

RIGHT OF ENTRY

Contra Costa County
Flood Control & Water Conservation District
Public Works Department
Real Estate Division
255 Glacier Drive
Martinez, CA 94553

Project: Lower Walnut Creek Restoration
Project No.: 7520-6B8285
Portion of Parcels: 159-250-006, -018, -019, -021, -022

Effective January 1, 2021, Gonsalves & Santucci, Inc., a California corporation, dba CONCO, ("Grantor") hereby grants permission to Contra Costa County Flood Control & Water Conservation District ("District"), its contractors, agents, and assigns, to enter upon its land, as described in Exhibits A and outlined on Exhibits B, attached hereto and made a part hereof, (the "Roadway Property") for the purpose of restoring and enhancing wetland and associated habitats in Lower Walnut Creek and providing sustainable flood management, while allowing opportunities for public access and recreation and accomplishing all necessary incidents thereto – the Lower Walnut Creek Restoration Project (the "Project").

It is understood that this permission is not a waiver in any way of the right to compensation for such land or of any remedy authorized by law to secure payment therefor.

This permission is granted on the understanding that the District will hereafter without unnecessary delay negotiate with the undersigned, and any other person, if any, having any right, title, or interest in the Roadway Property, to agree upon terms of compensation, and that, if any agreement cannot be reached, the District will promptly commence eminent domain proceedings to have such compensation determined.

This permission is granted in consideration of the location, improvement and construction of said Project and incidents thereto, which it is understood is required by the Contra Costa County Flood Control & Water Conservation District, Public Works Department, and shall continue in effect until all property rights required for the Project have been acquired by the District, either through negotiated purchase and sale in lieu of condemnation, or through eminent domain proceedings. The location of Access Easement 4, described in Exhibit "A" may be relocated from time to time as mutually agreed upon by Grantor and District's Chief Engineer, or designee, provided that the Chief Engineer, or designee, determines such relocated Access Easement 4 is consistent with being substantially the same dimensions, having the substantially the same contiguity, and providing substantially the same access, as Access Easement 4 described in Exhibit "A." Upon any relocation of Access Easement 4, in accordance with the terms hereof, the parties will prepare a new instrument and, if necessary, amendment to this Right of Entry to document the relocation.

Site 1 and Site 2 Temporary Construction Easements along with the Temporary Access Easements will be for a period of seventeen months, to commence on February 1, 2021 and terminate June 30, 2022.

To the extent permitted by law, and except as otherwise provided herein, the District shall indemnify, defend, and save harmless Grantor, its officers, employees, and agents from and against any and all costs, losses, damages, liabilities, expenses (including reasonable attorneys' fees and costs of defense), claims, and demands of whatever character, (collectively, "Liabilities") to the extent that the Liabilities arise from or are connected with

the negligence or willful misconduct of the District, its officers, employees, contractors, or agents while occupying and using the Roadway Property for the Project under this Right of Entry. Notwithstanding anything to the contrary herein, the Liabilities covered by this paragraph do not include any of the following damages to the extent that they are compensable under the Eminent Domain Law and claimed by the Grantor (collectively "Condemnation Damages"): compensation for the Roadway Property; removal of landscaping and improvements, if any; interference with any easements; other damages of every kind and nature accruing by reason of the acquisition of the Roadway Property and damages for the design, construction, and operation thereon of the public improvement as proposed and constructed; pre-condemnation planning and other activities by the District; severance damages, pursuant to Code of Civil Procedure section 1263.420, if any; damages for loss of goodwill, pursuant to Code of Civil Procedure section 1263.510, if any; and any lost rent, lost income, or increased expenses; statutory costs; statutory interest; and any attorney's fees as may be awarded under the Eminent Domain Law. The Grantor and the District agree that Condemnation Damages, if any, will be the subject of negotiation by the parties following an appraisal of the Roadway Property.

