

BOARD OF REGENTS
BRIEFING PAPER

Agenda Item Title: University of Nevada, Reno – Redfield Campus Access Easement

Meeting Date: June 9-10, 2016

1. BACKGROUND & POLICY CONTEXT OF ISSUE:

In 1996 the Redfield Trust gifted land to the Nevada System of Higher Education (NSHE) for the future development of the Redfield Campus. One year earlier, in 1995, the Redfield Trust entered into an agreement with Bruce and Martha Mackay to grant an access easement and to construct and maintain an access road across Redfield's property to allow the Mackays access to their property and business, the Mackay Drilling Company (Exhibit 1). It was recently discovered that the easement created under this 1995 agreement was never recorded with Washoe County. Further, the current access easement is not consistent with the existing access road and the easement therefore requires relocation.

Easement Area Description: This 20-foot non-exclusive easement consisting of 25,843 square feet replaces the easement outlined in the previous agreement. It runs along the northern boundary of Redfield Campus, beginning at the campus ring road and terminating at Mackay's property (Exhibits 2 & 3). This new easement runs along the access road which was constructed to Mackay's property and is in compliance with the Redfield Campus Master Plan. The easement needs to be 20-feet wide as Mackay Drilling Company has numerous large commercial trucks utilizing the road daily.

Both the Redfield Foundation and Truckee Meadows Community College support the granting of this easement.

The University of Nevada, Reno seeks approval of a Resolution authorizing the Chancellor or his assignee to sign the Grant of Easement and associated documents for the recording of the easement (Exhibit 4) after consultation with and review by the Vice Chancellor of Legal Affairs.

2. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

University of Nevada, Reno President Marc Johnson requests Board of Regents approval of a Grant of a Non-Exclusive Access Easement to Bruce and Martha Mackay on Parcel #144-070-21, better known as the Redfield Campus, and to authorize the Chancellor or his assignee to sign all associated documents to record the Easement after consultation with and review by the Vice Chancellor of Legal Affairs.

3. IMPETUS (WHY NOW?):

- It was recently discovered that the current un-recorded easement is not compatible with the current access road nor with the Redfield Campus Master Plan. The proposed new easement better depicts and defines the actual area currently used for access and the new easement location is both beneficial to NSHE and acceptable to the adjacent property

owner at this time.

4. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- New easement will be officially recorded and is in a location which will not hinder the operations of or limit future development at the Redfield Campus.
- The new easement is located on an access road that is already constructed and utilized by the adjacent property owners and their business.
- The Redfield Foundation and Truckee Meadows Community College both support the granting of this easement.

5. POTENTIAL ARGUMENTS AGAINST THE REQUEST RECOMMENDATION:

None

6. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

- Move the access easement to another location and incur costs in re-designing, master planning, surveying and constructing a new road.

7. COMPLIANCE WITH BOARD POLICY:

Consistent With Current Board Policy: Title #4 Chapter #10 Section #1.9
 Amends Current Board Policy: Title #_____ Chapter #_____ Section #_____
Other:_
 Fiscal Impact: Yes ___ No X
Explain: _____

Exhibit 1

PARTIAL SETTLEMENT AGREEMENT

This Agreement made this 30th day of May, 1995, between BETTY ALYCE JONES, HELEN JEANNE JONES, IRIS G. BREWERTON, KENNETH G. WALKER and GERALD C. SMITH, surviving trustees of the NELL J. REDFIELD TRUST, hereinafter referred to as ("Trust") and R. BRUCE MacKAY and MARTHA ANN MacKAY, husband and wife, as joint tenants, hereinafter referred to as ("MacKAY"), the COUNTY OF WASHOE, a political subdivision of the State of Nevada, hereinafter referred to as ("WASHOE") and THE STATE OF NEVADA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter called the ("STATE"),

WITNESSETH:

A. WHEREAS, the STATE filed on June 16, 1994, in the Second Judicial District Court in Case No. CV93-07037, an eminent domain action pursuant to NRS Chapters 37.408, to acquire fee simple title for a portion of a large parcel of property to be used for the construction of the proposed extension of U.S. 395 extension in Washoe County and Defendant TRUST, together with the other Defendants, stipulated to the immediate occupancy by the STATE and the STATE deposited into an interest bearing account the sum of \$1,590,000.00 and thereafter the TRUST withdrew its portion of the funds and reserving for trial the issue as to the amount of just compensation.

