

# PLANNING COMMISSION REPORT



Meeting Date: March 13, 2024  
General Plan Element: *Land Use*  
General Plan Goal: *Coordinate Planning to Balance Infrastructure*

## ACTION

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### **Pencek Abandonment 10-AB-2023**

#### **Request to consider the following:**

1. A recommendation to City Council regarding a request by owner to abandon the western 8-foot-wide portion of a 33-foot-wide GLO Patent Easement along the eastern property boundary and the 33-foot-wide GLO Patent Easement along the southern property boundary and the 25-foot-wide Roy Rogers Drive Right-of-Way along the southern property boundary, of a property with Single-Family Residential Environmentally Sensitive Lands Foothills Overlay (R1-70 ESL FO) zoning located at 28848 N 79th Street. Owner to dedicate property interests to the City.

#### **Goal/Purpose of Request**

This request is to abandon the 33 feet of Government Land Office (GLO) easements along the perimeter of two 2.32 +/- acre parcels located at the southeast corner of E. Roy Rogers Drive and N. 79<sup>th</sup> Street (more specifically the east and south sides of APN 216-69-72) and the abandonment of approximately 305 feet of the north 25 feet of E. Roy Rogers right-of-way west of N. 79<sup>th</sup> Street, consistent with the city's Transportation Master Plan and Desert Foothills Local Area Infrastructure Plan. The proposed abandonments will accommodate a single-family residence on the subject property.

The applicant's abandonment request is to remove these encumbrances on the property.

#### **Key Items for Consideration**

- Access not impacted by this proposed abandonment
- Conformance with the Transportation Master Plan and Local Area Infrastructure Plan
- No public input received regarding the proposed abandonment

## OWNER

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Tyler Pencek  
(602) 818-2269

## APPLICANT CONTACT

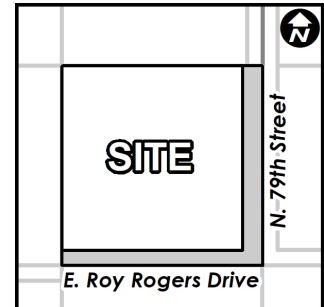
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Tyler Pencek  
(602) 818-2269

## LOCATION

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28848 N 79th St



## BACKGROUND

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### General Plan

The General Plan Land Use Element designates the subject property as Rural Neighborhoods. This land use category includes relatively large lot single-family neighborhoods. Densities in Rural Neighborhoods are usually one house per one acre (or more) of land.

### Character Area Plan

The subject property falls within The Desert Foothills Character Area. The Desert Foothills Character Area Plan is intended to preserve the natural desert, promote connected areas of desert open space and trails, and seeks to balance rural lifestyle with the unique and fragile upper Sonoran Desert.

### Zoning

The subject property is zoned Single-family Residential District Environmentally Sensitive Lands and Foothills Overlay (R1-70 ESL FO). The R1-70 ESL FO zoning district allows for single-family dwellings and uses incidental or accessory thereto together with required recreational, religious and educational facilities. The surrounding properties are also zoned Single-family Residential district Environmentally Sensitive Lands and Foothills Overlay (R1-70 ESL FO).

### Context

The subject property is located at the northeast corner of E. Roy Rogers Drive and N 79<sup>th</sup> St. The site is generally located west of N. Hayden Road and north of E. Dynamite Boulevard. Please refer to the context graphics attached.

The subject 33-foot General Land Office Patent Easement (GLO) located along the eastern and southern boundaries of 28848 N 79<sup>th</sup> Street was dedicated in June, 1938, through patent serial number 1189408. The subject GLO roadway easement was reserved on the original patent deed to assure legal access. Currently the affected GLO easements are unimproved.

The subject portion of Public Right-of-Way (ROW), located along the southern boundary of the parcel, was dedicated in September 1995, through recorded document number 1995/0751518. Currently that portion of ROW is unimproved. The corresponding 20-feet of that ROW on the lot to the south of the subject property never dedicated to the City.

### **General Land Office Patent Easements (general information)**

- 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” of the GLO lot.
- The City has viewed these patent roadway and utility easements as assured access for these lots, 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 may be requested to be abandoned if it is in excess of the current requirements of the City’s circulation plans (including trails) or City roadway standards, and not required to ensure access to any other lot.
- 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 9-500.24 became effective. This provision gives the local municipality the right to abandon GLO patent easements and concurs with the City’s position on abandonment of GLO patent easements.