Grantor acknowledges: that the District's Project is a public project that will be constructed on public property owned by the District; that, under state law, any Project subcontractor's sole remedy for nonpayment would be to file a stop payment notice with the District; and that on publicly-owned projects located on public property, a mechanic's lien cannot be used to secure a payment obligation. However, if a District contractor, or a subcontractor, performing work on the Project records a mechanic's lien against property owned by the Grantor to seek to assert or secure a claim to payment on the District's Project, the District, at its expense, will be responsible for taking actions necessary to cause the lien to be released or expunged.

Section 1245.235 of the Code of Civil Procedures requires the Contra Costa County Board of Supervisors, acting as the Contra Costa County Flood Control & Water Conservation District Board of Directors, to give each person whose property is to be acquired by eminent domain notice and a reasonable opportunity to appear before the Board of Supervisors and be heard on the matters referred to in Section 1240.030, 1240.510 and 1240.610 of the Code of Civil Procedure, which provides that the power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- (a) The public interest and necessity require the project.
- (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- (c) The property sought to be acquired is necessary for the project.
- (d) The offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record.
- (e) And, where some of the property to be acquired is appropriated to a public use, that the proposed use is a more necessary use than the use to which the property is now put, or a compatible public use.

By granting this right of entry to the District, Grantor hereby waives its right to appear and be heard on the foregoing matters. Grantor hereby agrees that the District can establish the truth of the above quoted matters, and Grantor will not

contest the adoption of a Resolution of Necessity by the Board of Supervisors (under Section 1245.255 of the Code of Civil Procedure). It is understood that the issues which will be determined in any subsequent eminent domain proceeding will be limited to those of just compensation for any Condemnation Damages as they relate to the property covered by this agreement, and no issues will be raised therein or in preliminary proceedings thereto challenging the public use or necessity of the project, or the utilization of the property covered by this right of entry.

It is understood that the District will pay interest on the just compensation paid from the date of possession by the District (i.e., beginning on the effective date first written above). The rate of interest will be the rate of earnings of the Surplus Money Investment Fund and computation will be in accordance with Section 1268.350 of the Code of Civil Procedure. Interest will be computed to and including the date of deposit of compensation.

RECOMMENDED FOR APPROVAL

GONSALVES & SANTUCCI, INC.
dba CONCO

BY _____
Angela Bell
Senior Real Property Agent

BY 
Joe Sostaric
Conco Vice-President

ACCEPTED & APPROVED:

CONTRA COSTA COUNTY
FLOOD CONTROL & WATER

BY 

CONSERVATION DISTRICT

BY _____
Brian M. Balbas
Chief Engineer

AB:dw:ss:dw
G:\realprop\Flood Control\Lower Walnut Creek Restoration\Gonsalves Santucci\Right of Entry\PR.01A Right of Entry - Flood Control & Conco final 1-6-21.doc

Temporary Construction Access Easements
Gonsalves & Santucci Inc.
Portion of APN 159-250-018, 159-250-019 and 159-250-022

EXHIBIT "A"

Real property located in an unincorporated area of the County of Contra Costa, State of California, being a portion of Section 15, Township 2 North, Range 2 West, Mount Diablo Meridian, also being a portion of the property described as Parcel 1 in the Certificate of Compliance for Lot Line Adjustment LLA 01-0032, recorded March 6, 2003 in Recorder's Series Number 2003-0104329, a portion of Parcel 2 in the Certificate of Compliance for Lot Line Adjustment LLA 01-0032, recorded March 6, 2003 in Recorder's Series Number 2003-0104328 and a portion of that parcel described in the Grant Deed from LandBank Baker, L.L.C. to Gonsalves & Santucci, Inc. recorded July 2, 2002 in Recorder's Series Number 2002-0232100, Contra Costa County records, described as follows:

Temporary Construction Access Easements

Temporary construction easements (TCE), having a minimum width of 24.00 feet, to provide ingress and egress for construction related activities to the Contra Costa County Flood Control and Water Conservation Districts' Temporary Construction Easement Site 1 and Temporary Construction Easement Site 2, from the Permanent Access Easement located at Point of Access #1 as designated in the attached Exhibit B for a period of seventeen months, to commence on February 1, 2021 and terminate on June 30, 2022.