B. WHEREAS, part of the property the STATE sought to condemn was a permanent easement U-395-WA-014.121PE involving a 50 foot wide strip of land along the northern border of the TRUST's west remainder parcel which was being acquired to provide access to the MacKAY property which as a result of the condemnation

proceedings lost its access to the Mt. Rose Highway and was therefore land locked.

C. WHEREAS, on or about May 16, 1994, MacKAY and the STATE OF NEVADA entered into a Public Highway Agreement which provide in part that the STATE OF NEVADA was to construct and maintain a twenty (20) foot wide 3 inch paved asphalt road on a fifty (50) foot non exclusive easement for a current surface access road along the southerly side of State Route 430, said parcel of land also identified as U-395-WA.014.121PE shown on the right-of-way plan sheet No. 6.

D. WHEREAS, MacKAY has agreed to abandon all of its rights, title and interest to the current surface access road and parcel of land set forth in C above, if and when MacKAY is provided with equal or superior access by the TRUST.

NOW THEREFORE, the parties hereto agree as to the following:

1. The TRUST in furtherance of its development of its remainder parcel has agreed to construct as soon as possible and then maintain a twenty (20) foot wide three (3) inch paved asphalt on a fifty (50) foot non-exclusive easement for a proposed surface access road from Mt. Rose Highway through the REDFIELD property to serve the MacKAY property. Such easement shall be a perpetual non-exclusive easement for the purpose of pedestrian, vehicular access, sewer, water service and other utilities. Attached hereto as Exhibit "A" is the legal description of the proposed surface access easement to MacKAY. Attached hereto as Exhibit "B" is a letter size drawing generally depicting the location of the proposed surface access easement from the highway through the REDFIELD

property to serve the MacKAY property. Both the legal description and letter size drawing are approximate and subject to adjustments as may be necessary to meet future development and/or construction requirements. MacKAY agrees that when the proposed surface access road is constructed as described herein, it will be equal to the current surface access road prepared by the STATE.

The TRUST further agrees to convey in the future to MacKAY a small parcel of property located adjacent to the MacKAY property and which parcel is identified in Exhibit "B". The conveyance will take place at such time that the TRUST is legally permitted to subdivide its property including the parcel shown on Exhibit "B". At the time of the conveyance, MacKAY agrees to pay to the TRUST the sum of \$10,000.00.

2. In return for the aforesaid non-exclusive easement and construction of proposed surface access road, MacKAY and the STATE agree to quitclaim the fifty (50) foot, non-exclusive easement for the current surface access road, identified as U-395-WA-014.121PE as described above. The quitclaim deed execution shall take place upon the recording of an Easement Deed on the property referred to in paragraph 1 above and the completion of construction of the proposed surface access road to the MacKAY parcel described herein. Until such conveyance and construction of the access roads, the STATE shall continue to maintain the MacKAY current access road.

3. The STATE agrees that it will approve any application for an encroachment permit to the Mt. Rose Highway at the Wedge Parkway intersection and will grant any permit which may be required for construction of the approach and access road

described above, so long as the proposed approach or access road complies with the Nevada Department of Transportation Standards and Specifications.

4. The County of Washoe agrees that the TRUST may construct and maintain the proposed surface access easement from the Mt. Rose Highway, through the REDFIELD property to serve the MacKAY property as described above, provided that any proposed surface access road developed on this said easement will continue the existing drainage, that the drainage and that the road will be built to County standards and will be maintained by the TRUST until such time as the road is dedicated to and accepted by the County.

5. It is further agreed that the STATE shall not pave the MacKAY current access road but shall rather furnish those sums set aside for the asphalt surface to the TRUST which shall use the sums in the construction of the proposed surface road as described above. The TRUST agrees that if the proposed surface road is not constructed the funds shall be returned to the STATE to be used on the MacKAY access road.

6. This Agreement shall constitute the entire understanding between the parties hereto and no modification hereof shall be binding unless endorsed herein by writing.

7. All covenants herein contained shall extend to and be obligatory upon the heirs, executors, administrators, successors, assigns, as the case may be or their respective parties.

8. The parties to this Agreement shall execute all such documents and may take such actions consistent with the terms of this Agreement as may be reasonably required to carry out the Agreement herein.

IN WITNESS WHEREOF the parties hereto execute this Agreement on the day and year first above written.