### **Related Policies, References:**

2008 Scottsdale Transportation Master Plan

Desert Foothills Area: Local Area Infrastructure Plan (LAIP)

## **IMPACT ANALYSIS**

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### **Land Use**

This property is zoned for single-family residential use and will continue to function as a single-family residence.

### **Traffic/Trails**

Access to the subject property will continue to be provided by the N. 79<sup>th</sup> Street from E. Via Dona Road. East/west trail alignments in the area are intended to be accommodated within the public right-of-way along E. Via Donna Road to the north and E. Dale Lane to the south, north/south alignments are intended to be accommodated along N. Hayden Road to the east and along N. 78<sup>th</sup> Street to the west.

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

All existing emergency and municipal access will be provided to the properties surrounding the abandonment area and maintained through existing and newly dedicated public right-of-way along N. 79<sup>th</sup> St No impacts are anticipated.

### **Public Utilities**

The public utilities have been notified of the applicant's request. The utility companies have indicated that there are no conflicts with the proposed abandonment and support the abandonment. A water and sewer facilities easement will be retained over the southern 10-feet of E Roy Rogers Drive alignment abandonment area.

### **Community Impact**

No community impacts are anticipated as a result of the requested abandonment area. The applicant agrees to pay \$6,232.91 as compensation to the City for the value of the abandonment area at the standard \$0.50 per square foot rate for this circumstance.

## **STAFF RECOMMENDATION**

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### **Recommended Approach:**

Staff recommends that the Planning Commission make a recommendation to City Council for approval to of the abandonment request, finding that the proposal is consistent with and conforms to the adopted General Plan, subject to the following:

1. The property owner dedicate a 25-foot-wide right-of-way for N. 79<sup>th</sup> Street
2. The property owner dedicate a 10-foot-wide water and sewer facilities easement
3. The property owner pay the combined total amount of \$6,232.91 as compensation to the city for the abandonment of right-of-way.

## **RESPONSIBLE DEPARTMENT**

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### **Planning and Development Services**

Current Planning Services

## **STAFF CONTACT**

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Jason Katz  
Associate Planner  
480-312-2542  
E-mail: [jkatz@scottsdaleaz.gov](mailto:jkatz@scottsdaleaz.gov)

## APPROVED BY

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Jason Katz, Report Author

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2/15/2024

Date



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Tim Curtis, AICP, Current Planning Director

Planning Commission Liaison

Phone: 480-312-7713

Email: [tcurtis@scottsdaleaz.gov](mailto:tcurtis@scottsdaleaz.gov)

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2/27/2024

Date



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Erin Perreault, AICP, Executive Director

Planning, Economic Development, and Tourism

Phone: 480-312-7093

Email: [eperreault@scottsdaleaz.gov](mailto:eperreault@scottsdaleaz.gov)

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03/01/2024

Date

## ATTACHMENTS

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1. Context Aerial
- 1A. Aerial Close-Up
2. Applicant's Narrative
3. Resolution No. 13056
  - Exhibit A: Legal Graphic
  - Exhibit B: Legal Description
  - Exhibit C: Legal Graphic
  - Exhibit D: Legal Description
  - Exhibit E: Depiction of subject parcel
4. Zoning Aerial
5. Dedications Graphic
6. Neighborhood Outreach
7. City Notification Map



Context Aerial

ATTACHMENT #1

10-AB-2023



Close-up Aerial

ATTACHMENT #1A

10-AB-2023

## Application Narrative

To whom it may concern,

My reason for this package is to dedicate NAOS, abandon a Right of Way (Roy Rodgers Rd) south of my property, and submit for a guesthouse/gym/barn building. I just purchased this property in spring of 2023 and the previous owner had not dedicated NAOS, or handled the ROW topic. In order to open the building envelope, the abandonment of Roy Rodgers is needed.

I'm really looking to handle all these topics in one package, so the property is in good hands if/when I ever decide to sell. BUT MOST IMPORTANTLY, I need to have a place for my parents as they get older, and this option is best for them to be closest to their grand babies.

