

**Marked Agendas  
Approved Minutes  
Approved Reports**

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Resolution No. 10528

Planning Commission Hearing 06/22/2016

City Council Hearing 08/31/2016

### **Case History**

40-PA-2016

**5-AB-2016**

**McIntosh Abandonments**

# PLANNING COMMISSION REPORT



Meeting Date: June 22, 2016  
General Plan Element: *Land Use*  
General Plan Goal: *Coordinate Planning to Balance Infrastructure*

## ACTION

### McIntosh Abandonments 5-AB-2016

#### Request to consider the following:

A recommendation to City Council regarding the following requests for a property located at 10300 N. 124<sup>th</sup> Street with Single-family Residential, Environmentally Sensitive Lands (R1-43 ESL) zoning:

1. Abandon the 33-foot General Land Office Patent Easement on the western boundary of the property
2. Abandon the western 5-feet of the Roadway Easement located along N. 124<sup>th</sup> Street leaving a 35-foot half street of right of way

#### Key Items for Consideration

- Access not impacted by these proposed abandonments
- Conformance with the Transportation Master Plan and Local Area Infrastructure Plan
- Reconfiguration of Natural Area Open Space Easements to a more appropriate location

## OWNER

Robert & Nancy McIntosh  
480-614-1252

## APPLICANT CONTACT

Ricki L. Horowitz  
Burch and Cracchiolo  
602-234-8728

## LOCATION

10300 N. 124<sup>th</sup> St.



Action Taken \_\_\_\_\_



## BACKGROUND

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### General Plan and Character Area Plan

The General Plan Land Use Element designates the property as Rural Neighborhoods and a part of the East Shea Character Area Plan. These categories include relatively low-density and larger lot development, including horse privilege neighborhoods and areas with sensitive and unique natural environments.

### Zoning

The site is zoned Single-family Residential, Environmentally Sensitive Lands (R1-43 ESL). The City of Scottsdale annexed the subject property in 1975 under Ordinance No. 891 and the City of Scottsdale R1-43 zoning was applied. The Environmentally Sensitive Lands Overlay was applied in 1991.

### Context

The subject property is located at the northwest corner N. 124<sup>th</sup> St. and E. Gold Dust Ave. The site is generally surrounded by one (1) acre single family parcels (see context aerial attachments).

### General Land Office Patent Easements History

- Within the City of Scottsdale there are General Land Office (GLO) lots or parcels of various sizes created by the Federal Small Tract Act. This act was passed in 1938 and repealed in 1976.
- Most GLO lots were patented with 33 foot (or sometimes 50 foot) roadway and public utility easements typically "as near as practicable to the exterior boundaries."
- The city has viewed these patent roadway and utility easements as assured access at least until a local circulation plan is established.
- As GLO lots come in for development (i.e., lot splits, subdivisions or requesting building permits) staff requires city right-of-way dedications per city circulation plans. The city's transportation plan establishes a street system to replace the grid pattern created by the GLO easements.
- Any patent easements in excess of the current requirements to the circulation plans (including trails), roadway standards, and not required to insure access to any other lot, may be requested to be abandoned.
- On 1981, City Ordinance 1386 was adopted delegating the authority for the release of GLO easements to the Engineering Services Director.
- On March 2, 1999, the City Council repealed Ordinance 1386 and adopted Ordinance 3219 which requires the abandonment of the GLO patent roadway easements to go through the same public hearing process currently used for all rights-of-way, alleys, and roadway easements. The City Attorney's office has concluded that this process for consideration of GLO roadway abandonment satisfies legal requirements.
- On August 12, 2005, Arizona Revised Statute section 9-500.4 became effective. This section gives the local municipality the right to abandon GLO patent easements, and concurs with the city's position on abandonment of GLO patent easements.



### **Subject Roadway Easements**

The subject 33-foot General Land Office Patent Easement (GLO) is located along the western boundary of the subject property and was dedicated in June of 1954 through patent serial number 1144958. The subject GLO roadway easement was reserved on the original patent deed to assure legal access. Currently the GLO easement is not improved and sits in the rear of the property (see attachment #6).

The subject ten (10) feet of the total 40-foot Roadway Easement is located along the eastern boundary of the subject property. The Roadway Easement was dedicated in June of 1976 through recording number 1976/0153068 to provide legal access to the property along N. 124<sup>th</sup> Street. The smaller portion of the roadway easement located on the property is currently not improved and is located in the front yard (see attachment #6).

### **Related Policies, References**

218-SA-2003

2008 Scottsdale Transportation Master Plan  
East Shea Area Local Area Infrastructure Plan (LAIP)

## **APPLICANTS PROPOSALS**

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This is a request to abandon roadway easements in order to relocate Natural Area Open Space easements to a more appropriate location, as follows

1. Abandon the 33-foot General Land Office Patent Easement (Patent No.1144958) on the western boundary of the property.
2. Abandon the western 5-feet of the Roadway Easement (Recording No. 1976/0153068) located along N. 124<sup>th</sup> Street leaving a 35-foot half street of right of way.

## **IMPACT ANALYSIS**

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### **Traffic/Trails**

The Local Area Infrastructure Plan provides street access off of N. 124<sup>th</sup> Street for the subject property (see attachment #10). The GLO easement is located opposite the front property line in the rear of the lot.

The street classification of N. 124<sup>th</sup> Street is a Minor Collector, and the minimum required right-of-way is a total of seventy (70) feet, comprised of two thirty-five (35) foot wide half streets. Currently, a forty (40) foot half street exists in easement and fee-simple form along N. 124<sup>th</sup> St., comprising of a thirty (30) foot right-of-way dedication, and ten (10) feet of roadway easements.

### **Emergency/Municipal Services and Utilities**

All existing emergency and service access will be provided to the properties surrounding the abandonment area and maintained through existing dedicated public right-of-way along N. 124<sup>th</sup> Street. No impacts are anticipated.

**Public Utilities**

The public utilities have been notified of the applicant's requests. Staff has received the utility companies' approval for the abandonment of the GLO easement, but has not yet received responses regarding the abandonment of the western five (5) feet of the Roadway Easement. Complete utility sign off for both abandonment areas will be a condition of the resolution.

**Community Involvement**

The applicant notified all property owners within 750 feet of the proposed abandonment. The site was also posted notifying interested parties of the request and the city sent postcards to property owners surrounding the site in notice of the request. The applicant and city staff received questions regarding the abandonment case, future improvements to the subject property, and the significant wash to the west the site.

**Community Impact**

The proposed abandonments do not restrict access for the adjacent properties. The applicant will provide \$1,090.84 as compensation to the City of Scottsdale, and will dedicate the remaining five (5) feet of Roadway Easement on the property as fee-simple right-of-way along N. 124<sup>th</sup> Street.

**OPTIONS & STAFF RECOMMENDATION**

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**Recommended Approach:**

Staff recommends that the Planning Commission make a recommendation to City Council for approval to abandon the 33-foot General Land Office Patent Easement on the western boundary of the property and the western 5-feet of the Roadway Easement located along N. 124<sup>th</sup> Street leaving a 35-foot half street of right of way for a property located at 10300 N. 124<sup>th</sup> St. with Single-family, Environmentally Sensitive Lands (R1-43 ESL) zoning, finding that the proposal is consistent with and conforms to the adopted General Plan, subject to the following conditions:

1. The property owner provides utility company approval letters from all affected companies for the five (5) foot Roadway Easement abandonment area.
2. The property owner dedicates five (5) feet of right-of-way along N. 124<sup>th</sup> Street, to achieve a thirty-five (35) foot fee-simple half street dedication.
3. The property owner pays \$1,090.84 to the City.

**RESPONSIBLE DEPARTMENTS**

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Current Planning Services & Transportation Department

**STAFF CONTACT(S)**

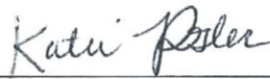
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Katie Posler  
Associate Planner  
480-312-2703  
E-mail: kposler@ScottsdaleAZ.gov

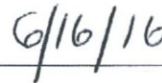


**APPROVED BY**

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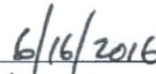
Katie Posler, Associate Planner, Report Author




Date



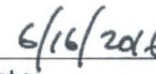
Tim Curtis, AICP, Current Planning Director  
480-312-4210, tcurtis@scottsdaleaz.gov



Date

 FOR

Randy Grant, Zoning Administrator  
Planning and Development Services  
480-312-2664, rgrant@scottsdaleaz.gov



Date

**ATTACHMENTS**

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1. Applicant's Narrative
2. Context Aerial
3. Detail Aerial
4. GLOPE Recorded Document (Patent No.1144958)
5. Roadway Easement Recorded Document (Recording No. 1976/0153068)
6. Abandonment Requests and Required Dedication Graphic
7. Request #1: GLOPE- Legal Description and Graphic
8. Request #2: Roadway Easement- Legal Description and Graphic
9. Proposed Release and Rededication of Natural Area Open Space (NAOS) Easements Graphics
10. Local Area Infrastructure Plan (LAIP)
11. City Notification Map





## MEMORANDUM

**To:** Brad Carr and Katie Posler  
**From:** Ed Bull  
**Date:** May 10, 2016  
**Re:** GLO Abandonment  
10300 N. 124<sup>th</sup> Street  
APN 217-32-447

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On behalf of Robert and Nancy McIntosh, owners of their single-family home at 10300 N. 124<sup>th</sup> Street, we request Abandonment of the existing Government Land Office (GLO) patent easement on the west side of the McIntosh's property.

As you know, the home is located within a two-lot subdivision called Essig's Estates. See Aerial attached at **Exhibit 1**. Mr. and Mrs. McIntosh purchased their home in March, 2015. See Warranty Deed<sup>1</sup> attached at **Exhibit 2**.

Per the McIntosh's research, the existing swimming pool on the site was permitted by the City of Scottsdale in 1977. An aerial photo taken from November 8, 1986 identifies the pool existed on the site prior to (probably several years prior to) 1986. See 1986 Aerial at **Exhibit 3**. On February 19, 1991, the Zoning Ordinance was amended through Ordinance No. 2305 to create a new Environmentally Sensitive Lands Overlay District that included the NAOS requirements. In October, 2004 a two-lot subdivision was created for the site and the property to the north. See the Plat at **Exhibit 4**. The Plat identified the NAOS areas. A portion of the NAOS is within the pool area – which existed years before the ESL Overlay District was adopted and even longer before the 2004 Plat was recorded.

When the McIntosh's inquired about obtaining permits for some home remodeling and additions, they were informed that their existing pool area was within the NAOS easement. An aerial identifying the NAOS easements is attached at **Exhibit 5**.

