

State of California  
Business, Transportation and Housing Agency  
Department of Transportation

HIGHWAY RIGHT OF WAY MATTERS  
Appearance  
Action Item

Prepared By:  
Gary Horn  
Acting Program Manager,  
Right of Way  
(916) 654-5075

CTC Meeting: July 19-20, 2000

Agenda Item: 2.4a.(1)

*Original Signed by* \_\_\_\_\_  
W.J. EVANS, Deputy Director  
Finance  
July 1, 2000

### RESOLUTION OF NECESSITY

The Department of Transportation recommends the California Transportation Commission adopt Resolution of Necessity C-18122. The summary below identifies the location of and designates the nature of the property rights covered by the Resolution of Necessity. In accordance with statutory requirements, the owners have been advised that the Department of Transportation is requesting a resolution at this time. Adoption of Resolution of Necessity C-18122 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

#### C-18122 – Helmut F.J. Lippert, Trustee

06-Fre-168-KP R9.17 - Parcel 83075-1,2,3 (freeway) Authorizes condemnation of land in fee for a State highway, all of those certain improvements which straddle the right of way line with an easement to enter the remaining ownership to remove such improvements, located in the City of Clovis at 255 West Bullard Avenue.

## CHRONOLOGY OF CONTACTS AND EVENTS

| <u>DATE</u> | <u>EVENT</u>  |
|-------------|---|
|             | Caltrans determined right of way requirements.  |
|             | Bechtel requested to obtain appraisals for negotiations to be conducted by Caltrans.  |
| 1-28-97     | Appraisals received and delivered to Caltrans.  |
|             | Negotiations take place, as follows:  |
| 3-7-97      | Offer of \$113,000.00 made by Caltrans.   |
| 3-14-97     | Parcel assigned to Bechtel at the request of Caltrans.  |
| 6-24-97     | Obtained an "Agreement for Possession and Use".   |
| 12-29-97    | Caltrans certified Fre-168, Segment 3.  |
| 9-17-98     | Revised maps and Grant Deed received from Caltrans Right of Way Engineering based on a design revision which leaves the existing driveway in place. A revised Appraisal was required.   |
| 12-8-98     | Revised appraisal received an amount of \$192,000.00. Provides for design change involving driveway and cost to cure items for substitute area acquired for parking.  |
| 2-6-99      | Doug Maxson met with Mr. Lippert and made revised Offer of \$192,000.00. As part of the offer, Mr. Lippert was advised of design change involving driveway as well as substitute parking area that had been obtained and would be made available as part of settlement. |

| <u>DATE</u> | <u>EVENT</u>   |
|-------------|--|
| 6-3-99      | Bechtel informed that Lippert now represented by attorney. At the same time, we were requested to release the \$113,000.00 placed in escrow under the "Agreement for Possession and Use", augment the escrowed moneys to reflect the revised offer of \$192,000.00 and initiate a condemnation action. |
| 6-7-99      | \$113,000.00 released from escrow. Attorney advised that amendment to agreement will be required prior to release of any additional funds and condemnation action requested.   |
| 6-23-99     | "Amendment to Agreement for Possession and Use" forwarded to Lippert's attorney relative to release of additional \$79,000.00. Never returned and funds, therefore, not released.  |
| 6-28-99     | Meeting held in Bechtel Office with Lippert, John Clark Murphy, attorney, and Jim Bane. Transaction discussed in detail including loss of additional parking spaces not provided for by substitute area which will only meet "code" requirements.  |
| 6-30-99     | Revised appraisal requested to consider new parking issue.   |
| 9-13-99     | Revised appraisal in amount of \$283,500.00 received.  |
| 9-21-99     | First Level Hearing held. Revised offer made.  |
| 10-13-99    | Bechtel informed that Caltrans Headquarters will not support the current design before the CTC.  |
| 1-15-00     | Bechtel hired Palmer for new report.   |
| 1-21-00     | Contract approved for Palmer.  |
|             | Parcel transferred to Caltrans, waiting for report.  |
| 4-6-00      | Spoke to Murphy (Lippert's Attorney) told of new offer; faxed, with hard copy to follow.   |