NELL J. REDFIELD TRUST

STATE OF NEVADA acting by and through its Department of Transportation:

By: Donald E. Smith

[Signature]
Director

Robert Bruce Mackay
ROBERT BRUCE MACKAY

COUNTY OF WASHOE

Martha Mackay
MARTHA ANN MACKAY

By: James P. Barnes

APPROVED AS TO LEGALITY AND FORM

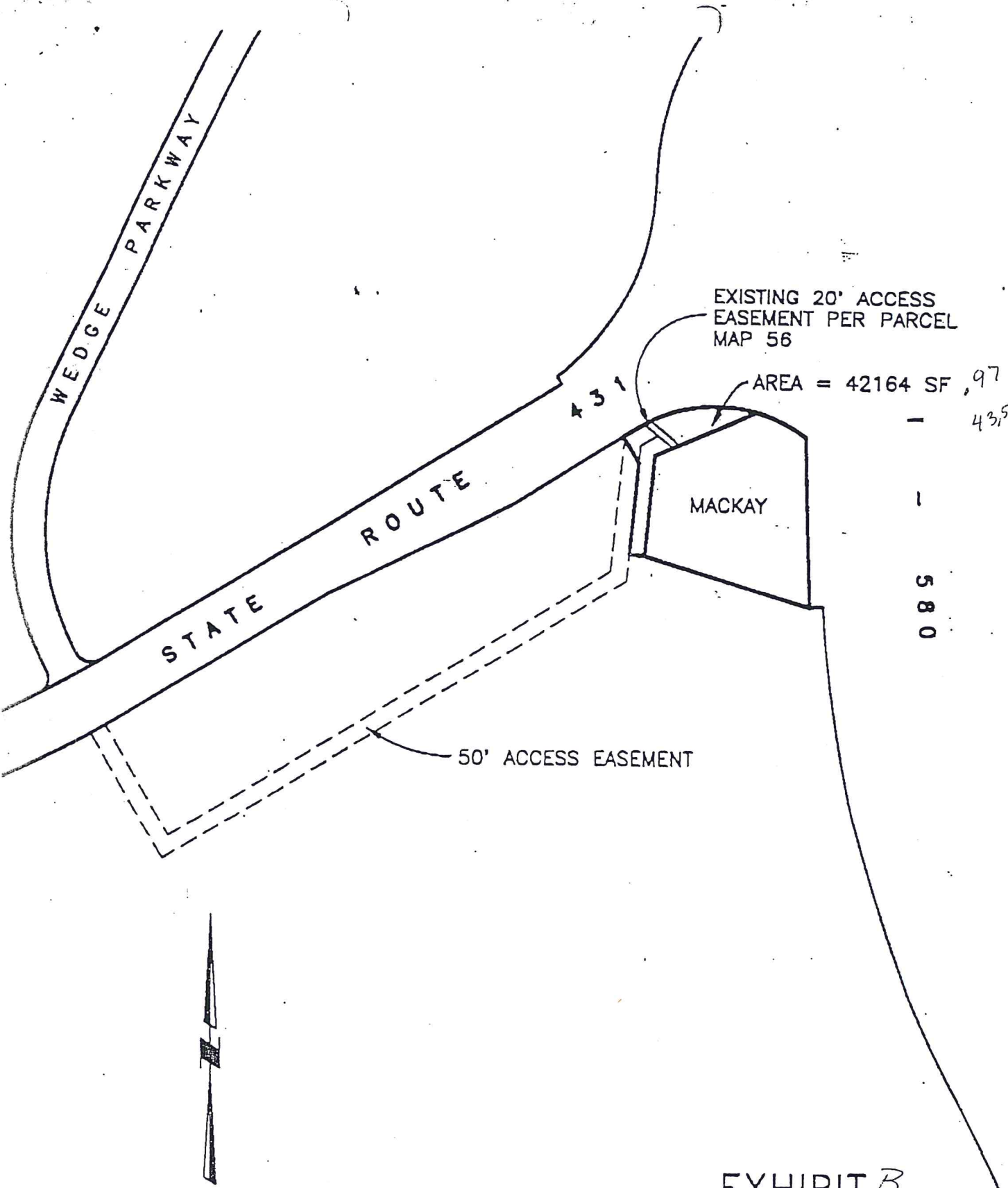
[Signature]
DEPUTY ATTORNEY GENERAL
CHIEF COUNSEL
DEPARTMENT OF TRANSPORTATION

LEGAL DESCRIPTION
ACCESS EASEMENT
TO MACKAY

An easement 50 feet in width, situated within the S1/2 of Section 29, T.18N., R.20E., M.D.M., the centerline of which is more particularly described as follows:

Beginning at a point on the southerly right-of-way of State Route 431, 100.00 feet right of and measured radially from Highway Engineer's Station "R" 545+00.00 P.O.C.; said point being further described as bearing N 50°13'53" E, 1487.54 feet from the southwest corner of said Section 29; thence S 29°42'39" E, 402.03 feet;
thence N 58°20'23" E, 1572.05 feet;
thence N 05°26'47" E, 401.25 feet;
thence N 58°20'23" E, 63.65 feet to a point on the west line of an existing 20' access easement as shown on Parcel Map 56, recorded March 7, 1974, as Document No. 319146; Official Records of Washoe County, Nevada, the point of ending.