The City should not have accepted a NAOS easement over the pre-existing pool area. In order to get that mistake corrected, the existing GLO easement will need to be abandoned so new areas for the NAOS can be provided within the abandoned GLO easement. A legal description and sketch of the GLO easement to be abandoned is attached at **Exhibit 6**.

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<sup>1</sup> The Warranty Deed was rerecorded on 2/12/16 to correct the legal description.

**ATTACHMENT #1**

**5-AB-2016  
05/11/16**

Edwin C. Bull  
702 East Osborn Road, Ste 200  
Phoenix, AZ 85014  
(602) 234-9913 (Tel.)  
(602) 343-7913 (Fax)  
[ebull@bcattorneys.com](mailto:ebull@bcattorneys.com)



RE: 10030 N. 124<sup>th</sup> Street  
May 9, 2016

An Application to Release the existing NAOS Easement and to provide a new NAOS Easement is also being processed at the same time as the Abandonment Application.

As mentioned above, a two-lot subdivision was created for the site and the property to the north (See the 2004 Plat at **Exhibit 4**). The plat mistakenly identified the same GLO patent easement on the south side of the site as is located on the west side of the site. There is no GLO patent easement on the south side of the McIntosh's site.

According to Patent No. 114958, Lot 24 (which the McIntosh property is part of) contained 5 acres and states: "This patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located **across said land or as near as practicable to the exterior boundaries.**" See the Patent Easement provided by the BLM at **Exhibit 7**. The exterior boundaries of the 5 acre Lot 24 are Cochise Drive alignment to the north, 124<sup>th</sup> Street to the east, Gold Dust Avenue to the south and the west property line of the McIntosh's property. An Assessor's map and the GLO Dependent Resurvey from the BLM are attached at **Exhibit 8**. As you can see, the only exterior boundary of the GLO patent on the McIntosh's property is the west 33' and the east 33' (124<sup>th</sup> Street). The south GLO exterior boundary is located on Gold Dust Avenue and not along the McIntosh's south property.

A survey of the property dated 11/5/15 confirms that the GLO easement shown on the south side of the property was incorrect and explains that the McIntosh's south property line is 315' north of the south line of GLO Lot 24. See 2015 Survey at **Exhibit 9**. In addition, the Title Report also notes at Schedule B.II, Item 10 that the GLO on the south line was incorrectly identified on the 2004 Land Division Plan (**Exhibit 4**). The Title Report is under separate coverage.

On behalf of the McIntoshes, we ask that the Abandonment be approved. If you or others on Staff have questions or want to discuss any of the above, please contact Ricki Horowitz at Burch & Cracchiolo (602-234-8728)/rhorowitz@bcattorneys.com or me at (602-234-9913)/ebull@bcattorneys.com.

Thank you.

A handwritten signature in black ink that reads "Ed Bull". The signature is written in a cursive, flowing style.

Ed Bull

ECB/rh  
Attachments  
c: Robert & Nancy McIntosh  
Andy Abraham





McIntosh GLOPE Abandonment

5-AB-2016





Q.S.  
28-57

2014 GIS Orthophoto



McIntosh GLOPE Abandonment

5-AB-2016



4-1212  
(Jan. 1958)

Phoenix 082479

# The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Land Office at Phoenix, Arizona, is now deposited in the Bureau of Land Management, whereby it appears that full payment has been made by the claimant

**James Erle Kelsey**

pursuant to the provisions of the Act of Congress approved June 1, 1938 (52 Stat. 609), entitled "An Act to provide for the purchase of public lands for home and other sites," and the acts supplemental thereto, for the following-described land:

**Gila and Salt River Meridian, Arizona.**

**T. 3 N., R. 5 E.,**

**Sec. 26, Lot 24.**

The area described contains **5** acres, according to the Official Plat of the Survey of the said Land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT unto the said claimant and to the heirs of the said claimant the Tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right-of-way thereon for ditches or canals constructed by the authority of the United States. Excepting and reserving, also, to the United States, all coal, oil, gas, and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1938. This patent is subject to a right-of-way not exceeding **33** feet in width, for roadway and public utilities purposes, to be located **across said land or as near as practicable to the exterior boundaries.**

Excepting and reserving, also to the United States, pursuant to the provisions of the Act of August 1, 1946 (60 Stat. 755), all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the ~~SEVENTEENTH~~

[SEAL]

day of **JUNE** in the year of our Lord one thousand nine

hundred and **FIFTY-FOUR** and of the Independence of the

United States the one hundred and **SEVENTY-EIGHTH.**

For the Director, Bureau of Land Management.

Patent No. **1114958**

By *S. C. Nichols*  
Chief, Patents ~~Unit~~

U. S. GOVERNMENT PRINTING OFFICE 16-64704-1

5-AB-2016  
05/11/16

ATTACHMENT #4

AT 11730-107

28-17

CITY OF SCOTTSDALE

EASEMENT

When recorded return to:  
City of Scottsdale  
City Hall - Civic Center  
Scottsdale, Arizona 85251

PROJECT \_\_\_\_\_  
PARCEL 217-32-33A

Charles E. Wait and Carolyn J. Wait, His Wife

Grantor(s),

for a valuable consideration, hereby grant(s) to the CITY OF SCOTTSDALE, ARIZONA, a municipal corporation, its successors and assigns, a perpetual easement and right of way for the following purposes, namely: The right to enter upon the hereinafter described land and grade, level, fill, drain, pave, construct, operate, maintain, repair, and rebuild a road or highway, together with such bridges, culverts, ramps, sidewalks, curbs, gutters, and cuts as may be necessary and to construct, operate and maintain any public utility lines, pipes or poles, on, over, under, and across the ground embraced within the right-of-way situated in the City of Scottsdale, State of Arizona and described as follows:

E 40 feet of the S 165 feet of the N 330 feet  
of the E 1/2 of the SE 1/4 of the NE 1/4 of the NW 1/4  
of Section 26, T3N R5E, G. & S. R. B. & M.,  
Maricopa County, Arizona.

I do hereby certify that the will is named instrument was recorded at request of CITY OF SCOTTSDALE  
JUN 22 1976 -H 35 D ck. 1 11730-1073 Records of Maricopa Co., Arizona  
With its original seal the day and year aforesaid  
TOM FREESTONE, Maricopa County Clerk, By [Signature] Deputy

The said easement to include the right to cut back and trim such portion of the branches and tops of the trees now growing or that may hereafter grow or extend over said right-of-way, so as to prevent the same from interfering with the efficient maintenance and operation of said public highway and public utilities.

And the Grantors hereby covenant that they are lawfully seized and possessed on this aforementioned tract or parcel of land; that they have a good and lawful right to sell and convey it; and that they will warrant the title and quiet possession thereto against the lawful claim of all persons.

DATED this 18th day of June, 1976

[Signature]  
[Signature]

STATE OF \_\_\_\_\_  
COUNTY OF Maricopa

This instrument was acknowledged before me this 18th day of June, 1976, by Charles E. Wait and Carolyn J. Wait

In witness whereof I hereunto set my hand and official seal.

[Signature]  
NOTARY PUBLIC  
My Commission expires Aug 11 1979

FORM NO. 22-1 REV. 9-66

My Commission expires \_\_\_\_\_





GLOPE #1144958

40' Roadway Easement  
(76/0153068)

40' Total  
Roadway  
Easement

Abandonment  
Request 1

33'

Site

Abandonment  
Request 2

5'

5' Dedication  
of Right-of-Way

N-124th Street

Current  
30' Half Street  
of Right-of-Way

New  
35' Half Street  
of Right-of-Way

ATTACHMENT #6

Q.S.  
28-57

2014 GIS Orthophoto

McIntosh GLOPE Abandonment

5-AB-2016

**EXHIBIT A**  
GOVERNMENT LAND OFFICE PATENT PARTIAL RELEASE OF EASEMENT

A PARTIAL RELEASE OF THE GOVERNMENT LAND OFFICE 33.00 FOOT PATENT EASEMENT DEDICATED IN PATENT 114495B AND LOCATED IN LOT 1 OF ESSIG'S ESTATES, AS RECORDED IN BOOK 711 OF MAPS, PAGE 11, RECORDS OF MARICOPA COUNTY, ARIZONA.





**EXHIBIT B**  
GOVERNMENT LAND OFFICE PATENT PARTIAL RELEASE OF EASEMENT

NORTH QUARTER CORNER  
SEC. 26, T3N, R5E  
FND. CITY OF SCOTTSDALE  
BRASS CAP IN HANDHOLE

WEST LINE OF LOT 1, ESSIG'S ESTATES

165.24'

N00°02'20"E

NOT TO EXCEED 33' ROADWAY  
AND UTILITY EASEMENT  
GOVERNMENT LAND OFFICE  
PATENT EASEMENT #1144958  
PARTIAL RELEASE AREA

**LOT 1, ESSIG'S ESTATES**  
BOOK 711 OF MAPS, PAGE 11, MCR  
DEED: 2015-0214625, MCR

S89°59'08"E

329.84'

211.84'

NORTH LINE OF LOT 1,  
ESSIG'S ESTATES

30.00'

165.30'

S00°02'04"W

30.00'

124TH STREET

165.31'

2641.09'(M)

S00°02'04"W(M)

1635.55'

N89°58'24"W 329.85'  
NORTH LINE, SOUTH 315', LOT 24 & THE SOUTH LINE OF LOT 1, ESSIG'S ESTATES  
BOOK 711 OF MAPS, PAGE 11, MCR

CENTER OF SECTION  
SEC. 26, T3N, R5E  
FND. CITY OF SCOTTSDALE  
BRASS CAP IN HANDHOLE

840.23'





**EXHIBIT A**  
**LEGAL DESCRIPTION**  
**ROADWAY EASEMENT PARTIAL ABANDONMENT**

A PARTIAL ABANDONMENT OF THE PERPETUAL EASEMENT AND RIGHT OF WAY RECORDED IN DOCKET 11730, PAGE 107, RECORDS OF MARICOPA COUNTY, ARIZONA AND LOCATED IN LOT 1 OF ESSIG'S ESTATES, AS RECORDED IN BOOK 711 OF MAPS, PAGE 11, RECORDS OF MARICOPA COUNTY, ARIZONA DESCRIBED AS FOLLOWS:

THE WEST 5 FEET OF THAT PORTION OF THE ABOVE DESCRIBED EASEMENT LOCATED WITHIN SAID LOT 1.