The location of said easements to follow over and across those portions of existing and proposed roadways within said Parcel 1, said Parcel 2 and said Parcel (2002-232100) as they have currently been constructed, are currently proposed for construction, the approximate location thereof shown on attached Exhibit B, or as they may be relocated from time to time by such other route mutually agreed upon by the parties hereto.

Containing 132,333 square feet (3.038 acres), more or less

Exhibit "B", a plat is attached hereto, and by this reference, made a part hereof.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: 

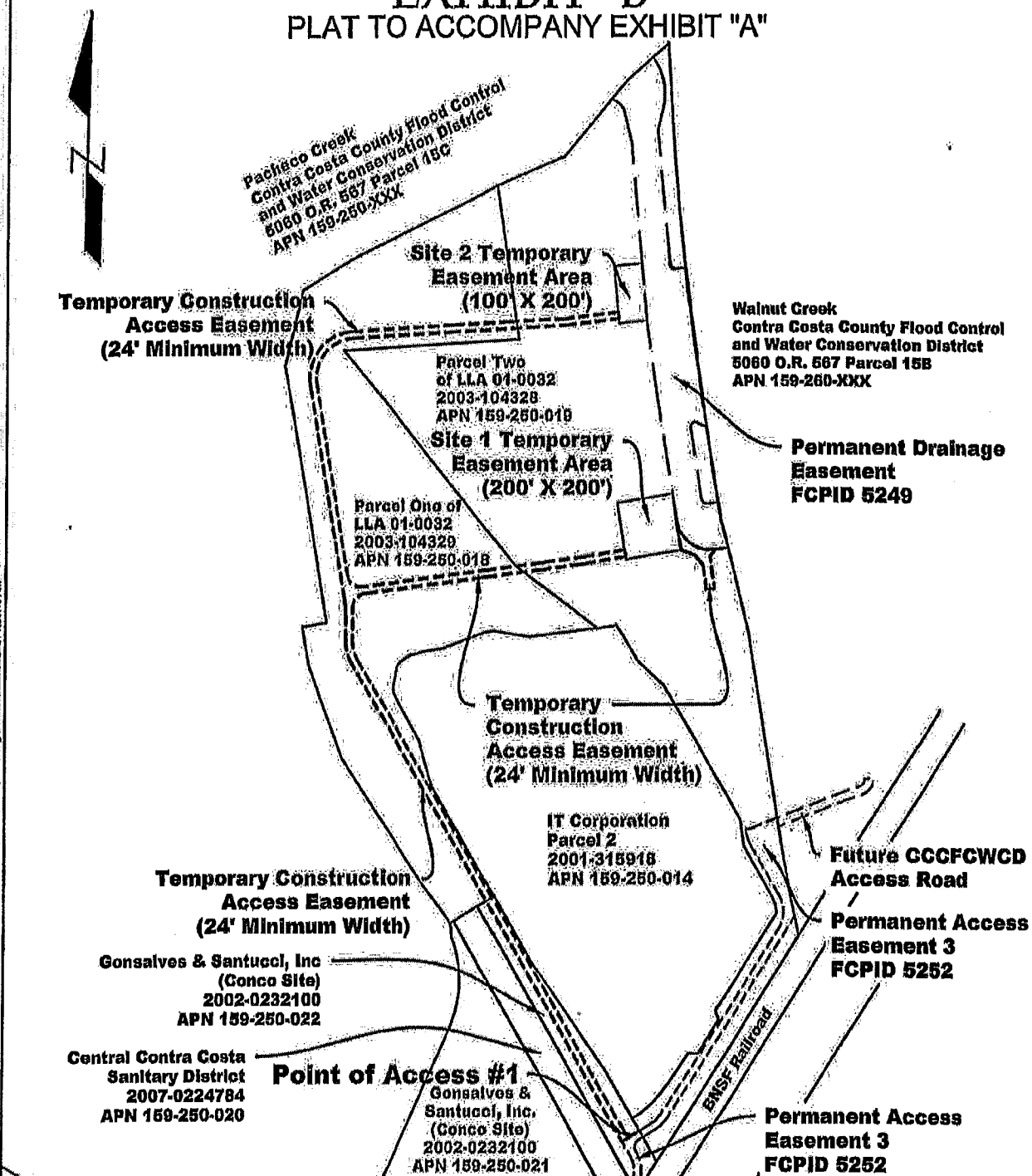
Licensed Land Surveyor
Contra Costa County Public Works Department