Semper Fidelis,

Tyler Pencek USMC (Ret)

602-818-2269

ATTACHMENT #2

## RESOLUTION NO. 13056

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 RIGHTS-OF-WAY FOR PROPERTY LOCATED AT 28848 N. 79<sup>TH</sup> ST.

(10-AB-2023)  
(Pencek Abandonment)

### 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 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 Rights-of-way").
- D. The Abandonment Government Land Office Patent Easement are legally described on **Exhibit "A"** and depicted on **Exhibit "B"** attached hereto, and comprise an area of approximately 12,465.82 square-feet. The Abandonment Rights-of-way are legally described on **Exhibit "C"** and depicted on **Exhibit "D"** attached hereto, and comprise an area of approximately 7,641.5 square-feet.
- E. The Abandonment Rights-of-way fall within, serve, affect or are near a parcel comprising approximately 2.32 acres ("Owner's Parcel"), as depicted on **Exhibit "E"** attached hereto.
- F. The Council finds that, subject to the conditions, requirements, reservations and limitations of this resolution, the Abandonment Rights-of-way are no longer necessary for public use.
- G. The 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.
- H. The 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 Rights-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 Rights-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 Rights-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 drainage or flood control easement or similar easement or covenant.

2.2.4 Any public non-motorized access easement or trail easement or similar easement or covenant.

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

2.3 An easement for all existing utilities, if any.

2.4 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 the Zoning Administrator determines that 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 owner of the parcel shall pay to City the total amount of Six Thousand Two Hundred Thirty-two Dollars and 91/100 (\$6,232.91) as compensation to the 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.

3.2 The owner has delivered to City a deed, plat or other instrument that dedicates to City, in accordance with City specifications, a 10-foot-wide water and sewer facilities easement over the southern portion of Owner's parcel.

3.3 The owner has delivered to City a deed, plat or other instrument that dedicates to City, in accordance with City specifications, a 25-foot-wide Right-of-way over the eastern portion of Owner's parcel, along 79<sup>th</sup> Street alignment.

3.4 As proof of satisfaction of the conditions set forth in Section 3, The Zoning Administrator shall execute 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, the Zoning Administrator shall report the same to the City Clerk and 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 \_\_\_\_\_, 2024.

CITY OF SCOTTSDALE, an Arizona municipal corporation

\_\_\_\_\_  
David D. Ortega, Mayor

ATTEST:

By:

\_\_\_\_\_  
Ben Lane, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
Sherry R. Scott, City Attorney

By: Eric C. Anderson, Senior Asst. 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

DRAFT

**EXHIBIT A  
LEGAL DESCRIPTION  
FOR  
ROADWAY AND PUBLIC UTILITY EASEMENT ABANDONMENT**

A PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, PER PATENT NO. 1189408 AND FILED IN DOCKET 2714, PAGE 545, RECORDS OF SAID MARICOPA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTH 33.00 FEET AND THE EAST 33.00 FEET OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA;  
EXCEPT THE EAST 25 FEET THEREOF.