**EXHIBIT B**  
ROADWAY EASEMENT PARTIAL ABANDONMENT

40' RIGHT OF WAY EASEMENT  
DOCKET 11730, PAGE 1073, MCR

NORTH LINE OF LOT 1, ESSIG'S ESTATES

5' 35'

30.00'

RIGHT OF WAY EASEMENT  
DOCKET 11730, PAGE 1073, MCR  
PARTIAL ABANDONMENT AREA

WEST LINE OF LOT 1, ESSIG'S ESTATES

**LOT 1, ESSIG'S ESTATES**  
BOOK 711 OF MAPS, PAGE 11, MCR  
DEED: 2015-0214625, MCR

30' RIGHT OF WAY  
BOOK 711 OF MAPS, PAGE 11, MCR  
124TH STREET

5' 30.00'

SOUTH LINE OF LOT 1, ESSIG'S ESTATES



ATTACHMENT #9

**EXHIBIT B**  
NATURAL AREA OPEN SPACE RELEASE EASEMENT

NORTH QUARTER CORNER  
SEC. 26, T3N, R5E  
FND. CITY OF SCOTTSDALE  
BRASS CAP IN HANDHOLE

WEST LINE OF LOT 1, ESSIG'S ESTATES

N00°02'20"E 165.24'

S89°59'08"E 329.84'  
211.84'

NORTH LINE OF LOT 1,  
ESSIG'S ESTATES

30.00'

840.23'

**LOT 1, ESSIG'S ESTATES**

BOOK 711 OF MAPS, PAGE 11, MCR  
DEED: 2015-0214625, MCR

EXISTING NATURAL AREA OPEN SPACE  
BOOK 711 OF MAPS, PAGE 11, MCR  
RELEASED

S00°02'04"W 165.30'

124TH STREET

2641.09'(M)

165.31'

S00°02'04"W(M)

299.85'

30.00'

N89°58'24"W

329.85'

NORTH LINE, SOUTH 315', LOT 24 & THE SOUTH LINE OF LOT 1, ESSIG'S ESTATES  
BOOK 711 OF MAPS, PAGE 11, MCR

CENTER OF SECTION  
SEC. 26, T3N, R5E  
FND. CITY OF SCOTTSDALE  
BRASS CAP IN HANDHOLE

1635.55'

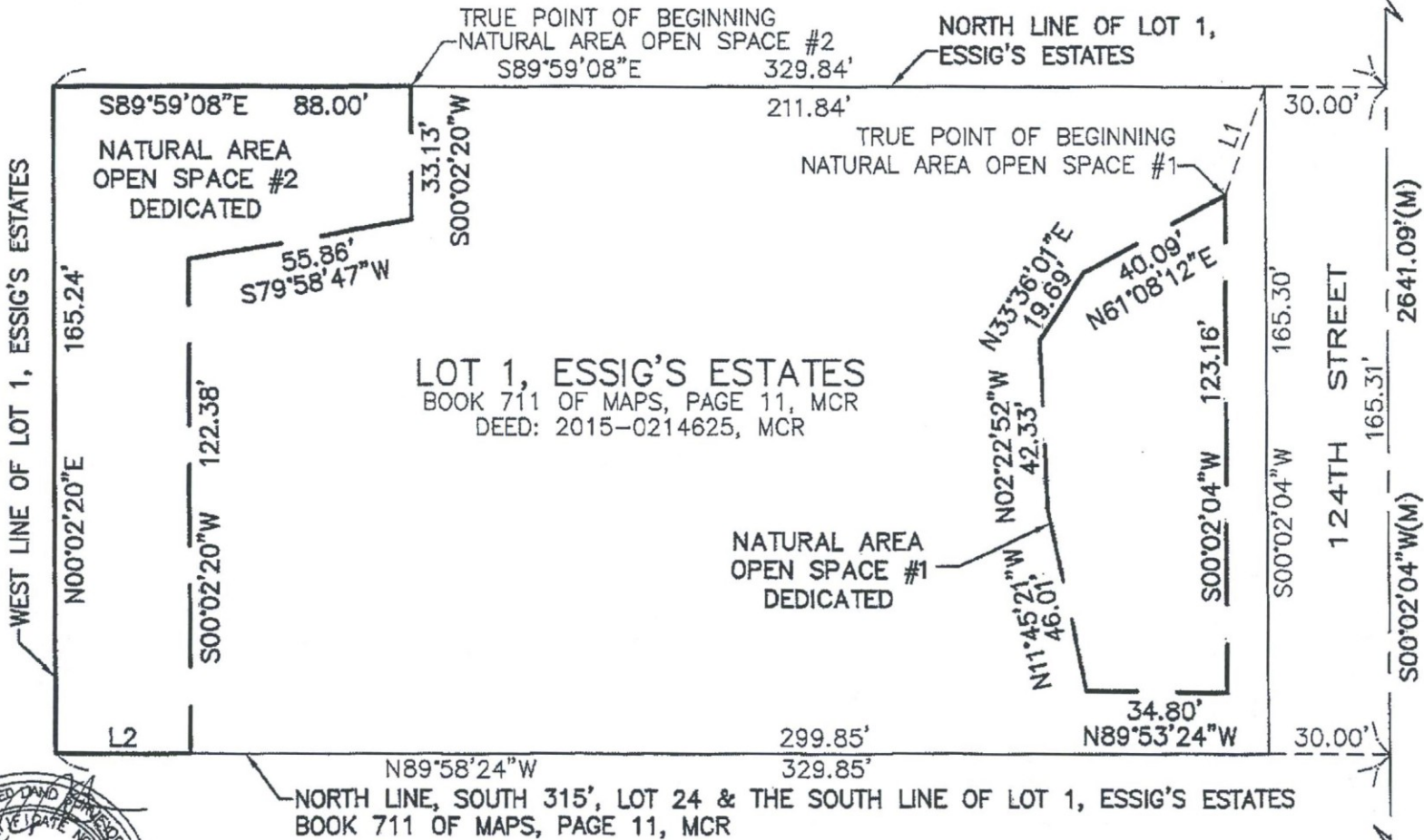




**EXHIBIT B**

NATURAL AREA OPEN SPACE EASEMENT DEDICATION  
DEED: 2015-0214625, MCR

NORTH QUARTER CORNER  
SEC. 26, T3N, R5E  
FND. CITY OF SCOTTSDALE  
BRASS CAP IN HANDHOLE  
POINT OF COMMENCING



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S20°26'19"W	28.68'(TIE)
L2	N89°58'24"W	33.00'

ALL BEARINGS AND DISTANCES  
ARE CALCULATED UNLESS  
OTHERWISE NOTED.

CENTER OF SECTION  
SEC. 26, T3N, R5E  
FND. CITY OF SCOTTSDALE  
BRASS CAP IN HANDHOLE

840.23'

2641.09'(M)

165.31'

1635.55'



# Local Area Infrastructure Plan

## East Shea Area 3



**Q.S.  
28-57**

**McIntosh GLOPE Abandonment**

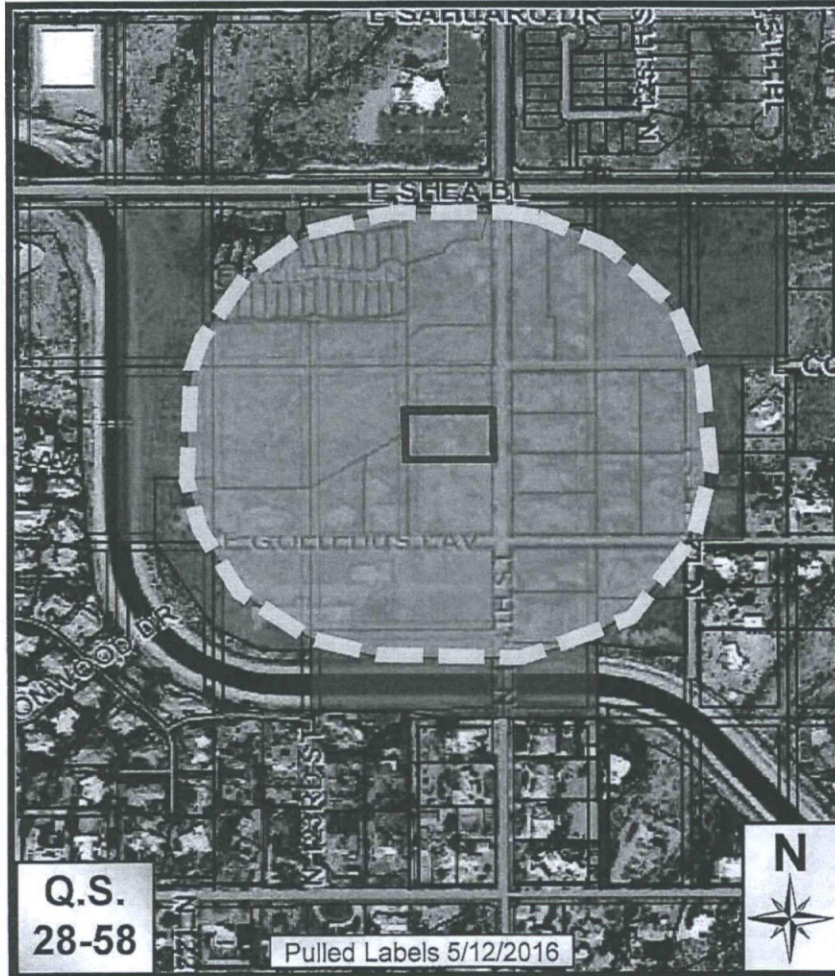
**5-AB-2016**

**ATTACHMENT #10**



# City Notifications – Mailing List Selection Map

ATTACHMENT #11



## Map Legend:



Site Boundary



Properties within 750-feet

Postcards 84

## Additional Notifications:

- Interested Parties List
- Adjacent HOA's
- P&Z E-Newsletter
- Facebook
- Twitter
- Nextdoor.com
- City Website-Projects in the hearing process

**McIntosh Residence**

**5-AB-2016**

# CITY COUNCIL REPORT



Meeting Date: August 31, 2016  
 General Plan Element: *Land Use*  
 General Plan Goal: *Coordinate Planning to Balance Infrastructure*

## ACTION

### McIntosh Abandonments 5-AB-2016

#### Request to consider the following:

1. Adopt Resolution No. 10528 to abandon the 33-foot General Land Office Patent Easement on the western boundary of the property and abandon the western 5-feet of the Roadway Easement located along N. 124<sup>th</sup> Street leaving a 35-foot half street of right of way for a property located at 10300 N. 124<sup>th</sup> Street with Single-family Residential, Environmentally Sensitive Lands (R1-43 ESL) zoning.