Date: 1/6/2021



EXHIBIT "B"

PLAT TO ACCOMPANY EXHIBIT "A"



File Path: X:\Drawings\Flood Control\22285 Lower Walnut Creek Restoration\MCAD\WO 8285 Lower Walnut Creek Restoration\Easements\1-5-21.dwg Plot Date: 1/6/2021 7:36:06 AM

Temporary Construction Access Easements			<p>Contra Costa County Public Works Department 255 Glacier Drive Martinez, CA 94553</p>
Instr. _____	Recorded _____	SCALE: 1"=500'	
Series # _____		DATE: 1/6/2021	
DRAWN BY: BD		DRAWING NO. _____	
CHECKED BY: JS			

Sites 1 and 2 Temporary Construction Easements
Gonsalves & Santucci Inc.
Portion of APN 159-250-019

EXHIBIT "A"

Real property located in an unincorporated area of the County of Contra Costa, State of California, being a portion of Section 15, Township 2 North, Range 2 West, Mount Diablo Meridian, also being a portion of the property described as Parcel 2 in the Certificate of Compliance for Lot Line Adjustment LLA 01-0032., recorded March 6, 2003 in Recorder's Series number 2003-0104328, Contra Costa County records, described as follows:

Site 1 (200'X200') Temporary Construction Easement

A temporary construction easement (TCE) for construction purposes and incidents related thereto, upon, in, over and across the property described below for a period of seventeen months, to commence on February 1, 2021 and terminate on June 30, 2022.

Commencing at the north corner of said Parcel 2 (2003-0104328); thence, along the east line of said Parcel 2, south 3°32'45" east for a distance of 225.54 feet to the beginning of a tangent curve, concave to the east, having a radius of 10,660.00 feet; thence continuing along said east line of Parcel 2, along said curve through a central angle of 5°39'57" for an arc distance of 1054.14 feet; thence continuing along said east line of Parcel 2 south 9°12'42" east for a distance of 403.42; thence continuing along said east line of Parcel 2 south 14°51'40" east for a distance of 77.31 feet; thence leaving said east line of Parcel 2 south 80°51'17" west for a distance of 166.57 feet to the Point of Beginning; thence south 80°51'17" west for a distance of 200.00 feet; thence north 09°08'43" west for a distance of 200.00 feet; thence north 80°51'17" east for a distance of 200.00 feet; thence south 09°08'43" east for a distance of 200.00 feet to the point of beginning.

Containing 40,000 square feet (0.918 acres), more or less

Site 2 (100'X200') Temporary Construction Easement

A temporary construction easement (TCE) for construction purposes and incidents related thereto, upon, in, over and across the property described below a period of seventeen months, to commence on February 1, 2021 and terminate on June 30, 2022.

Commencing at the northeast corner of previously described Site 1 Temporary Construction Easement; thence north 09°08'43" west for a distance of 364.84 feet; thence north 08°12'54" west for a distance of 249.10 feet to the Point of Beginning; thence south 84°44'53" west for a distance of 100.00 feet; thence north 05°15'07" west for a distance


of 200.00 feet; thence north 84°44'53" east for a distance of 100.00 feet; thence south 05°15'07" east for a distance of 200.00 feet to the point of beginning.