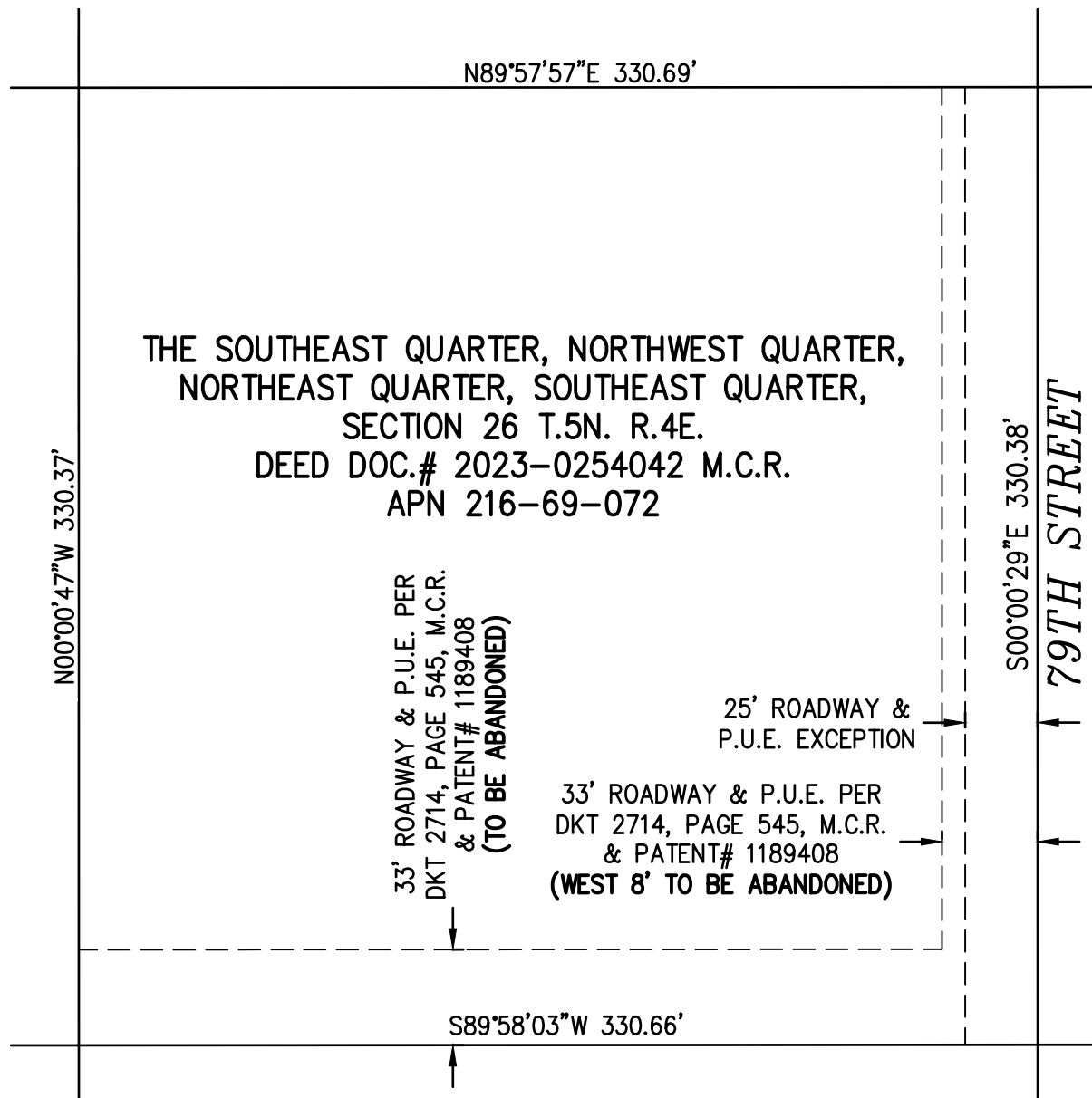
THE ABOVE EASEMENT ABANDONMENT DESCRIPTION CONTAINS A COMPUTED AREA OF 12,466 SQ. FT. MORE OR LESS AND BEING SUBJECT TO ANY EXISTING EASEMENTS, RESTRICTIONS, RIGHTS-OF-WAY OF RECORD OR OTHERWISE.

PREPARED BY:       GLOBAL LAND SURVEYING LLC  
                          P.O. BOX 2132  
                          PEORIA, AZ 85380  
                          PROJECT NO. 2307004A



**Exhibit A  
Resolution No. 13056  
Page 1 of 1**

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION  
FOR  
ROADWAY AND PUBLIC UTILITY EASEMENT  
ABANDONMENT



**Exhibit B**  
**Resolution No. 13056**  
**Page 1 of 1**

Global Land Surveying LLC  
P.O. BOX 2132  
PEORIA, ARIZONA 85380  
623 328-9424

JOB# 2307004A  
Page 2 of 2



SCALE 1" = 60'



**EXHIBIT C**  
**LEGAL DESCRIPTION**  
**FOR**  
**RIGHT-OF-WAY ABANDONMENT**

A PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, PER DOCUMENT NO. 1995-0751518, RECORDS OF SAID MARICOPA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTH 25.00 FEET OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA.

THE ABOVE RIGHT-OF-WAY AREA DESCRIPTION CONTAINS A COMPUTED AREA OF 8,267 SQ. FT. MORE OR LESS AND BEING SUBJECT TO ANY EXISTING EASEMENTS, RESTRICTIONS, RIGHTS-OF-WAY OF RECORD OR OTHERWISE.