#### Key Items for Consideration

- Access not impacted by these proposed abandonments
- Conformance with the Transportation Master Plan and Local Area Infrastructure Plan
- Reconfiguration of Natural Area Open Space Easements to a more appropriate location
- Planning Commission heard this case on June 22, 2016 and recommended approval with a 6-0 vote

## OWNER

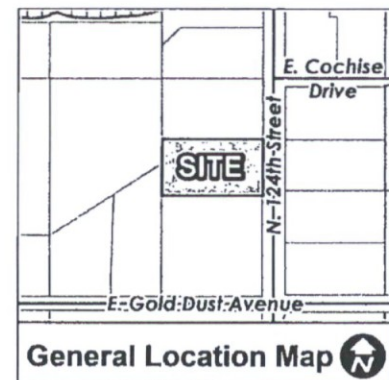
Robert & Nancy McIntosh  
480-614-1252

## APPLICANT CONTACT

Ricki L. Horowitz  
Burch and Cracchiolo  
602-234-8728

## LOCATION

10300 N 124th St.





## **BACKGROUND**

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### **General Plan and Character Area Plan**

The General Plan Land Use Element designates the property as Rural Neighborhoods and a part of the East Shea Character Area Plan. These categories include relatively low-density and larger lot development, including horse privilege neighborhoods and areas with sensitive and unique natural environments.

### **Zoning**

The site is zoned Single-family Residential, Environmentally Sensitive Lands (R1-43 ESL). The City of Scottsdale annexed the subject property in 1975 under Ordinance No. 891 and the City of Scottsdale R1-43 zoning was applied. The Environmentally Sensitive Lands Overlay was applied in 1991.

### **Context**

The subject property is located at the northwest corner N. 124<sup>th</sup> St. and E. Gold Dust Ave. The site is generally surrounded by one (1) acre single family parcels (see context aerial attachments).

### **General Land Office Patent Easements History**

- Within the City of Scottsdale there are General Land Office (GLO) lots or parcels of various sizes created by the Federal Small Tract Act. This act was passed in 1938 and repealed in 1976.
- Most GLO lots were patented with 33 foot (or sometimes 50 foot) roadway and public utility easements typically “as near as practicable to the exterior boundaries.”
- The city has viewed these patent roadway and utility easements as assured access at least until a local circulation plan is established.
- As GLO lots come in for development (i.e., lot splits, subdivisions or requesting building permits) staff requires city right-of-way dedications per city circulation plans. The city’s transportation plan establishes a street system to replace the grid pattern created by the GLO easements.
- Any patent easements in excess of the current requirements to the circulation plans (including trails), roadway standards, and not required to insure access to any other lot, may be requested to be abandoned.
- On 1981, City Ordinance 1386 was adopted delegating the authority for the release of GLO easements to the Engineering Services Director.
- On March 2, 1999, the City Council repealed Ordinance 1386 and adopted Ordinance 3219 which requires the abandonment of the GLO patent roadway easements to go through the same public hearing process currently used for all rights-of-way, alleys, and roadway easements. The City Attorney’s office has concluded that this process for consideration of GLO roadway abandonment satisfies legal requirements.
- On August 12, 2005, Arizona Revised Statute section 9-500.4 became effective. This section gives the local municipality the right to abandon GLO patent easements, and concurs with the city’s position on abandonment of GLO patent easements.

### **Subject Roadway Easements**

The subject 33-foot General Land Office Patent Easement (GLO) is located along the western boundary of the subject property and was dedicated in June of 1954 through patent serial number 1144958. The subject GLO roadway easement was reserved on the original patent deed to assure legal access. Currently the GLO easement is not improved and sits in the rear of the property (see attachment #7).

The subject ten (10) feet of the total 40-foot Roadway Easement is located along the eastern boundary of the subject property. The Roadway Easement was dedicated in June of 1976 through recording number 1976/0153068 to provide legal access to the property along N. 124<sup>th</sup> Street. The smaller portion of the roadway easement located on the property is currently not improved and is located in the front yard (see attachment #7).

### **Related Policies, References**

218-SA-2003

2008 Scottsdale Transportation Master Plan

East Shea Area Local Area Infrastructure Plan (LAIP)

## **APPLICANTS PROPOSALS**

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This is a request to abandon roadway easements in order to relocate Natural Area Open Space easements to a more appropriate location, as follows

1. Abandon the 33-foot General Land Office Patent Easement (Patent No.1144958) on the western boundary of the property.
2. Abandon the western 5-feet of the Roadway Easement (Recording No. 1976/0153068) located along N. 124<sup>th</sup> Street leaving a 35-foot half street of right of way.

## **IMPACT ANALYSIS**

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### **Traffic/Trails**

The Local Area Infrastructure Plan provides street access off of N. 124<sup>th</sup> Street for the subject property (see attachment #9). The GLO easement is located opposite the front property line in the rear of the lot.

The street classification of N. 124<sup>th</sup> Street is a Minor Collector, and the minimum required right-of-way is a total of seventy (70) feet, comprised of two thirty-five (35) foot wide half streets. Currently, a forty (40) foot half street exists in easement and fee-simple form along N. 124<sup>th</sup> St., comprising of a thirty (30) foot right-of-way dedication, and ten (10) feet of roadway easements.

### **Emergency/Municipal Services and Utilities**

All existing emergency and service access will be provided to the properties surrounding the abandonment area and maintained through existing dedicated public right-of-way along N. 124<sup>th</sup> Street. No impacts are anticipated.



### **Public Utilities**

The public utilities have been notified of the applicant's requests. Staff has received the utility companies' approval for the abandonment of the GLO easement and Roadway easement.

### **Community Involvement**

The applicant notified all property owners within 750 feet of the proposed abandonment. The site was also posted notifying interested parties of the request and the city sent postcards to property owners surrounding the site in notice of the request. The applicant and city staff received questions regarding the abandonment case, future improvements to the subject property, and the significant wash to the west the site.

### **Community Impact**

The proposed abandonments do not restrict access for the adjacent properties. The applicant will provide \$1,090.84 as compensation to the City of Scottsdale, and will dedicate the remaining five (5) feet of Roadway Easement on the property as fee-simple right-of-way along N. 124<sup>th</sup> Street.

## **OTHER BOARDS & COMMISSIONS**

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### **Planning Commission**

Planning Commission heard this case on June 22, 2016 and recommended approval with a 6-0 vote.

### **Recommended Approach:**

Staff recommended that the Planning Commission make a recommendation to City Council for approval to abandon the 33-foot General Land Office Patent Easement on the western boundary of the property **and** the western 5-feet of the Roadway Easement located along N. 124<sup>th</sup> Street leaving a 35-foot half street of right of way for a property located at 10300 N. 124<sup>th</sup> St. with Single-family, Environmentally Sensitive Lands (R1-43 ESL) zoning, finding that the proposal is consistent with and conforms to the adopted General Plan, subject to the following conditions:

1. The property owner dedicates five (5) feet of right-of-way along N. 124<sup>th</sup> Street, to achieve a thirty-five (35) foot fee-simple half street dedication.
2. The property owner pays \$1,090.84 to the City.

## **RECOMMENDATION**

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### **Recommended Approach:**

Adopt Resolution No. 10528 to abandon the 33-foot General Land Office Patent Easement on the western boundary of the property and abandon the western 5-feet of the Roadway Easement located along N. 124<sup>th</sup> Street leaving a 35-foot half street of right of way for a property located at 10300 N. 124<sup>th</sup> Street with Single-family Residential, Environmentally Sensitive Lands (R1-43 ESL) zoning.

**RESPONSIBLE DEPARTMENTS**

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Current Planning Services & Transportation Department

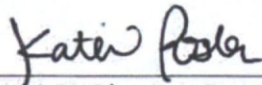
**STAFF CONTACT(S)**

---

Katie Posler  
Associate Planner  
480-312-2703  
E-mail: kposler@ScottsdaleAZ.gov

**APPROVED BY**

---



Katie Posler, Associate Planner, Report Author

8/4/16

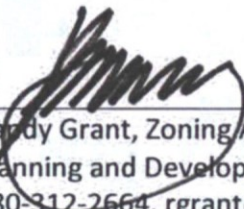
Date



Tim Curtis, AOP, Current Planning Director  
480-312-4210, tcurtis@scottsdaleaz.gov

8/10/2016

Date



Randy Grant, Zoning Administrator  
Planning and Development Services  
480-312-2664, rgrant@scottsdaleaz.gov

8/14/16

Date



## ATTACHMENTS

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1. Resolution No. 10528
2. Applicant's Narrative
3. Context Aerial
4. Detail Aerial
5. GLOPE Recorded Document (Patent No.1144958)
6. Roadway Easement Recorded Document (Recording No. 1976/0153068)
7. Abandonment Requests and Required Dedication Graphic
8. Proposed Release and Rededication of Natural Area Open Space (NAOS) Easements Graphics
9. Local Area Infrastructure Plan (LAIP)
10. City Notification Map
11. June 22, 2016 Planning Commission minutes

**RESOLUTION NO. 10528**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, ABANDONING, SUBJECT TO CONDITIONS AND RESERVATIONS, CERTAIN INTERESTS IN A PORTION OF THE PUBLIC RIGHT-OF-WAY FOR 124TH STREET SOUTH OF COCHISE DRIVE AND A GLO PATENT EASEMENT

(5-AB-2016)  
(McIntosh)

WHEREAS:

A. A.R.S. Sec. 28-7201, et seq., and A.R.S. §9-500.24 provide that a city may dispose of a public roadway or portion thereof that is no longer necessary for public use.

B. Scottsdale Revised Code §2-221 and other applicable laws provide that the City may dispose of other real property interests.

C. After notice to the public, the City of Scottsdale ("City") City's planning commission and City Council have held hearings on the proposed abandonment of a certain portion of the street right-of-way and other interests (collectively the "Abandonment Right-of-way").

D. The Abandonment Right-of-way is described on **Exhibit "A"**, **Exhibit "B"**, **Exhibit "C"** and **Exhibit "D"** attached hereto.

E. The Abandonment Right-of-way falls within, serves, affects or is near the parcel (the "McIntosh Parcel") comprising approximately 1.1 acres north of the northwest corner of Gold Dust Avenue and 124th Street as described on **Exhibit "E"** attached hereto.

F. The Abandonment Right-of-way lies within the area of a General Land Office (GLO) easement created by patent reservation.

