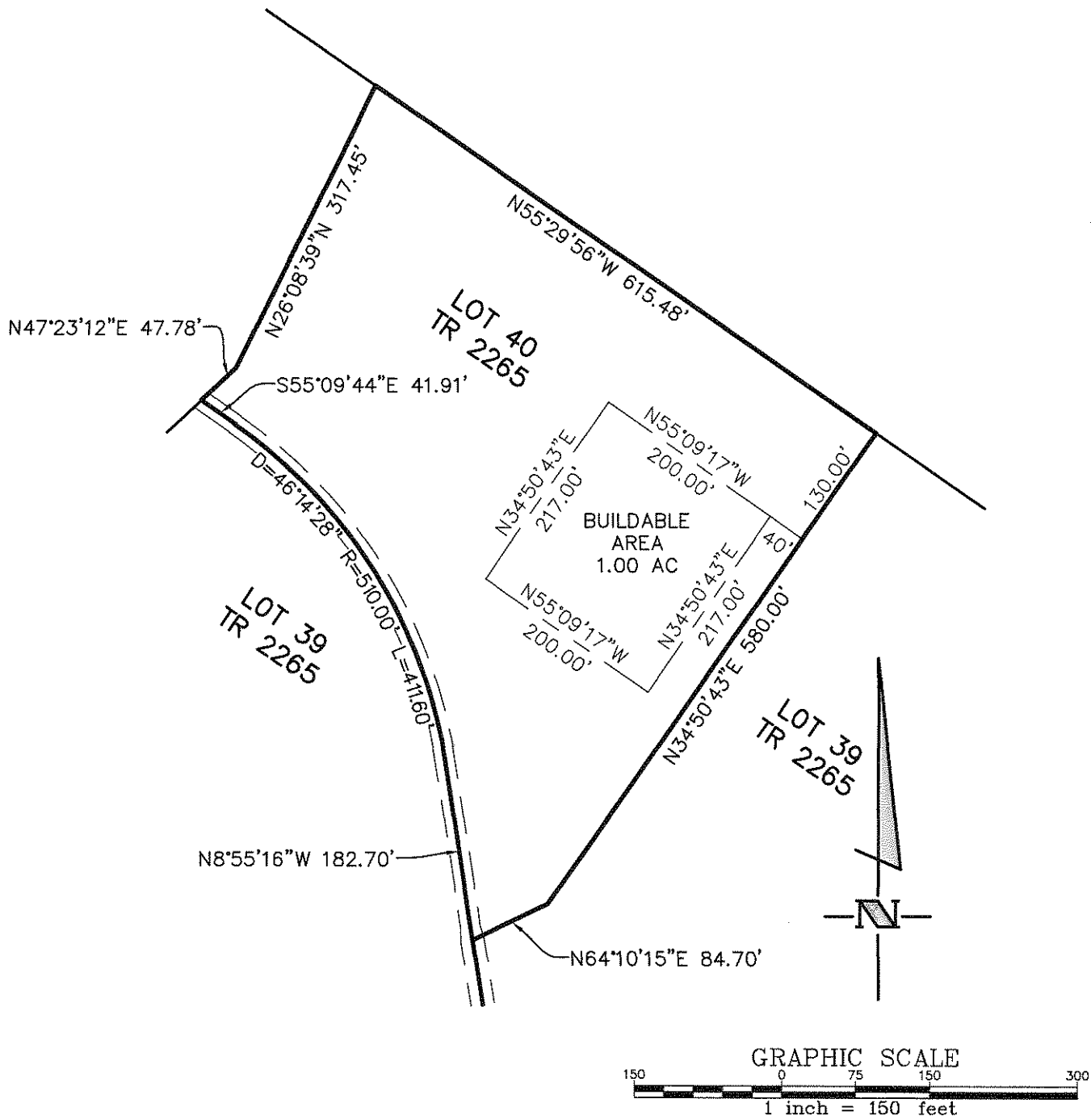
Lot 40 of Tract 2265 in the City of Arroyo Grande, County of San Luis Obispo, State of California, as shown on the map recorded in Book 19 of Maps at Page 31 in the Office of the County Recorder of said county.