EXHIBIT A



SCALE: 1" = 400'

EXHIBIT B
ACCESS EASEMENT

Exhibit 2

APN: 144-070-17

Recorder, please return to:

Robert B. MacKay and Martha A. MacKay
1600 Mt. Rose Highway
Reno, NV 89511

GRANT OF EASEMENT AGREEMENT

This Agreement is entered into this 13 day of MAY, 2016, by and between the BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION on behalf of the University of Nevada, Reno ("Grantor") and ROBERT B. MACKAY AND MARTHA A. MACKAY ("Grantees").

WHEREAS, Grantor is the owner of certain real property located in Washoe County, Nevada as described in Exhibit "A" (the "Burdened Property").

WHEREAS, Grantees desire to acquire a certain easement described below in a portion of the Burdened Property for the purpose of vehicular and pedestrian access to Grantee's property located adjacent to the Burdened Property.

NOW THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set forth herein, together with other good and valuable consideration provided to Grantor, receipt of which is hereby acknowledged, Grantor and Grantees hereby agree to the following:

1. **Grant of Easement.** Grantor hereby grants to Grantees a non-exclusive easement as described in Exhibits B and C, (the "Easement Area") over a portion of the Burdened Property for the purposes of vehicular and pedestrian ingress and egress (but not parking) to Grantees' property located at 1600 Mt. Rose Highway, Reno, Washoe County, Nevada, as described in Exhibit "C" (the "Benefited Property"). Grantor expressly reserves for itself, its successors and its assigns, the right to use the Easement Area or to grant other easements or licenses within, near or adjacent to the Easement Area so long as such use does not unreasonably interfere with the rights herein granted.
2. **Use.** Grantees shall not, without Grantor's prior written consent, install, construct or place any improvements or obstructions within the Easement Area. Grantees shall not materially interfere with the use, operation, and activities of Grantor on the Burdened Property, and Grantees shall use such routes and follow such procedures and regulations (including any traffic regulations issued pursuant to Nevada Revised Statute 396.435) that Grantor determines will result in the least damage and inconvenience to Grantor.

3. Hazardous Materials. Neither Grantees, nor any of Grantees' agents, contractors, employees, or invitees shall at any time, manufacture, store or knowingly dispose of in or about the Easement Area any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance (collectively "Hazardous Materials") subject to regulation by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively "Environmental Laws"). Grantees shall not commit or permit waste, including any type of Hazardous Materials, at the Easement Area and shall allow no nuisances to exist or be maintained thereon.
4. Damage to Property. Grantees shall be responsible for any damage to the Burdened Property caused by Grantees or third parties acting on Grantees' behalf resulting from any exercise of the rights herein granted, excluding normal wear and tear and climate damage conditions to no fault of Grantee. Grantees shall promptly repair and restore to its original condition the Burdened Property, including, but not limited to, roads, utilities, buildings and fences that may be altered, damaged or destroyed in connection with the exercise of the Easement or use of the Easement Area.
5. Maintenance. Grantor shall be responsible for maintaining the Easement Area in a serviceable condition.
6. Grantor's Use. Grantor shall use the Easement Area without restriction or limitations on use. Grantor retains, for its benefit, the right to fence, plant, pave, landscape, maintain, alter or otherwise improve and to so use the Easement Area for its own purposes; provided, however, that all such purposes and uses do not interfere with Grantees' rights herein granted.
7. Liens, Encumbrances. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Grantor's Burdened Property, whether or not of record. The use of the word "grant" shall not imply any warranty on the part of the Grantor with respect to the Easement or the Easement Area.
8. Compliance with Laws. Grantees shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable regulatory, environmental and safety requirements at Grantees' sole cost and expense.
9. Relocation. At its own expense, Grantor may relocate the Easement if in the opinion of Grantor it unreasonably interferes with the present or future use by Grantor of Grantor's Burdened Property, provided however, that Grantor shall provide to Grantees a substitute Easement Area reasonably suited to Grantees' needs at no cost to Grantees.