G. The owners of the McIntosh Parcel (each an "Owner") have each executed and acknowledged an "Agreement and Release by GLO Abandonment Parcel Owner". Such documents are attached hereto as **Exhibit "F-1"**, and **"F-2"**. Such documents provide that:

1. City is releasing only its interest in the General Land Office (GLO) easement, and other persons or entities may claim that this resolution does not completely extinguish the General Land Office (GLO) easement.

2. Each Owner releases City from any and all damages or harm relating to any of such claims.



3. Each Owner warrants and represents that all holders of fee title, leaseholds, liens, exclusive easements, or options affecting Owner's property, if any, have executed and acknowledged an "Agreement and Release by Lender, Tenant, or Other Interest Holder". (Such documents are attached hereto as **Exhibit "G"**.) The preceding sentence does not apply to ordinary leases to individual residential rental unit tenants.

4. Each Owner warrants and represents that there are no other holders of fee title, leaseholds, liens, exclusive easements, or options affecting Owner's property. The preceding sentence does not apply to ordinary leases to individual residential rental unit tenants.

H. City's city council finds that, subject to the conditions, requirements, reservations and limitations of this resolution, the Abandonment Right-of-way is no longer necessary for public use.

I. City's city council has considered the City expenditure, if any, authorized by this resolution and the direct consideration that City will receive and finds that there is a clearly identified public purpose for City's expenditure, if any, and that City will receive direct consideration substantially equal to its expenditure.

J. City's city council finds that consideration and other public benefit commensurate with the value of the interests in the Abandonment Right-of-way being abandoned, giving due consideration to its degree of fragmentation and marketability, will be provided to City by the owners of the abutting property.

NOW, THEREFORE, BE IT RESOLVED by the city council of the City of Scottsdale, Arizona, as follows:

1. Abandonment. Subject to the reservations and conditions below, City's interests comprising the Abandonment Right-of-way are hereby abandoned.

2. Reservations. City reserves to itself and excludes from this abandonment all of the following cumulative, perpetual interests:

2.1 Any and all interests in the Abandonment Right-of-way that any related application, zoning case, plat, lot split, use permit, or other land use regulatory process or requirements may require to be dedicated to City.

2.2 Any of the following in favor of City that may already have been imposed on the Abandonment Right-of-way prior to this resolution, if any:

2.2.1 Any V.N.A.E. or other vehicular non-access easement or covenant.

2.2.2 Any N.A.O.S. or other open space or similar easement or covenant.

2.2.3 Any scenic corridor, setback or similar easement or covenant.

2.3 Such rights and interests, if any, as are required to be reserved by A.R.S. Sec. 28-7210 and A.R.S. Sec. 28-7215.

3. Effective Date. This resolution shall not be recorded or become effective until all of the following conditions (the "Conditions") are satisfied in accordance with all applicable laws, regulations and policies and at no expense to City:

3.1 The owners shall dedicate five (5) feet of right-of-way along the McIntosh parcel frontage, to achieve a thirty-five (35) foot fee simple half street dedication.

3.2 The owners shall pay to City the total amount of One Thousand Ninety and 84/100 Dollars (\$1,090.84) (the "Payment Amount") as compensation to City for the Abandonment Right-of-way, in addition to any application fees or other amounts related to this resolution and in addition to any other amounts payable to City.

3.3 The zoning administrator executes the certificate at the bottom of this resolution indicating that the Conditions have been satisfied.

4. Administration of Conditions. If the foregoing Conditions are not all satisfied prior to the second annual anniversary of this resolution, or if this resolution is not recorded prior to that deadline, then the city clerk shall mark this resolution to indicate that this resolution is void.

5. Exhibit Labeling. The text of this resolution controls any conflict with the exhibits as to the nature of the interests created, reserved or otherwise affected by this resolution. For example, if the text of this resolution indicates that City is reserving a particular type of easement, but the exhibit text or labels indicate a different type of real estate interest, then the text controls.

PASSED AND ADOPTED by the City Council of the City of Scottsdale this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF SCOTTSDALE, an Arizona municipal corporation

\_\_\_\_\_  
W. J. "Jim" Lane, Mayor

ATTEST:

By: \_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

*Margaret Wilson*

Bruce Washburn, City Attorney

By: Margaret Wilson, Assistant City Attorney



**CERTIFICATE**

I am the zoning administrator of the City of Scottsdale. I certify that I have confirmed that the conditions stated in paragraph 3 of the abandonment resolution above have been fulfilled and the resolution is ready to be recorded and become effective.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed

**EXHIBIT A**  
LEGAL DESCRIPTION  
GOVERNMENT LAND OFFICE PATENT PARTIAL ABANDONMENT

A PARTIAL ABANDONMENT OF THE GOVERNMENT LAND OFFICE 33.00 FOOT PATENT EASEMENT DEDICATED IN PATENT 1144958 AND LOCATED IN LOT 1 OF ESSIG'S ESTATES, AS RECORDED IN BOOK 711 OF MAPS, PAGE 11, RECORDS OF MARICOPA COUNTY, ARIZONA DESCRIBED AS FOLLOWS:

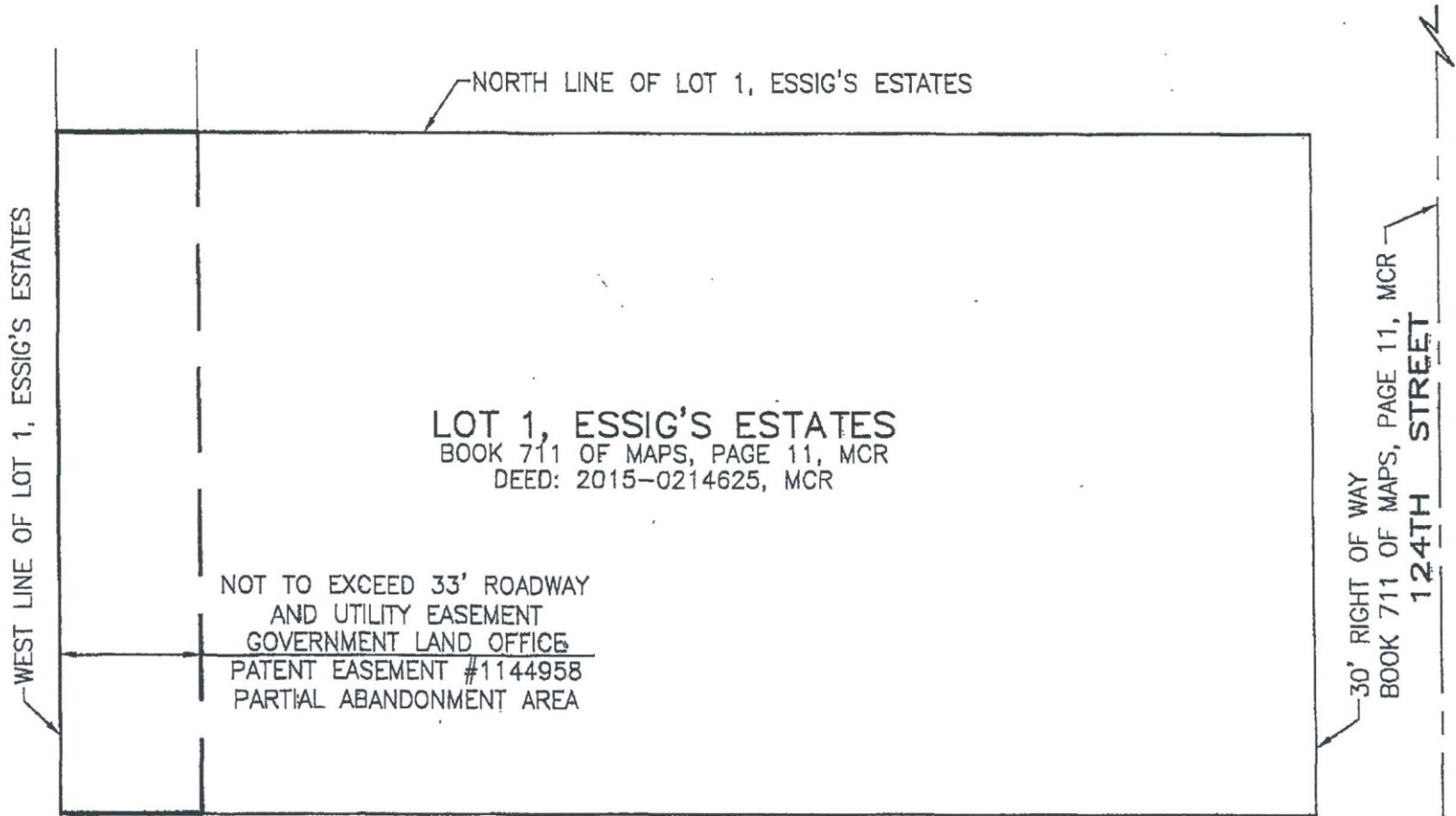
THE WEST 33 FEET OF SAID LOT 1.





**EXHIBIT B**  
GOVERNMENT LAND OFFICE PATENT PARTIAL ABANDONMENT

Ex.B pg.1 of 1 Res. No. 10528



**LOT 1, ESSIG'S ESTATES**  
BOOK 711 OF MAPS, PAGE 11, MCR  
DEED: 2015-0214625, MCR

NOT TO EXCEED 33' ROADWAY  
AND UTILITY EASEMENT  
GOVERNMENT LAND OFFICE  
PATENT EASEMENT #1144958  
PARTIAL ABANDONMENT AREA