Containing 20,000 square feet (0.459 acres), more or less

Exhibit "B", a plat is attached hereto, and by this reference, made a part hereof.

The location of said easements (Site 1 and Site 2) within said Parcel 2 may be relocated from time to time in a manner as mutually agreed upon by the parties hereto, consistent with being the same dimensions and being contiguous to the western boundary of the permanent drainage easement (FCPID 5249) as shown on the attached Exhibit "B".

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: 

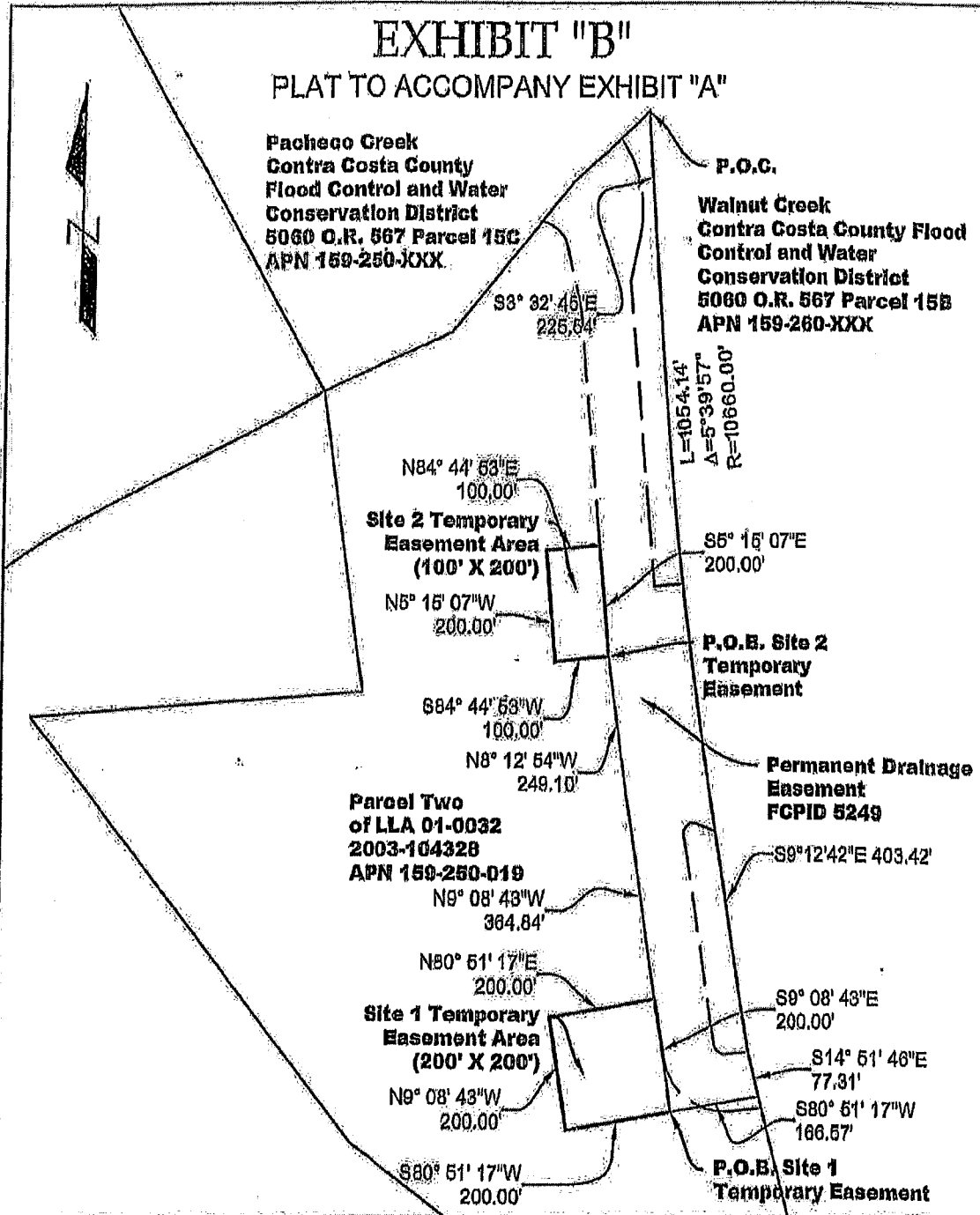
Licensed Land Surveyor
Contra Costa County Public Works Department