PREPARED BY:       GLOBAL LAND SURVEYING LLC  
                          P.O. BOX 2132  
                          PEORIA, AZ 85380  
                          PROJECT NO. 2307004A



EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION  
FOR  
RIGHT-OF-WAY ABANDONMENT

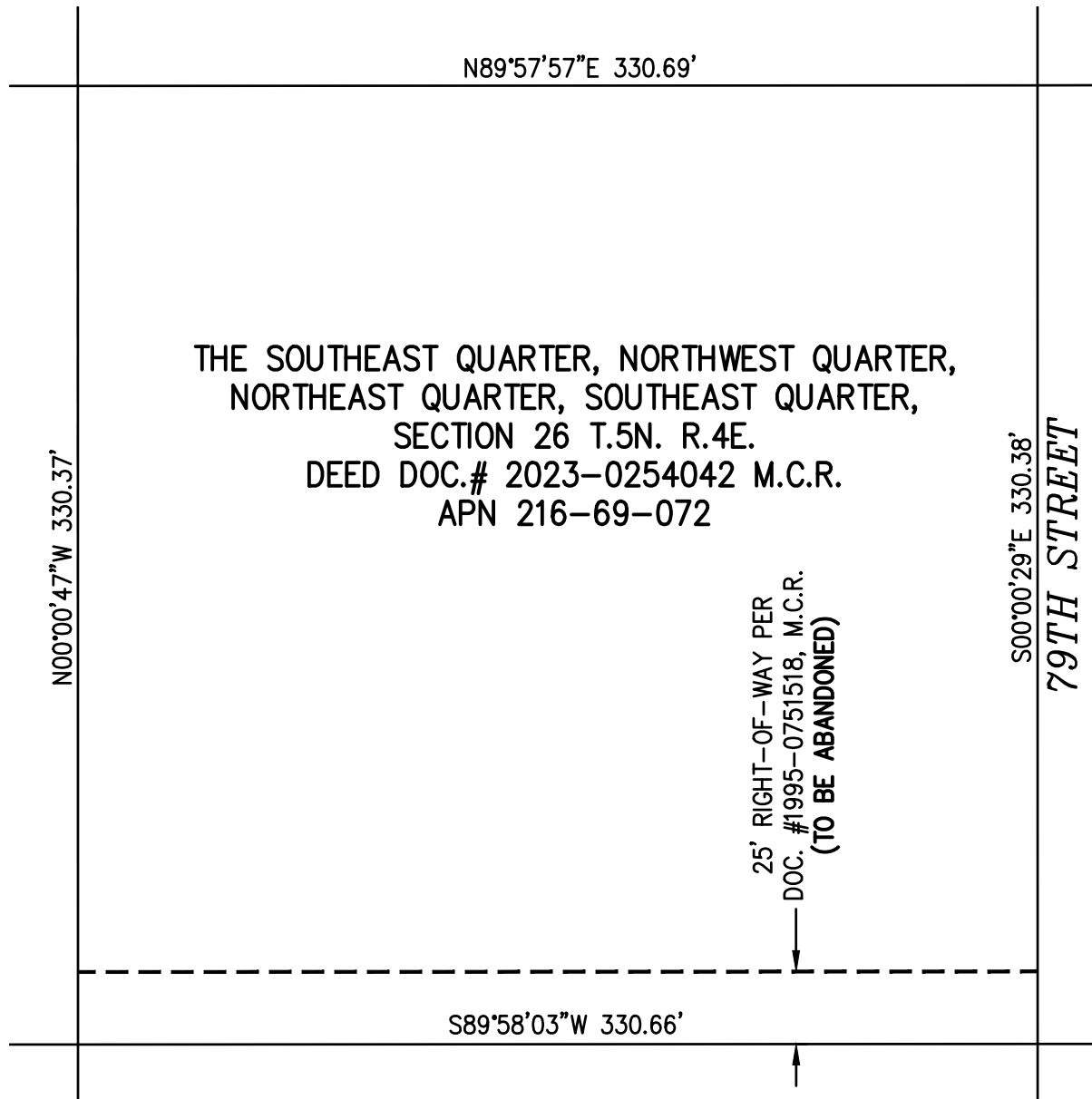



Exhibit D  
Resolution No. 13056  
Page 1 of 1

Global Land Surveying LLC  
P.O. BOX 2132  
PEORIA, ARIZONA 85380  
623 328-9424  
JOB# 2307004B