The above described property is shown graphically on Exhibit "B" attached.



2-19-2014

# EXHIBIT "B"



**ABOVE  
GRADE  
ENGINEERING**

1304 Broad Street, San Luis Obispo, CA 93401  
 phone: (805) 540-5115 • fax: (805) 540-5116

A California Corporation • State License PE # 58256

## PLAT

OF LOT 40 OF TRACT 2265 PER 19 MAPS 31  
 IN THE ARROYO GRANDE, COUNTY OF SAN  
 LUIS OBISPO, CALIFORNIA

SCALE: 1" = 150'

JOB NUMBER: 14026

BY: JRE

DATE: 2-19-2014

EXHIBIT "C"  
LEGAL DESCRIPTION

That portion of Lot 40 of Tract 2265 in the City of Arroyo Grande, County of San Luis Obispo, State of California, as shown on the map recorded in Book 19 of Maps at Page 31 in the Office of the County Recorder of said county more particularly described as follows:

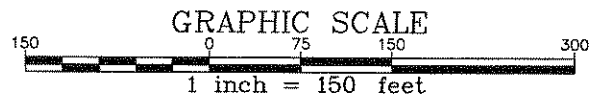
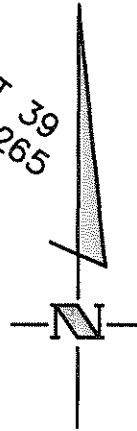
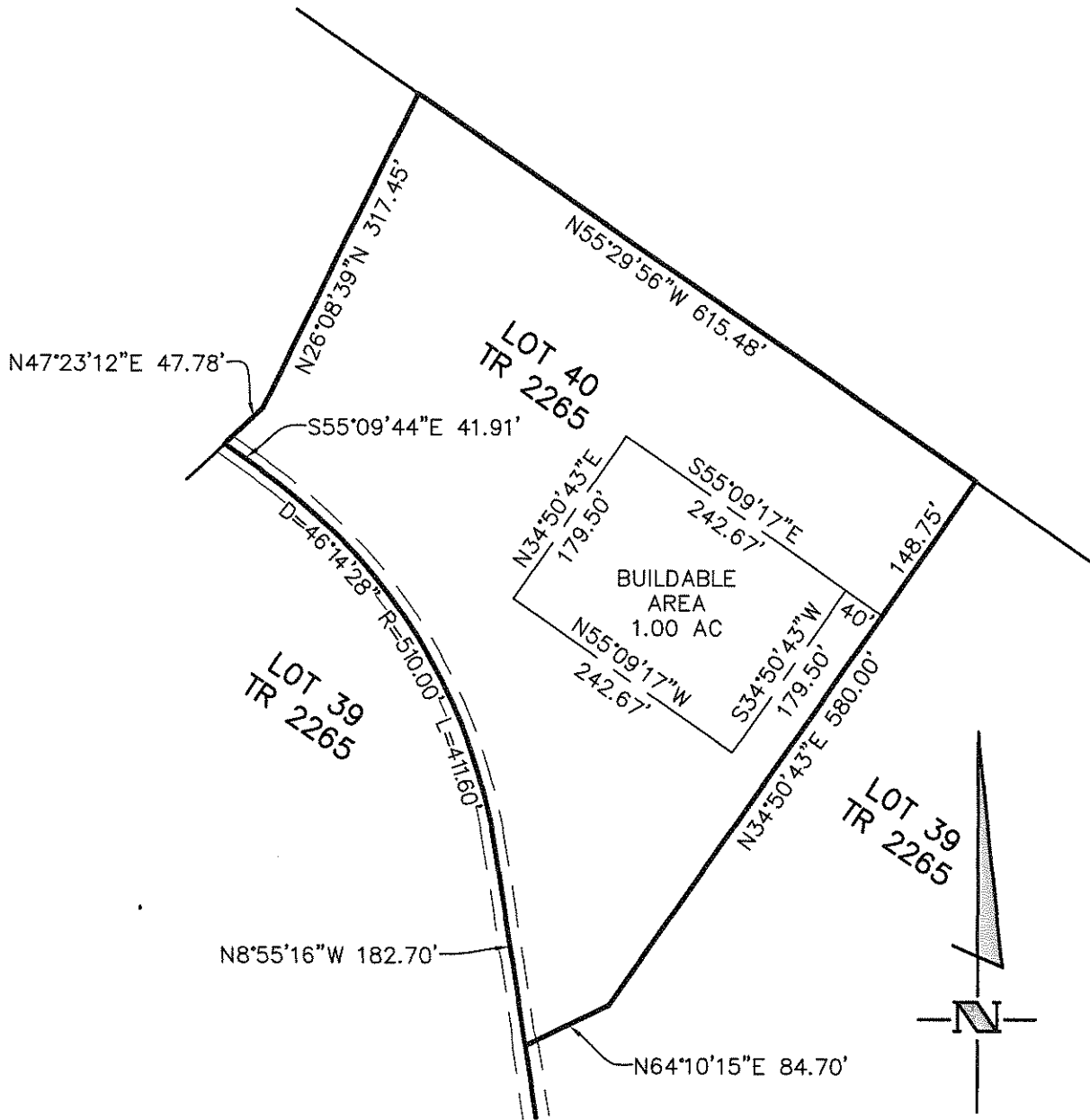
Commencing at the most easterly corner of said Lot 40; thence along the southeasterly line of said Lot 40, South 34°50'43" West, 148.75 feet, thence at right angles North 55°09'17" West, 40.00 feet to the True Point of Beginning; thence at right angles South 34°50'43" West, 179.50 feet; thence at right angles North 55°09'17" West, 242.67 feet; thence at right angles North 34°50'43" East, 179.50 feet; thence at right angles South 55°09'17" East, 242.67 feet to the True Point of Beginning.