| <u>DATE</u>         | <u>EVENT</u>  |
|---------------------|---|
| 4-11-00             | Revised offer sent (hard copy in file).   |
| 4-26-00             | Received call, from K. Erik Friess (Murphy's office).<br>Friess told of escrow closing on May 1, 2000, for<br>alternative access parcel, Friess has not contacted Lippert<br>yet for a response.                                |
| 5-8 thru<br>5-11-00 | Attempt to contact Friess - no response.  |
| 5-12-00             | Friess called, all deals off. Friess wants Order In<br>Possession instead of Agreement for Possession and Use.<br>Discussed dates for Second Level Hearing.   |
| 5-16-00             | Message received from Friess, date of June 5 <sup>th</sup> accepted,<br>either Orange County or San Francisco. Friess was told<br>Caltrans would go ahead with work under the terms of the<br>Agreement for Possession and Use. |
| 5-17-00             | Letter received from Friess. He believes Caltrans<br>to be in breach of the Agreement for Possession and Use.   |
| 5-23-00             | Left message for Friess, confirming hearing date and<br>Oakland location. Also told him that Construction plans to<br>continue as scheduled under Agreement for Possession and<br>Use, day after Second Level Hearing.          |
| 5-25-00             | Hard copy letter of the same sent to Friess.  |

## RESOLUTION OF NECESSITY

### REVIEW PANEL REPORT

The Resolution of Necessity Review Panel met June 5, 2000 in Oakland. The Panel members were Right of Way Senior Douglas Link (Chair), Karla Sutliff, Office of Design and Local Programs, and Caltrans attorney Gene Bonnstetter. The property owner was not in attendance but was represented by attorney K. Erik Friess.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Chief Engineer.

The Panel believes that the District's project design complies with the Code of Civil Procedure in that:

- I. The public interest and necessity require this project.
- II. The project is planned to provide the greatest public good with the least private injury.
- III. This property is required for the proposed project.
- IV. An offer to purchase the property, in compliance with Government Code Section 7267.2, has been made to the owners of record.

#### I. NEED FOR THE PROJECT

This Project is needed to improve continuity of State Route 168 within Fresno County, relieve traffic congestion on local streets and to reduce travel times between the northeast sector of the Fresno-Clovis Metropolitan Area (FCMA) and the downtown area of the City of Fresno.

Route 168 currently begins at the interchange of Route 41 with Shaw Avenue in the City of Fresno. The route runs easterly on Shaw Avenue to Clovis Avenue, north on Clovis Avenue to Third Street, east on Third Street to Tollhouse Road, and northeast on Tollhouse Road to Huntington Lake. This project, along with a number of related projects, will place Route 168 on a new freeway throughout the FCMA.

Local streets in the northeast sector of the FCMA will experience significant traffic congestion by the year 2010 without construction of the Route 168 freeway. Stop-and-Go traffic can be expected along most of the major arterials in the region. The segments of streets that comprise Route 168 will be operating at Level of Service E or F by 2010.

## **II. PROJECT DESIGN**

The project constructs a four- and six-lane freeway on an eight-lane right of way between Bullard Avenue and Temperance Avenue.

Authorization to prepare a Project Report for the realignment of Route 76 (now Route 168) was given to Caltrans District 6 on December 29, 1953. The Project Report was completed on May 4, 1954. It recommends the present planned roadway alignment in the project area. On May 24, 1954, Caltrans Headquarters approved the Project Report based on an ultimate freeway facility.

The Final Environment Impact Statement/Environmental Impact Report was approved on August 9, 1993, and the Project Approval Report was approved on August 10, 1993. Only three alternatives were not withdrawn from consideration during environmental studies. These were the Construction of a New Freeway on the Adopted Alignment Alternative, the Construction of a New Freeway on Wetlands Avoidance Alignment Alternative, and the No-Build Alternative. The Construction of a New Freeway on the Adopted Alignment was chosen as the preferred alternative. The New Freeway on Wetlands Avoidance Alignment Alternative would have displaced 80 more residences and 5 more businesses.

Current construction cost is \$55 million. This project is in the 1998 Measure "C" Expenditure Plan for funding in the 1999/2000 Fiscal Year.

## **III. NEED FOR THE PARCEL**

The Lippert parcel is in the northeast quadrant of the Route 168 interchange with Bullard Avenue. Avoidance of the parcel would require shifting of the Route 168 alignment west of the current alignment. This shift would impact multiple apartment complexes impacting more than 35 apartment units.

The impact to the Lippert parcel was reduced by shifting the alignment of the Route 168 eastbound on-ramp to the west. This shift allowed the existing Bullard Avenue driveway to remain open for access to the parking lot.

Since the property owner has concerns about the viability of the driveway close to a signalized ramp intersection, another access has been acquired by Caltrans. The newly acquired access will provide a connection between the Lippert parcel parking lot and Villa Avenue.

## **IV. STATUTORY OFFER TO PURCHASE**

The Department has appraised the subject property and has offered the full amount of the appraisal in accordance with Government Code Section 7267.2. Amount of compensation is outside the purview of the California Transportation Commission.