  
SCALE 1" = 60'



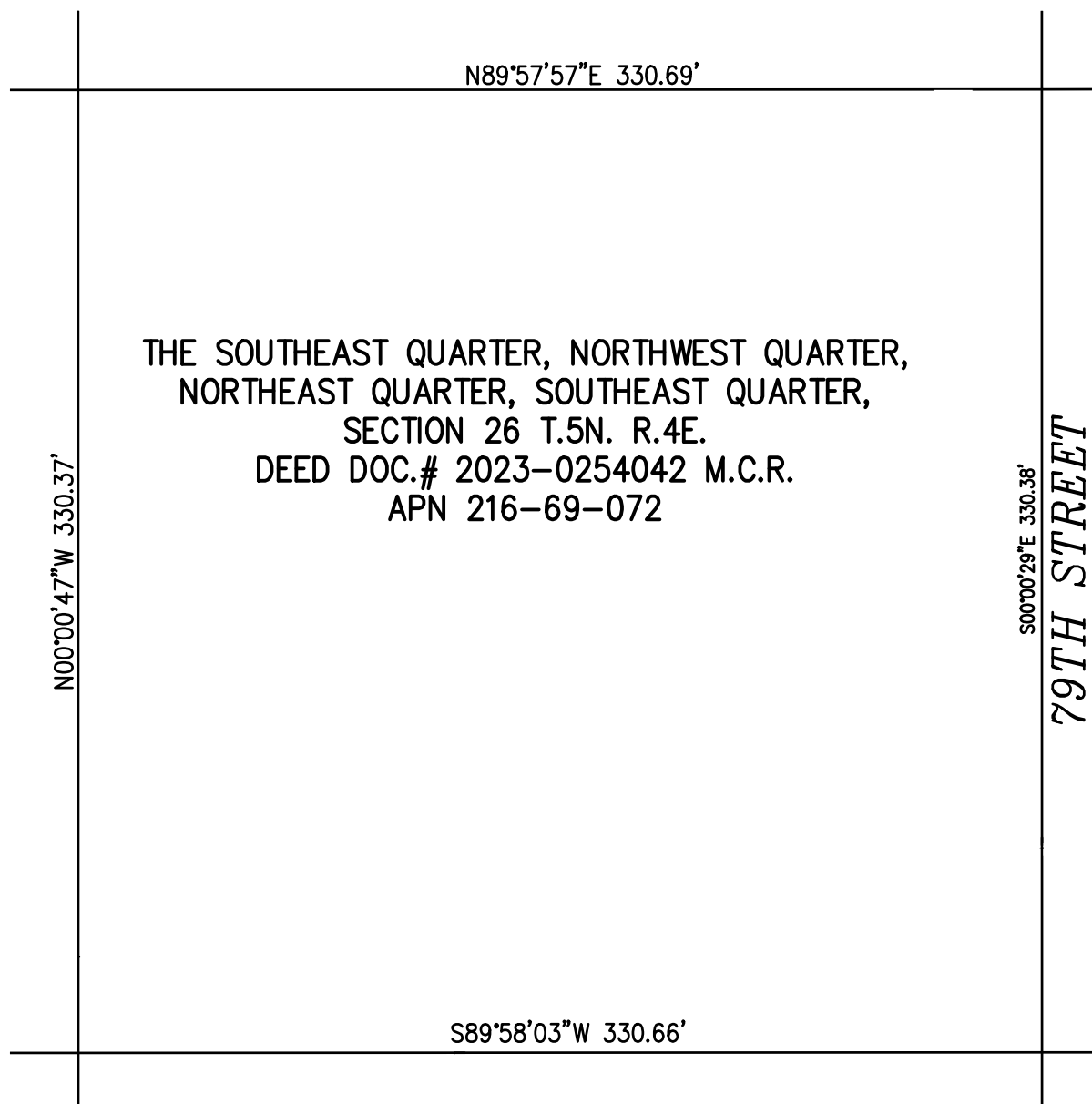


Exhibit E  
Resolution No. 13056  
Page 1 of 1



SCALE 1" = 60'



Zoning Aerial

ATTACHMENT #4

10-AB-2023



Dedications

ATTACHMENT # 5

10-AB-2023

## Public Participation

**Project Request and Description:** This notification is regarding a public hearing case for the abandonment of Roy Rogers Dr. 25' Right of Way along the southern property boundary and 33' Government Land Office Patent Easements (G.L.O.P.E. #1189408) along the eastern and southern property boundaries. In addition, in good faith to the City's request/requirement to build, we are also dedicating 79<sup>th</sup> St. 25' Right-of-way along the east property boundary and 29670sqft of Natural Area Open Space (NAOS). Ultimately this request will lead to future development on the property while observing all required development standards for the zoning district and Foothills Overlay.