The above described property contains 1.00 acre and is shown graphically on Exhibit "D" attached.



2-19-2014

# EXHIBIT "D"



**ABOVE  
GRADE  
ENGINEERING**

1304 Broad Street, San Luis Obispo, CA 93401  
phone: (805) 540-5115 • fax: (805) 540-5116

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IN THE ARROYO GRANDE, COUNTY OF SAN  
LUIS OBISPO, CALIFORNIA

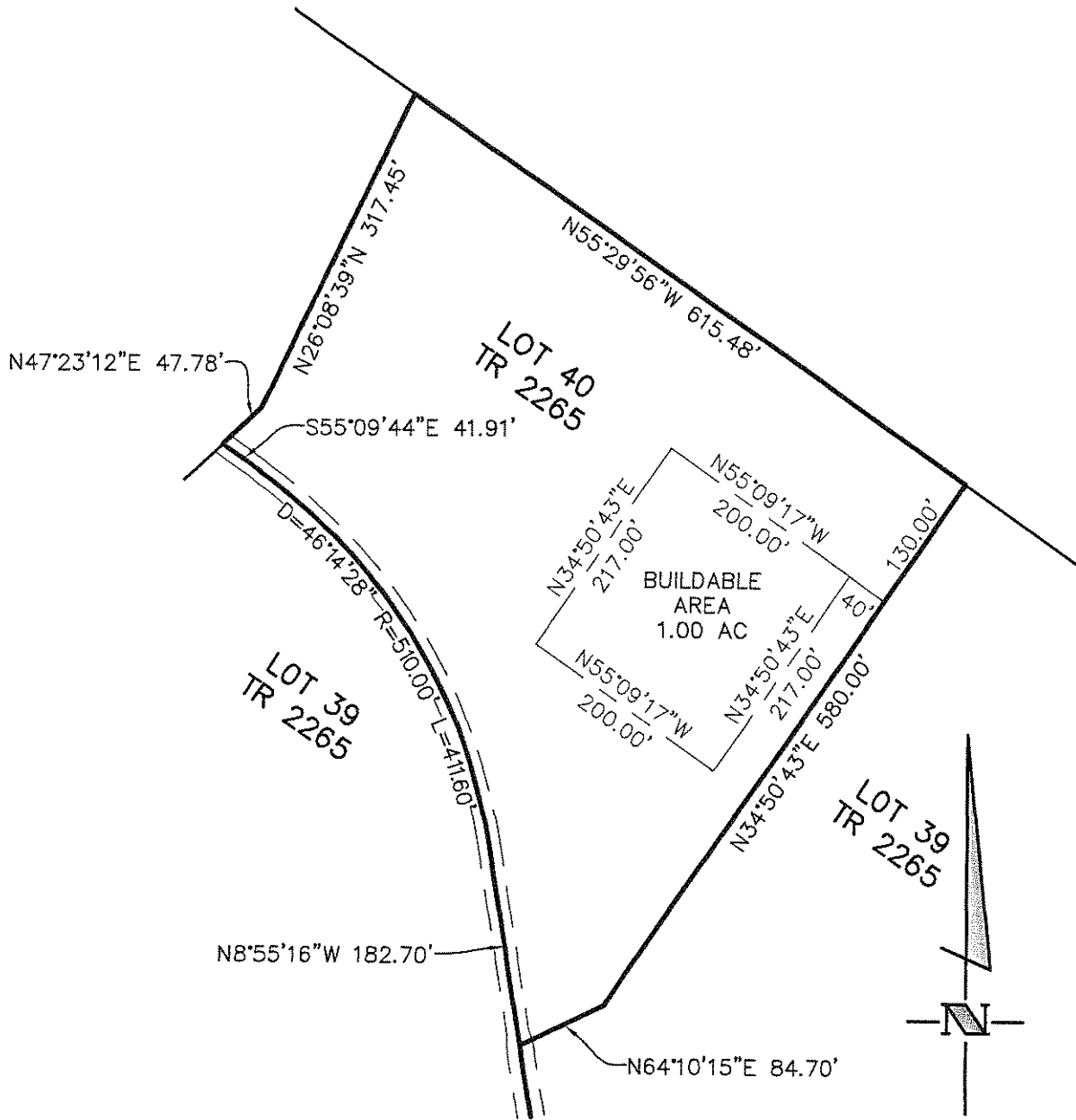
SCALE: 1" = 150'