PERSONS IN ATTENDANCE AT THE SECOND LEVEL REVIEW PANEL  
HEARING ON APRIL 5, 2000

Douglas Link, Chairperson  
Karla Sutliff, Panel Member  
Gene Bonnsetter, Panel Member  
K. Erik Friess, Property Owners' Attorney  
Jim Bane, Project Manager  
Tony McDowell, Acquisition Branch Chief  
Randeem Walter, Assistant Regional Division Chief, Right of Way  
Sharon Parsons, Acquisition Agent

## SUMMARY OF ISSUES

With Regard to the Four Criteria Required for a Resolution of Necessity.

### **The public interest and necessity require this project.**

Not an issue.

### **The project is planned to provide the greatest public good with the least private injury.**

The owners do not believe this project is planned with the least private injury in as far as their parcel is concerned. Their concerns are:

- The proposed taking improperly renders the remainder parcel uneconomic. The State proposes to acquire the most desirable portion of the parcel and would completely disrupt access to the remainder. The current use, for medical office buildings, will become impossible due to the disruption of access and parking.
- A safety hazard will be created by reason of the traffic ingress and egress to and from the medical complex into an approach lane for the Route 168 eastbound on-ramp of the Bullard Avenue interchange.
- The property owner has stated that vehicles will be delayed in entering from and exiting onto Bullard Avenue due to the close proximity of the Route 168 eastbound on and off ramp signalized intersection. The owner's opinion is that tenants will become frustrated with the delays and will not renew leases and potential tenants will avoid this property due to this project.
- The property owner has stated the existing left-turn in and out of the existing driveway will be eliminated.
- The offer fails to include proper compensation for damage to the remainder.

In order to accommodate the existing parcel driveway, the eastbound on-ramp intersection at Bullard Avenue and Route 168 was relocated to the west. The relocated ramp intersection provides the minimum distance (Advisory Design Exception to allow 15m) between the end of a ramp curb return and a driveway. With this project change, the parcels existing driveway will remain open at the same location.

Due to the property owners' concerns about a safety hazard created when egressing traffic from the medical complex enters an approach lane for a Route 168 on-ramp, a separate right turn lane for on-ramp traffic was eliminated. The resulting lane configuration in front of the parcel driveway will be three through lanes for westbound traffic. The number three lane (outside lane) will become an exit only on to the westbound Route 168 on-ramp after the signalized intersection for the eastbound on- and off-ramps. With this project change egressing traffic from the parcel can enter any lane without concern of an immediate maneuver out of a lane to avoid entering the freeway.

To address the property owners concern of the potential difficulty the project will cause vehicles egressing the parcel, the State has offered an additional access driveway to Villa Avenue. This additional driveway access (Access Easement) crosses an adjoining parcel parking area and driveway and will also provide access to the excess parcel being offered by the State for additional parking. This offer will provide an

additional access point for the property. This should eliminate tenant concerns of delays egressing the parcel and improve circulation to and from the parcel.

The City of Clovis constructed a median island in 1988, which eliminated left turn movements directly in and out of the parcel. This median island was in place until 1999 when stage construction of the southern portion of the Route 168 project eliminated it. The project will replace the median island. The property owner is incorrect when stating left turn in and out of the parcel will be eliminated by the project.

**This property is required for the proposed project.**

Not an issue.

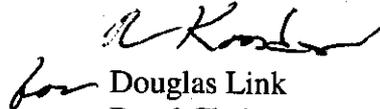
**An offer to purchase the property, in compliance with Government Code Section 7267.2, has been made to the owners of record.**

Not an issue. The property owners provided a Right of Entry so the Project could proceed to be constructed.

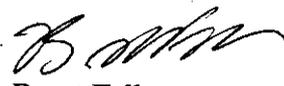
06-KER-168-R5.4/R9.3  
PARCEL No. 83075-1,2,3  
GRANTOR: Lippert et ux

**PANEL RECOMMENDATION**

The Panel recommends submitting a Resolution of Necessity to the California Transportation Commission.

  
Douglas Link  
Panel Chairperson

I concur with the Panel's recommendation.

  
Brent Felker  
Chief Engineer

## RESOLUTION OF NECESSITY APPEARANCE FACT SHEET

### PROJECT DATA

06-Fre-168-R5.4/R9.3

Location: In Fresno County in the City of Clovis

Limits: From Bullard Avenue to Temperance Avenue

Cost: R/W and Construction cost of contract or usable unit

Funding Source: Measure "C" Fresno County half cent Sales Tax

Number of Lanes: Existing: 6-lane conventional highway

Proposed: 6-lane freeway on new alignment

Proposed Major Features:

Interchanges: Bullard Av., Herndon Av., Fowler Av., and Temperance Ave.