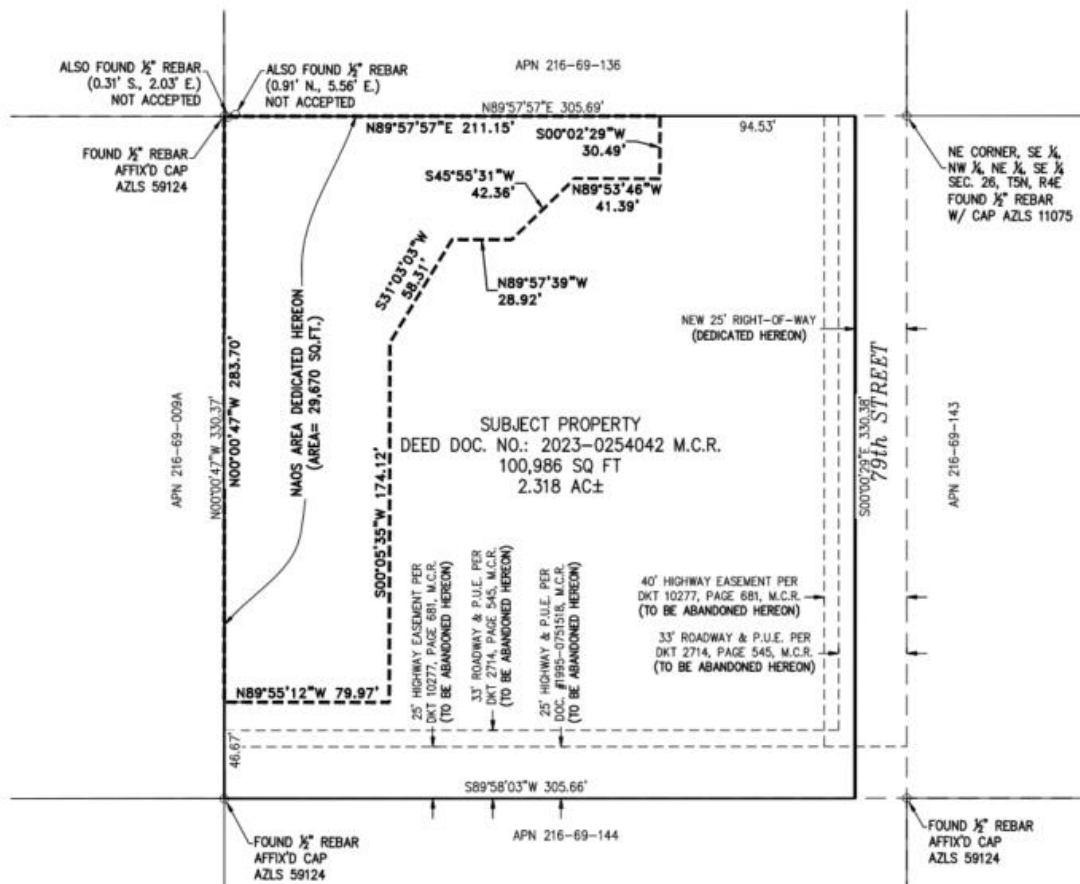
**Pre-Application #:** 332-PA-2023

**Project Location:** 28848 N. 79<sup>th</sup> St Scottsdale AZ 85266

**Size:** 2.3 Acres

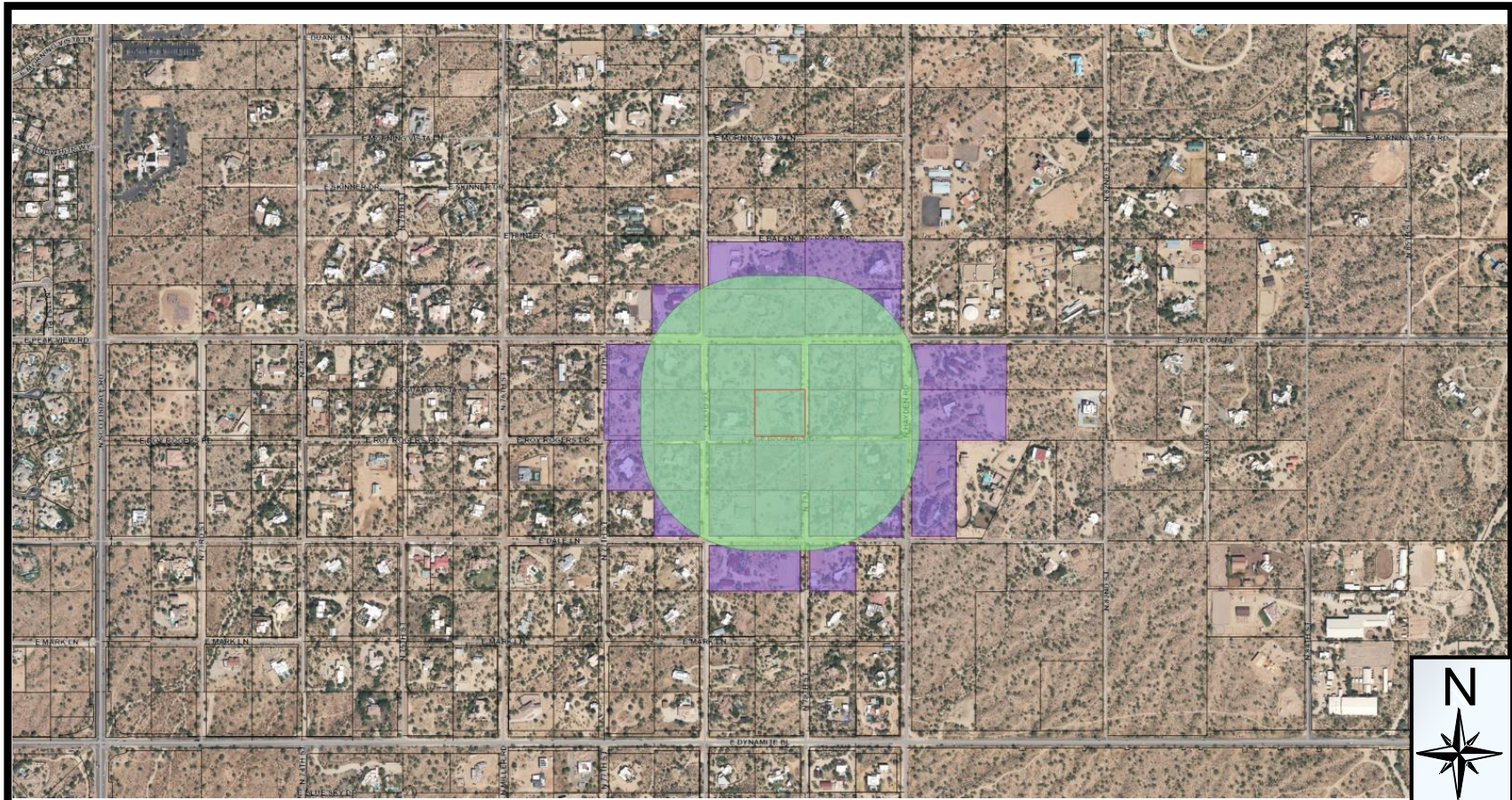
**Zoning:** R1-70

**City Contact:** Jason Katz 480-312-2542, [jkatz@scottsdaleaz.gov](mailto:jkatz@scottsdaleaz.gov)



# City Notifications – Mailing List Selection Map

## Pencek Abandonment



### Additional Notifications:

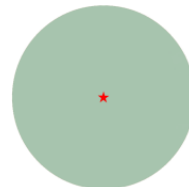
Interested Parties List  
 Adjacent HOA's  
 P&Z E-Newsletter  
 Facebook  
 Nextdoor.com  
 City Website-Projects in the hearing process

Pulled Labels  
 January 12, 2024

### Map Legend:



Site Boundary



Properties within 750-feet

Postcards: 65

**10-AB-2023**