JOB NUMBER: 14026

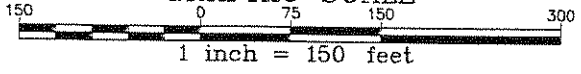
BY: JRE

DATE: 2-19-2014

ATTACHMENT 1



GRAPHIC SCALE



**ABOVE  
GRADE  
ENGINEERING**

1304 Broad Street, San Luis Obispo, CA 93401  
phone: (805) 540-5115 • fax: (805) 540-5116

A California Corporation • Scott Steiner PE # 58256

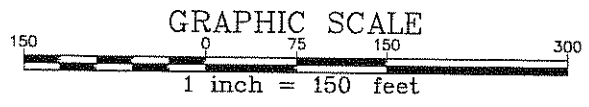
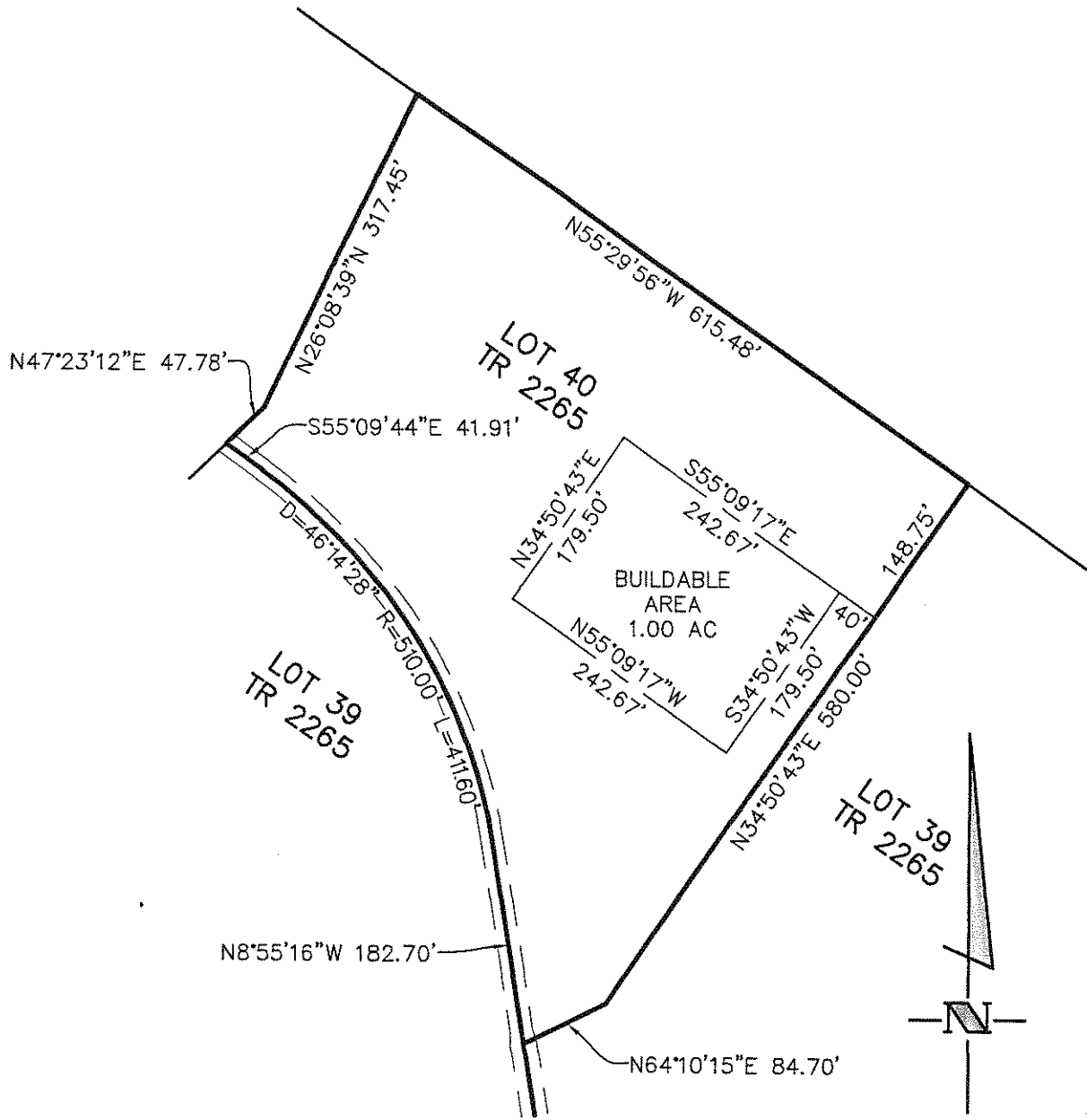
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LUIS OBISPO, CALIFORNIA

SCALE: 1" = 150'  
JOB NUMBER: 14026  
BY: JRE  
DATE: 2-19-2014



ATTACHMENT 2



**ABOVE  
GRADE  
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**PLAT**

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SCALE: 1" = 150'

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BY: JRE

DATE: 2-19-2014