NOT TO SCALE

**EXHIBIT C**  
LEGAL DESCRIPTION  
PERPETUAL EASEMENT AND RIGHT OF WAY PARTIAL ABANDONMENT

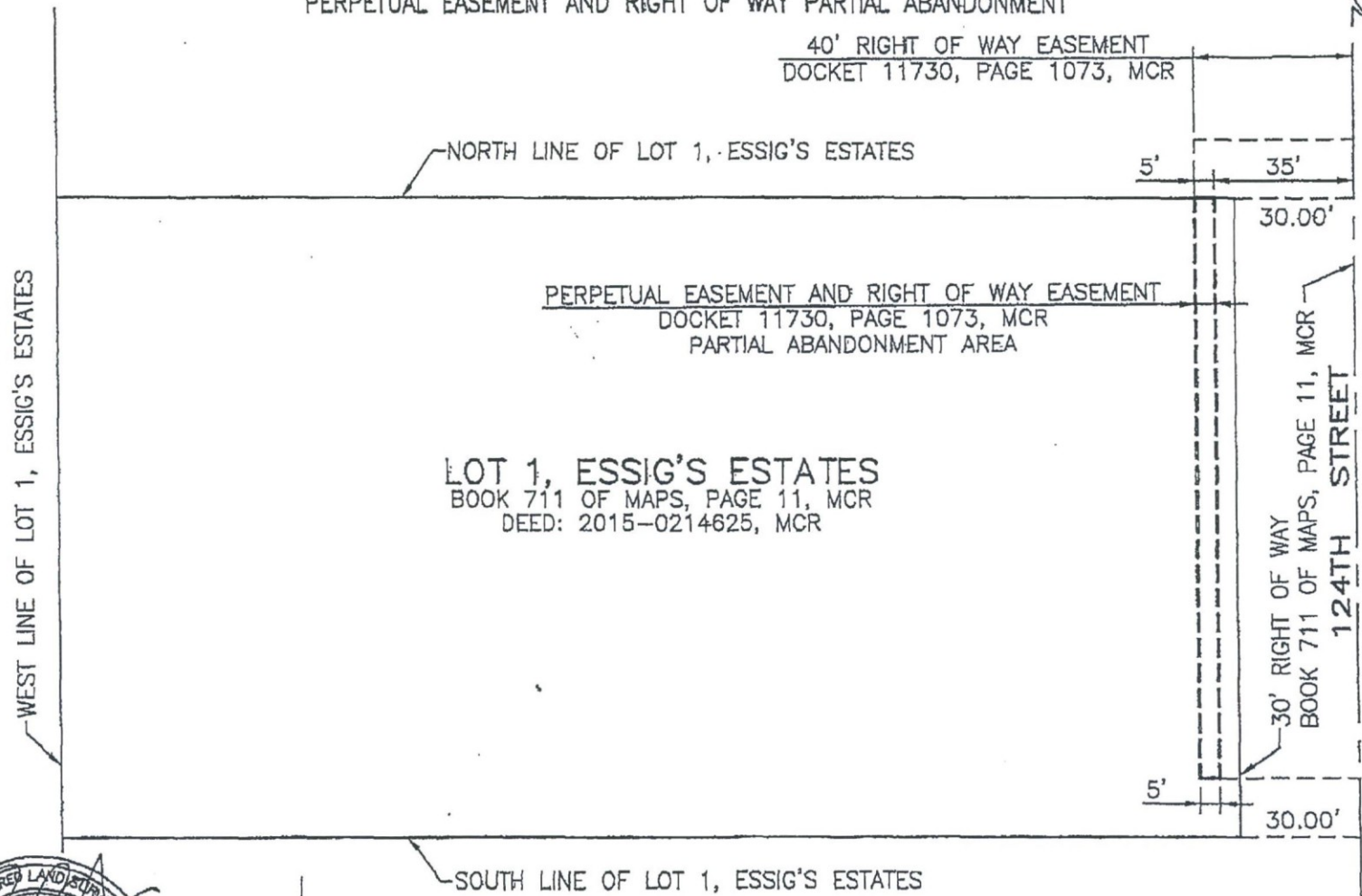
A PARTIAL ABANDONMENT OF THE PERPETUAL EASEMENT AND RIGHT OF WAY RECORDED IN DOCKET 11730, PAGE 1073, RECORDS OF MARICOPA COUNTY, ARIZONA AND BEING A PART OF LOT 1 OF ESSIG'S ESTATES, AS RECORDED IN BOOK 711 OF MAPS, PAGE 11, SAID RECORDS, DESCRIBED AS FOLLOWS:

THE WEST 5 FEET OF THAT PORTION OF SAID EASEMENT.





**EXHIBIT D**  
PERPETUAL EASEMENT AND RIGHT OF WAY PARTIAL ABANDONMENT



NOT TO SCALE

LEGAL DESCRIPTION OF MCINTOSH PARCEL FOR REFERENCE ONLY

PARCEL NO. 1:

Lot 1, ESSIG'S ESTATES, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 711 of Maps, page 11.

EXCEPT all coal, oil, gas and other mineral deposits in said land; and also;

EXCEPT all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, as reserved in the Patent of said land.

PARCEL NO. 2:

An easement for driveway and parking purposes over the following described property: Those portions of the North 150 feet of the South 315 feet of Lot 24, Section 26, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Parcel "A"

Beginning at the Northeast corner of said North 150 feet of the South 315 feet:

Thence South 00 degrees 01 minutes 38 seconds West along the East line of said Lot 24, 14.00 feet;

Thence departing said East line North 88 degrees 55 minutes 00 second West parallel with the North line of said North 150 feet of the South 315 feet, a distance of 82 feet;

Thence North 83 degrees 24 minutes 58 seconds West 31.30 feet to said North line;

Thence South 88 degrees 55 minutes 00 seconds East along said North line 110.00 feet to the POINT OF BEGINNING;

EXCEPT any part thereof lying with a public roadway easement or right-of-way.

Parcel "B"

Beginning at a point on the North line of said North 150 feet of the South 315 feet that lies North 88 degrees 59 minutes 00 seconds West 140.48 feet from the Northeast corner of said North 150 feet of the South 315 feet;

Thence departing said North line South 79 degrees 46 minutes 40 seconds West 64.41 feet; Thence North 10 degrees 13 minutes 20 seconds West, a distance of 11.63 feet to said North line;

Thence South 89 degrees 59 minutes 00 seconds East along said North line 66.46 feet to the POINT OF BEGINNING.



AGREEMENT AND RELEASE BY GLO ABANDONMENT PARCEL OWNER

As an inducement to the City of Scottsdale ("City") to approve abandonment resolution No. 10528, the undersigned ("Owner") hereby makes certain acknowledgements, representations, warranties and agreements (collectively the "Assurances") in favor of City as follows:

1. Owner acknowledges that:

1.1 Some or all of the right-of-way covered by the resolution is an easement created by a federal General Land Office (GLO) patent reservation.

1.2 City's intent by the resolution is to abandon only City's specified interests in the land.

1.3 Other persons or entities may claim that the resolution does not completely extinguish the General Land Office (GLO) easement or may claim rights for themselves or others to use the land for various purposes and/or to prevent any improvement or use of the land that is affected by the resolution.

2. Owner agrees that:

2.1 Owner shall proceed entirely at Owner's own risk as to any damages, delays, loss, difficulties, injury or other harm of any nature that Owner or any third party may now or hereafter suffer due to the existence or abandonment of the easement or due to the resolution or the issues recited above. Owner completely, unconditionally and irrevocably releases City from any and all legal or other responsibility for any such harm.

2.2 All of the Assurances run with the land in favor of City upon the right-of-way covered by the resolution and upon Owner's land adjoining such right-of-way.

2.3 City would not have approved the resolution without the Assurances.

3. Owner makes the Assurances on behalf of Owner and Owner's heirs, successors and assigns, and the Assurances are binding upon all of them.

4. Owner warrants and represents that:

4.1 Owner is the owner of the fee title to the land across which the General Land Office (GLO) easement passes.

4.2 Owner has delivered to City an "Agreement and Release by GLO Abandonment Parcel Lender, Tenant or Other Interest Holder" from each holder of fee title, leaseholds, liens, exclusive easements, and options (except for individual residential rental unit tenants).

Owner: Neely McIntosh

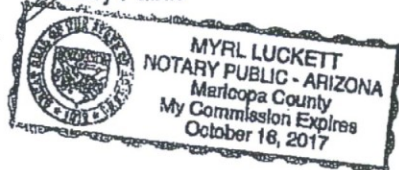
STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

Subscribed, sworn to and acknowledged before me this 20 day of July, 2016 by Driver License

[Signature]  
Notary Public

My Commission Expires:

October 16, 2017



**AGREEMENT AND RELEASE BY GLO ABANDONMENT PARCEL OWNER**

As an inducement to the City of Scottsdale ("City") to approve abandonment resolution No. 10528, the undersigned ("Owner") hereby makes certain acknowledgements, representations, warranties and agreements (collectively the "Assurances") in favor of City as follows:

1. Owner acknowledges that:

1.1 Some or all of the right-of-way covered by the resolution is an easement created by a federal General Land Office (GLO) patent reservation.

1.2 City's intent by the resolution is to abandon only City's specified interests in the land.

1.3 Other persons or entities may claim that the resolution does not completely extinguish the General Land Office (GLO) easement or may claim rights for themselves or others to use the land for various purposes and/or to prevent any improvement or use of the land that is affected by the resolution.

2. Owner agrees that:

2.1 Owner shall proceed entirely at Owner's own risk as to any damages, delays, loss, difficulties, injury or other harm of any nature that Owner or any third party may now or hereafter suffer due to the existence or abandonment of the easement or due to the resolution or the issues recited above. Owner completely, unconditionally and irrevocably releases City from any and all legal or other responsibility for any such harm.

2.2 All of the Assurances run with the land in favor of City upon the right-of-way covered by the resolution and upon Owner's land adjoining such right-of-way.

2.3 City would not have approved the resolution without the Assurances.

3. Owner makes the Assurances on behalf of Owner and Owner's heirs, successors and assigns, and the Assurances are binding upon all of them.

4. Owner warrants and represents that:

4.1 Owner is the owner of the fee title to the land across which the General Land Office (GLO) easement passes.

4.2 Owner has delivered to City an "Agreement and Release by GLO Abandonment Parcel Lender, Tenant or Other Interest Holder" from each holder of fee title, leaseholds, liens, exclusive easements, and options (except for individual residential rental unit tenants).

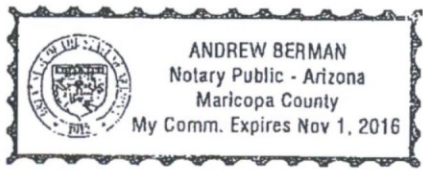
Owner: [Signature]

STATE OF ARIZONA )  
                                  ) ss.  
County of Maricopa )

Subscribed, sworn to and acknowledged before me this 1st day of February,  
2016 by Robert W. McIntosh.

[Signature]  
Notary Public

My Commission Expires:  
November 1, 2016  
Ex.F-2 pg.1 of 1 Res. No. 10528





CONSENT OF LIENHOLDER

The undersigned JPMorgan Chase Bank, N.A., as a mortgagee for the mortgage given by Robert W. McIntosh and Nancy McIntosh, husband and wife, dated March 30, 2015, recorded March 31, 2015 in instrument #20150214626, in the records of Maricopa County, Arizona, recorder Helen Purcell, hereby consents to the attached Agreement and Release By GLO Abandonment Parcel Owners.