10. Indemnification. Grantees shall indemnify, defend and hold harmless Grantor, its officers, employees and agents from and against all liabilities, claims, losses, costs or expenses to the person or property of another, lawsuits, judgments, and/or expenses, including attorneys' fees, arising either directly or indirectly from any act or failure to act by Grantees or any of its officers or employees, which may occur during or which may arise out of the performance of this Easement.

11. Termination. Grantor may terminate this Easement and all of the rights granted herein any time after six (6) months of continuous non-use of the Easement Area by Grantees. In the event of such termination, the Easement shall be quitclaimed from Grantees to Grantor, without expense to Grantor, and any and all interest in Grantor's Burdened Property conveyed in this Easement shall automatically revert to Grantor or its assigns and successors, without the necessity of any further action to effect said reversion. On demand by Grantor, Grantees shall promptly remove any and all improvements it installed in, on, under or above the Easement Area. At the option of Grantor, all such improvements shall become the personal property of Grantor at no cost to Grantor.

12. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect except in a subsequent modification in writing, signed by the parties hereto.

13. Benefit to Successors, Assigns. This instrument shall run with the land and bind and inure to the benefit of the successors and assigns of Grantor and to any subsequent owner of the Benefited Property.

EXECUTED on this ____ day of _____, 2016.

GRANTOR:

**BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION,
ON BEHALF OF THE UNIVERSITY OF NEVADA, RENO AND TRUCKEE MEADOWS
COMMUNITY COLLEGE**

RECOMMENDED APPROVAL:



By: Marc Johnson
Title: President, University of Nevada, Reno

RECOMMENDED APPROVAL:



By: J. Kyle Dalpe
Title: President, Truckee Meadows Community College

///

APPROVED:

By: _____
Title: Chancellor, Nevada System of Higher Education

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

On this _____ day of _____, 2016, _____,
Chancellor of the Nevada System of Higher Education personally appeared before me
the undersigned, a notary public in and for said County and State, Nevada who
acknowledged to me that he executed the above instrument for the purposes stated
therein.

WITNESS my hand and official seal.

NOTARY PUBLIC in and for said County and State

SEAL}

GRANTEE:

R. Bruce MacKay
By: ROBERT B. MACKAY

5-13-16
Date

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

On this 13 day of MAY, 2016, Robert B. Mackay personally appeared before me the undersigned, a notary public in and for said County and State, Nevada who acknowledged to me that he executed the above instrument for the purposes stated therein.

WITNESS my hand and official seal.

Lisa Louise Miller
NOTARY PUBLIC in and for said County and State



SEAL}

Martha A. Mackay
By: MARTHA A. MACKAY

5-13-16
Date

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

On this 13 day of MAY, 2016, Martha A. Mackay personally appeared before me the undersigned, a notary public in and for said County and State, Nevada who acknowledged to me that she executed the above instrument for the purposes stated therein.

WITNESS my hand and official seal.