Date: 11/23/2020



EXHIBIT "B"

PLAT TO ACCOMPANY EXHIBIT "A"



Temporary Construction Easements Sites

Instr. _____ Recorded _____

Series # _____



Contra Costa County
Public Works Department
255 Glacier Drive
Martinez, CA 94553

SCALE: 1"=250'

DATE: 10/19/2020

DRAWN BY: BD

DRAWING NO.

CHECKED BY: JS

Access Easement 4
Gonsalves & Santucci Inc.
Portion of APN 159-250-021 and 159-250-006

EXHIBIT "A"

Real property located in an unincorporated area of the County of Contra Costa, State of California, being a portion of Section 15, Township 2 North, Range 2 West, Mount Diablo Meridian, also being a portion of that parcel described in the Grant Deed from LandBank Baker, L.L.C. to Gonsalves & Santucci, Inc. recorded July 2, 2002 in Recorder's Series Number 2002-0232100, and a portion of that parcel described as Lot 1 of Lot Line Adjustment #LL03-83 in the Corporation Grant Deed from Vinehill Investments, Inc. to Gonsalves & Santucci, Inc. recorded April 12, 2004 at Recorder's Series Number 2004-0125820, Contra Costa County records, described as follows:

Access Easement 4 FOPID 5253

An easement, having a minimum width of 25.00 feet, to provide ingress and egress from the Burlington Northern Santa Fe Railroad Right of Way at a location designated as Access Location "A" to the Contra Costa County Flood Control and Water Conservation Districts' Right of Way at a location designated as Access Location B as shown on attached Exhibit B over and across said Parcel (2002-0232100) and said Lot 1.

The location of said easement to follow an existing roadway within said Parcel (2002-0232100) and said Lot 1 as it has currently been constructed, the approximate location thereof shown on attached Exhibit B or as it may be relocated from time to time by such other route mutually agreed upon by the parties hereto.

Containing 26,790 square feet (0.615 acres), more or less

Exhibit "B", a plat is attached hereto, and by this reference, made a part hereof.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: _____

Licensed Land Surveyor
Contra Costa County Public Works Department

Date: _____

10/30/2020



EXHIBIT "B"

PLAT TO ACCOMPANY EXHIBIT "A"

Discovery Builders, Inc.
Lot 2 of Lot Line
Adjustment LL03-83
APN 380-030-046

Racheco Creek
Contra Costa County Flood
Control and Water
Conservation District
5888 O.R. 588

Gonsalves & Santucci, Inc.
(Conco Site)
2002-0232100
APN 159-250-021

Gonsalves & Santucci, Inc.
2004-0125820
Lot 1 of Lot Line
Adjustment LL03-83
APN 159-250-006

Approximate location
Access Easement
(25' min width)

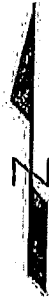
Access Location "B"

Access Location "A"

FCPID 5253

BNSF Railroad

BNSF Railroad



Access Easement 4 FCPID 5253

Instr. _____ Recorded _____

Series # _____



Contra Costa County
Public Works Department
255 Glacier Drive
Martinez, CA 94553

SCALE: 1"=150'

DATE: 10/19/2020

DRAWN BY: BD

DRAWING NO.

CHECKED BY: JS

FA-20160