JPMORGAN CHASE BANK, N.A.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF LOUISIANA )

) ss.:

PARISH OF OUACHITA )

On the \_\_\_\_\_ day of August, 2016, before me appeared \_\_\_\_\_, to me personally known, who did say that s/he/they is (are) the Vice President of JPMorgan Chase Bank, N.A., and that the instrument was signed on behalf of the corporation (or association), by authority from its board of directors, and that s/he/they acknowledged the instrument to be the free act and deed of the corporation (or association).

\_\_\_\_\_  
\_\_\_\_\_, NOTARY PUBLIC

LA Notary ID# \_\_\_\_\_

Lifetime Commission

**AGREEMENT AND RELEASE BY GLO ABANDONMENT PARCEL  
LENDER, TENANT OR OTHER INTEREST HOLDER**

As an inducement to the City of Scottsdale ("City") to approve abandonment resolution No. 10528 the undersigned lender, tenant, or holder of another interest in the land across which the general land office (GLO) easement passes ("Interest Holder") hereby makes certain acknowledgements, warranties and agreements (collectively the "Assurances") in favor of City as follows:

1. Interest Holder acknowledges that:
  - 1.1 Some or all of the right-of-way covered by the resolution is an easement created by a federal General Land Office (GLO) patent reservation.
  - 1.2 City's intent by the resolution is to abandon only City's specified interests in the land.
  - 1.3 Other persons or entities may claim that the resolution does not completely extinguish the General Land Office (GLO) easement or may claim rights for themselves or others to use the land for various purposes and/or to prevent any improvement or use of the land that is affected by the resolution.
2. Interest Holder agrees that:
  - 2.1 Interest Holder shall be entirely at Interest Holder's own risk as to any damages, delays, loss, difficulties, injury or other harm of any nature that Interest Holder or any third party may now or hereafter suffer due to the existence or abandonment of the easement or due to the resolution or the issues recited above. Interest Holder completely, unconditionally and irrevocably releases City from any and all legal or other responsibility for any such harm.
  - 2.2 All of the Assurances run with the land in favor of City upon the right-of-way covered by the resolution and upon the land adjoining such right-of-way in which Interest Holder holds its interest.
  - 2.3 City would not have approved the resolution without the Assurances.
3. Interest Holder makes the Assurances on behalf of Interest Holder and Interest Holder's heirs, successors and assigns, and the Assurances are binding upon all of them.
4. Interest Holder warrants and represents that Interest Holder has not previously conveyed any part of Interest Holder's interest.

Interest Holder: \_\_\_\_\_

by \_\_\_\_\_

Its \_\_\_\_\_

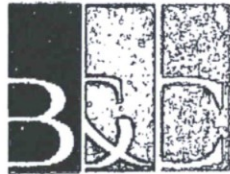
STATE OF ARIZONA    )  
                                  ) ss.  
County of Maricopa    )

Subscribed, sworn to and acknowledged before me this \_\_\_ day of \_\_\_\_\_ 20\_\_\_ by  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires:





## MEMORANDUM

**To:** Brad Carr and Katie Posler  
**From:** Ed Bull  
**Date:** May 10, 2016  
**Re:** GLO Abandonment  
10300 N. 124<sup>th</sup> Street  
APN 217-32-447

---

On behalf of Robert and Nancy McIntosh, owners of their single-family home at 10300 N. 124<sup>th</sup> Street, we request Abandonment of the existing Government Land Office (GLO) patent easement on the west side of the McIntosh's property.

As you know, the home is located within a two-lot subdivision called Essig's Estates. See Aerial attached at **Exhibit 1**. Mr. and Mrs. McIntosh purchased their home in March, 2015. See Warranty Deed<sup>1</sup> attached at **Exhibit 2**.

Per the McIntosh's research, the existing swimming pool on the site was permitted by the City of Scottsdale in 1977. An aerial photo taken from November 8, 1986 identifies the pool existed on the site prior to (probably several years prior to) 1986. See 1986 Aerial at **Exhibit 3**. On February 19, 1991, the Zoning Ordinance was amended through Ordinance No. 2305 to create a new Environmentally Sensitive Lands Overlay District that included the NAOS requirements. In October, 2004 a two-lot subdivision was created for the site and the property to the north. See the Plat at **Exhibit 4**. The Plat identified the NAOS areas. A portion of the NAOS is within the pool area – which existed years before the ESL Overlay District was adopted and even longer before the 2004 Plat was recorded.

When the McIntosh's inquired about obtaining permits for some home remodeling and additions, they were informed that their existing pool area was within the NAOS easement. An aerial identifying the NAOS easements is attached at **Exhibit 5**.

The City should not have accepted a NAOS easement over the pre-existing pool area. In order to get that mistake corrected, the existing GLO easement will need to be abandoned so new areas for the NAOS can be provided within the abandoned GLO easement. A legal description and sketch of the GLO easement to be abandoned is attached at **Exhibit 6**.

---

<sup>1</sup> The Warranty Deed was rerecorded on 2/12/16 to correct the legal description.

**ATTACHMENT #2**      **5-AB-2016**  
   **05/11/16**

Edwin C. Bull  
702 East Osborn Road, Ste 200  
Phoenix, AZ 85014  
(602) 234-9913 (Tel.)  
(602) 343-7913 (Fax)  
[ebull@bcattorneys.com](mailto:ebull@bcattorneys.com)



RE: 10030 N. 124<sup>th</sup> Street  
May 9, 2016

An Application to Release the existing NAOS Easement and to provide a new NAOS Easement is also being processed at the same time as the Abandonment Application.

As mentioned above, a two-lot subdivision was created for the site and the property to the north (See the 2004 Plat at **Exhibit 4**). The plat mistakenly identified the same GLO patent easement on the south side of the site as is located on the west side of the site. There is no GLO patent easement on the south side of the McIntosh's site.

According to Patent No. 114958, Lot 24 (which the McIntosh property is part of) contained 5 acres and states: "This patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located **across said land or as near as practicable to the exterior boundaries.**" See the Patent Easement provided by the BLM at **Exhibit 7**. The exterior boundaries of the 5 acre Lot 24 are Cochise Drive alignment to the north, 124<sup>th</sup> Street to the east, Gold Dust Avenue to the south and the west property line of the McIntosh's property. An Assessor's map and the GLO Dependent Resurvey from the BLM are attached at **Exhibit 8**. As you can see, the only exterior boundary of the GLO patent on the McIntosh's property is the west 33' and the east 33' (124<sup>th</sup> Street). The south GLO exterior boundary is located on Gold Dust Avenue and not along the McIntosh's south property.

A survey of the property dated 11/5/15 confirms that the GLO easement shown on the south side of the property was incorrect and explains that the McIntosh's south property line is 315' north of the south line of GLO Lot 24. See 2015 Survey at **Exhibit 9**. In addition, the Title Report also notes at Schedule B.II, Item 10 that the GLO on the south line was incorrectly identified on the 2004 Land Division Plan (**Exhibit 4**). The Title Report is under separate coverage.

On behalf of the McIntoshes, we ask that the Abandonment be approved. If you or others on Staff have questions or want to discuss any of the above, please contact Ricki Horowitz at Burch & Cracchiolo (602-234-8728)/rhorowitz@bcattorneys.com or me at (602-234-9913)/ebull@bcattorneys.com.

Thank you.



Ed Bull

ECB/rlh  
Attachments  
c: Robert & Nancy McIntosh  
Andy Abraham





McIntosh GLOPE Abandonment

5-AB-2016





Q.S.  
28-57

2014 GIS Orthophoto



McIntosh GLOPE Abandonment

5-AB-2016



# The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Land Office at Phoenix, Arizona, is now deposited in the Bureau of Land Management, whereby it appears that full payment has been made by the claimant

**James Eric Kelsey**

pursuant to the provisions of the Act of Congress approved June 1, 1938 (52 Stat. 609), entitled "An Act to provide for the purchase of public lands for home and other sites," and the acts supplemental thereto, for the following-described land:

**Gila and Salt River Meridians, Arizona.**

**T. 3 N., R. 5 E.,**

**Sec. 26, Lot 24.**

The area described contains 5 acres, according to the Official Plat of the Survey of the said Land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT unto the said claimant and to the heirs of the said claimant the Tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right-of-way thereon for ditches or canals constructed by the authority of the United States. Excepting and reserving, also, to the United States, all coal, oil, gas, and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1938. This patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located across said land or as near as practicable to the exterior boundaries.

Excepting and reserving, also to the United States, pursuant to the provisions of the Act of August 1, 1946 (60 Stat. 755), all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the ~~SEVENTEENTH~~

[SEAL]

day of **JUNE** in the year of our Lord one thousand nine hundred and **FIFTY-FOUR** and of the Independence of the United States the one hundred and **SEVENTY-EIGHTH.**

For the Director, Bureau of Land Management.

Patent No. 1144958

By S. C. Nichols  
Chief, Patents ~~Section~~

AT 11730-107

28-17

CITY OF SCOTTSDALE

EASEMENT

When recorded return to:  
City of Scottsdale  
City Hall - Civic Center  
Scottsdale, Arizona 85251

PROJECT \_\_\_\_\_  
PARCEL 217-32-33A

Charles E. Wait and Carolyn J. Wait, His Wife

Grantor(s),

for a valuable consideration, hereby grant(s) to the CITY OF SCOTTSDALE, ARIZONA, a municipal corporation, its successors and assigns, a perpetual easement and right of way for the following purposes, namely: The right to enter upon the hereinafter described land and grade, level, fill, drain, pave, construct, operate, maintain, repair, and rebuild a road or highway, together with such bridges, culverts, ramps, sidewalks, curbs, gutters, and cuts as may be necessary and to construct, operate and maintain any public utility lines, pipes or poles, on, over, under, and across the ground embraced within the right-of-way situated in the City of Scottsdale, State of Arizona and described as follows:

E 40 feet of the S 165 feet of the N 330 feet  
of the E 1/2 of the SE 1/4 of the NE 1/4 of the NW 1/4  
of Section 26, T3N R5E, G. & S. R. B. & M.,  
Maricopa County, Arizona.

I do hereby certify that the within named instrument was recorded at request of CITY OF SCOTTSDALE  
Dkt. 1 11730 1073 Records of Maricopa Co., Arizona  
JUN 22 1976 - H 35  
Witnessed by hand and official seal the day and year aforesaid  
TOM FREESTONE, Maricopa County Clerk. By [Signature] Deputy

The said easement to include the right to cut back and trim such portion of the branches and tops of the trees now growing or that may hereafter grow or extend over said right-of-way, so as to prevent the same from interfering with the efficient maintenance and operation of said public highway and public utilities.