Lisa Louise Miller
NOTARY PUBLIC in and for said County and State



SEAL}

Exhibit A

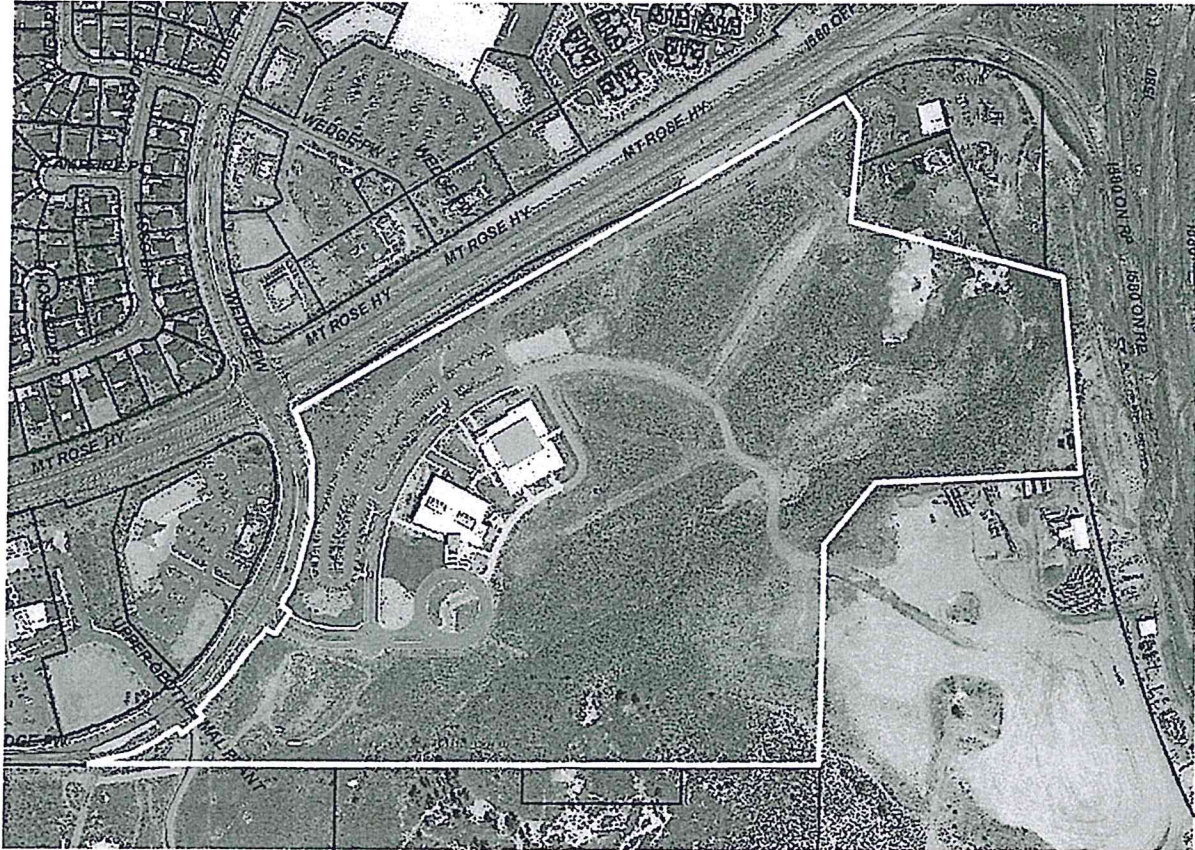


Exhibit B

LEGAL DESCRIPTION
For
20' Non-Exclusive Access Easement

The following describes a twenty (20) foot wide non-exclusive access easement, situate within the South ½ of Section 29, T18N, R20E, M.D.M., County of Washoe, State of Nevada, lying ten (10) feet on each side of the following described centerline:

BEGINNING at a point on the north line of a 52' wide access easement, as shown on that "3RD Parcel Map for Nell J. Redfield Trust, recorded on June 25, 1996 as Parcel Map No. 3056, File No. 2006882, Official Records of Washoe County. Said point being further described as lying N 58°30'19" E, 2079.05 feet from the Southwest corner of said section 29.

THENCE departing said north line N 23°35'35" W, 95.44 feet;

THENCE along the arc of a tangent curve to the right, having a radius of 60.00 feet, through a central angle of 83°03'44", a distance of 86.98 feet;

THENCE N 59°28'09" E, 143.65 feet;

THENCE along the arc of a tangent curve to the right, having a radius of 1000.00 feet, through a central angle of 04°16'11", a distance of 74.52 feet;

THENCE N 63°44'20" E, 609.65 feet;

THENCE along the arc of a tangent curve to the left, having a radius of 130.00 feet, through a central angle of 32°04'22", a distance of 72.77 feet;

THENCE along the arc of a reverse curve to the right, having a radius of 130.00 feet, through a central angle of 26°37'43", a distance of 60.42 feet;

THENCE N 58°17'41" E, 64.99 feet;

THENCE along the arc of a tangent curve to the left, having a radius of 350.00 feet, through a central angle of 13°41'35", a distance of 83.65 feet; to a point on the west line of Parcel 2, as shown on that "Record of Survey supporting a Boundary Line Adjustment for The Mackay Family Trust", recorded on June 25, 2001 as Record of Survey Map No. 2566737, Official Record of Washoe County. Said point being further described as lying S 31°39'39" W, 40.01 feet from the Northwest corner of said Parcel 2.

The sidelines of the above described easement shall be lengthened or shortened as to begin on the north line of a 52' wide access easement and terminate on the west line of Parcel 2.

The basis of bearings for this description is Nevada State Plane Coordinates, West Zone NAD 83/94, based upon found monumentation.