And the Grantors hereby covenant that they are lawfully seized and possessed on this aforementioned tract or parcel of land; that they have a good and lawful right to sell and convey it; and that they will warrant the title and quiet possession thereto against the lawful claim of all persons.

DATED this 18th day of June, 1976

[Signature]  
[Signature]

STATE OF \_\_\_\_\_  
COUNTY OF Maricopa

This instrument was acknowledged before me this 18th day of June  
1976, by Charles E. Wait and Carolyn J. Wait

In witness whereof I hereunto set my hand and official seal.

[Signature]  
NOTARY PUBLIC  
[Signature]

FORM NO. 22-1 REV. 8-66

My Commission expires Aug 12, 1977





McIntosh GLOPE Abandonment

5-AB-2016

ATTACHMENT #8

**EXHIBIT B**  
NATURAL AREA OPEN SPACE RELEASE EASEMENT

NORTH QUARTER CORNER  
SEC. 26, T3N, R5E  
FND. CITY OF SCOTTSDALE  
BRASS CAP IN HANDHOLE

WEST LINE OF LOT 1, ESSIG'S ESTATES

N00°02'20"E  
165.24'

S89°59'08"E

329.84'  
211.84'

NORTH LINE OF LOT 1,  
ESSIG'S ESTATES

30.00'

840.23'

**LOT 1, ESSIG'S ESTATES**  
BOOK 711 OF MAPS, PAGE 11, MCR  
DEED: 2015-0214625, MCR

EXISTING NATURAL AREA OPEN SPACE  
BOOK 711 OF MAPS, PAGE 11, MCR  
RELEASED

S00°02'04"W  
165.30'

124TH STREET

165.31'

2641.09'(M)

S00°02'04"W(M)

299.85'  
329.85'

30.00'

N89°58'24"W

NORTH LINE, SOUTH 315', LOT 24 & THE SOUTH LINE OF LOT 1, ESSIG'S ESTATES  
BOOK 711 OF MAPS, PAGE 11, MCR

CENTER OF SECTION  
SEC. 26, T3N, R5E  
FND. CITY OF SCOTTSDALE  
BRASS CAP IN HANDHOLE

1635.55'









# Local Area Infrastructure Plan

## East Shea Area 3



**Q.S.  
28-57**

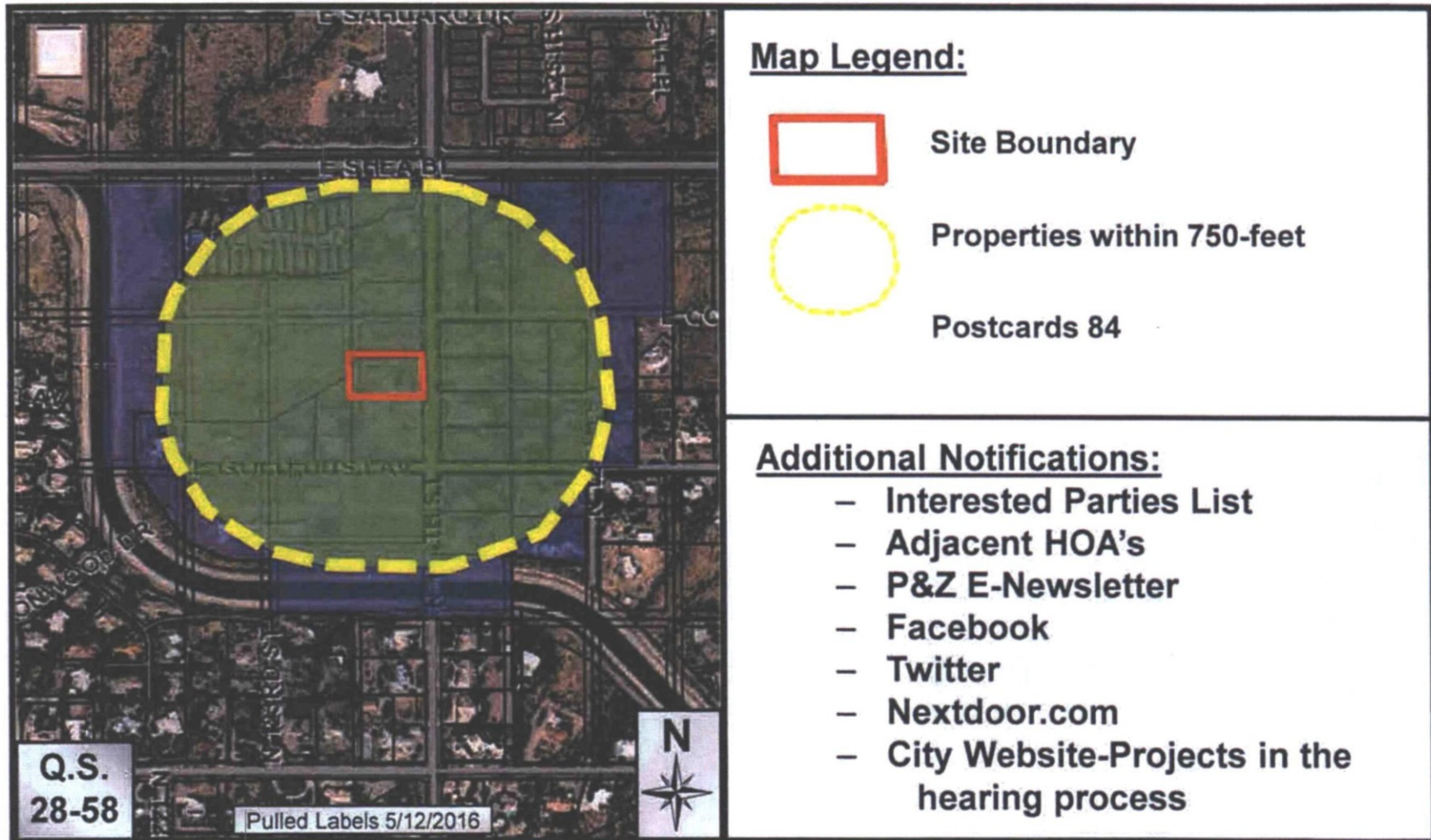
**McIntosh GLOPE Abandonment**

**5-AB-2016**



## City Notifications – Mailing List Selection Map

ATTACHMENT #10



**McIntosh Residence**

**5-AB-2016**



**SCOTTSDALE PLANNING COMMISSION  
KIVA-CITY HALL  
3939 DRINKWATER BOULEVARD  
SCOTTSDALE, ARIZONA**

**WEDNESDAY, JUNE 22, 2016**

**\*SUMMARIZED MEETING MINUTES\***

**PRESENT:** Matthew Cody, Vice Chair  
David Brantner, Commissioner  
Larry S. Kush, Commissioner  
Michael J. Minnaugh, Commissioner  
Ali Fasih, Commissioner  
Paul Alessio, Commissioner

**ABSENT:** Michael Edwards, Chair

**STAFF:** Tim Curtis  
Joe Padilla  
Brad Carr  
Greg Bloemberg  
Meredith Tessier  
Cody White

**CALL TO ORDER**

Vice Chair Cody called the regular session of the Scottsdale Planning Commission to order at 5:01 p.m.

**ROLL CALL**

A formal roll call was conducted confirming members present as stated above.

\* Note: These are summary action minutes only. A complete copy of the meeting audio is available on the Planning Commission page on ScottsdaleAZ.gov, search "Planning Commission"



### **MINUTES REVIEW AND APPROVAL**

1. Approval of May 25, 2016 Regular Meeting Minutes including the Study Session.

**COMMISSIONER ALESSIO MOVED TO APPROVE THE MAY 25, 2016 REGULAR MEETING MINUTES INCLUDING THE STUDY SESSION, SECONDED BY COMMISSIONER FAKIH, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SIX (6) TO ZERO (0).**

### **EXPEDITED AGENDA**

2. 452-PA-2016 (Short Term Rentals)  
Initiate a Text Amendment to the City of Scottsdale Zoning Ordinance (No. 455) to revise definitions and Use Regulations related to short-term rentals or vacation rentals, consistent with State of Arizona Senate Bill No. 1350. Applicant/Staff contact person is Greg Bloemberg, 480-312-4306.
3. 21-ZN-2015 (Christian Bros Automotive-Scottsdale)  
Request by owner for a Zoning District Map Amendment and amend the Development Plan by eliminating all zoning stipulations from zoning case 44-Z-88 (Ordinance No. 2377) on a 1.33 +/- acre site, located at 11416 E. Desert Cove Avenue, with Highway Commercial, Planned Community District (C-3 PCD) zoning. Staff contact person is Meredith Tessier, 480-312-4211. Applicant contact person is Sake Reindersma, 480-515-5123.
4. 14-UP-2015 (Christian Bros Automotive-Scottsdale)  
Request by owner for a Conditional Use Permit for Vehicle Repair on a 1.33 +/- acre site, located at 11416 E. Desert Cove Avenue, with Highway Commercial, Planned Community District (C-3 PCD) zoning. Staff contact person is Meredith Tessier, 480-312-4211. Applicant contact person is Sake Reindersma, 480-515-5123.

**Request to speak card: Will Wottowa**

\* Note: These are summary action minutes only. A complete copy of the meeting audio is available on the Planning Commission page on ScottsdaleAZ.gov, search "Planning Commission"

5. 5-AB-2016 (McIntosh Abandonments)

Request by owner to abandon the 33-foot General Land Office Patent Easement on the western boundary of the property and the western 5-foot of the Roadway Easement located along 124th Street leaving a 35-foot half street of right of way for a property located at 10300 N. 124th Street with Single-family Residential, Environmentally Sensitive Lands (R1-43 ESL) zoning. Staff contact person is Katie Posler, 480-312-2703. Applicant contact person is Ricki L. Horowitz, 602-234-8728.

**Item No's 2, 3, 4 & 5: Move to initiate case 452-PA-2016; Recommended City Council approve cases 21-ZN-2015, 14-UP-2015 and 5-AB-2016, by a vote of 6-0; Motion by Commissioner Brantner, per the staff recommended stipulations, after determining that the proposed Zoning District Map Amendment including approval of the Amended Development Plan; and based upon the finding that the Conditional Use Permit criteria have been met; and the Abandonment are consistent and conform with the adopted General Plan, 2<sup>nd</sup> by Commissioner Alessio.**

**ADJOURNMENT**

With no further business to discuss, the regular session of the Planning Commission adjourned at 5:17 p.m.

\* Note: These are summary action minutes only. A complete copy of the meeting audio is available on the Planning Commission page on ScottsdaleAZ.gov, search "Planning Commission"