CFA Inc.
1150 Corporate Blvd.
Reno, NV
89502

Exhibit C

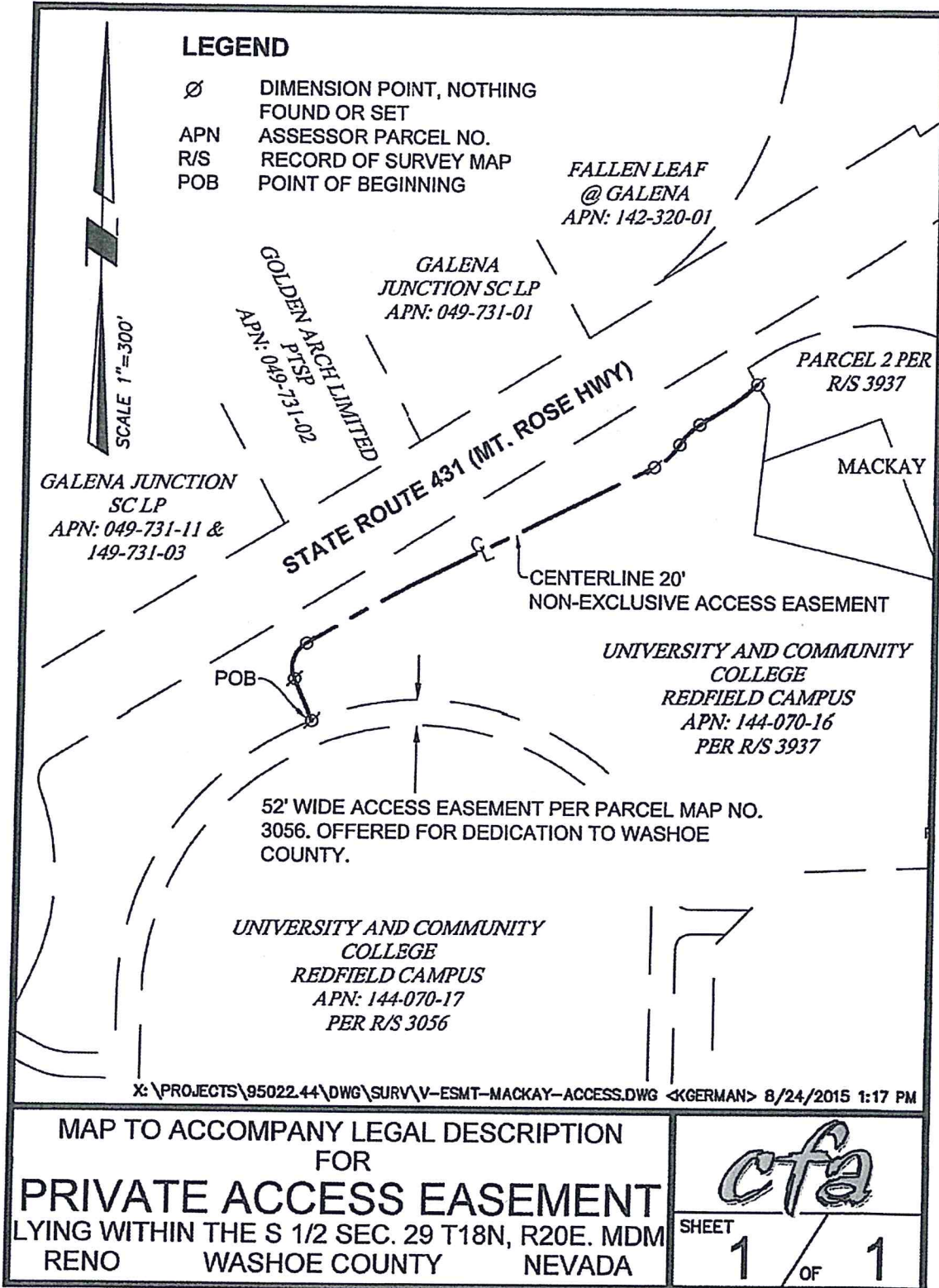


Exhibit 3

Redfield Campus Master Plan

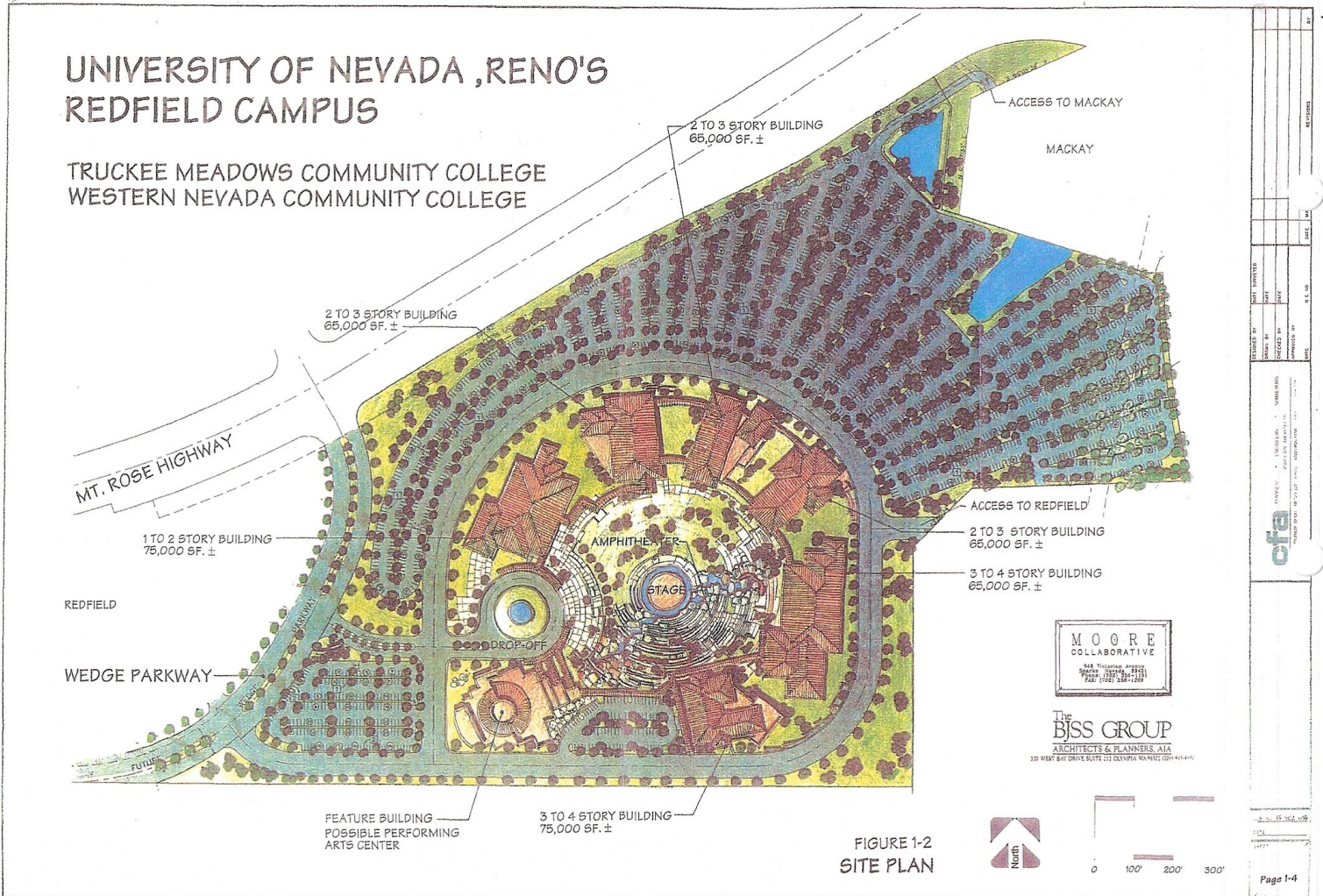


EXHIBIT 4

RESOLUTION NO. _____

A RESOLUTION PERTAINING TO THE APPROVAL OF THE GRANTING OF A PERMANENT NON-EXCLUSIVE EASEMENT TO BRUCE AND MARTHA MACKAY ON A PORTION OF WASHOE COUNTY PARCEL APN#s 144-070-21, RENO, NEVADA, AND TO THE AUTHORIZATION OF CHANCELLOR DANIEL J. KLAICH, OR HIS DESIGNEE, TO APPROVE AND SIGN THE CORRESPONDING TITLE DOCUMENTS ASSOCIATED WITH THE GRANTING OF EASEMENT AFTER CONSULTATION WITH AND REVIEW BY THE VICE CHANCELLOR OF LEGAL AFFAIRS.

BE IT RESOLVED that the Board of Regents approves the request to grant a permanent non-exclusive easement to Bruce and Martha Mackay on a portion of Washoe County Assessor's Parcel # 14-070-21, Reno, Nevada.

BE IT FURTHER RESOLVED that the Board of Regents hereby authorizes Chancellor Daniel J. Klaich, or his Designee, to approve and sign the corresponding escrow and title documents associated with the granting of the easement, after consultation with and review by the Vice Chancellor of Legal Affairs.

PASSED AND ADOPTED on _____, 2016.

Chairman
Board of Regents of the
Nevada System of Higher Education

(SEAL)
Attest:

Chief Executive Officer to the
Board of Regents