Other: An additional westbound through lane will be provided on Bullard Avenue.

### PARCEL DATA

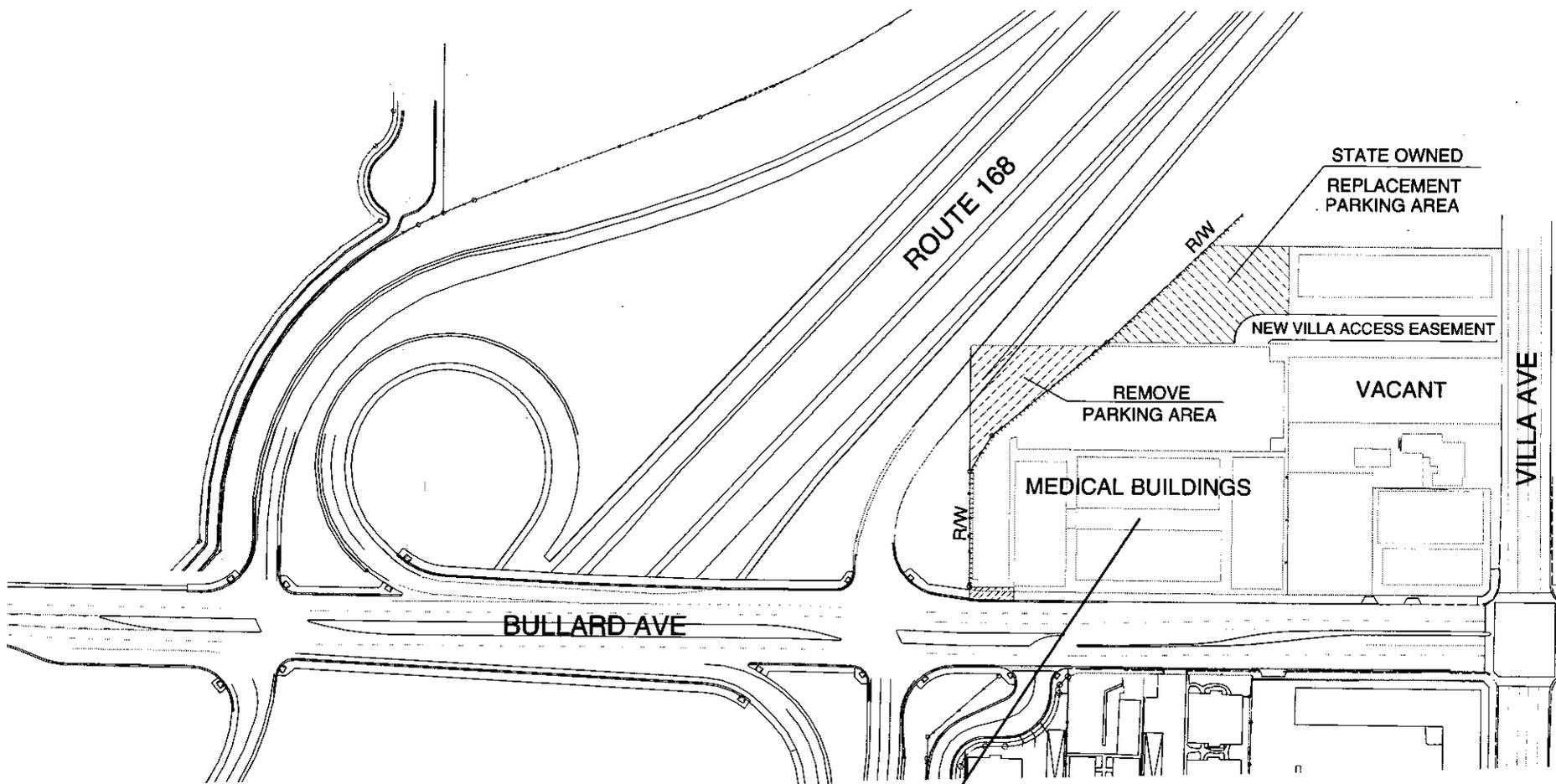
Property Owner: HELMUT F. J. LIPPERT and MARIA T. LIPPERT, as Trustees of the LIPPERT FAMILY REVOCABLE LIVING TRUST AGREEMENT, and NORBERT G. LIPPERT and NICOLE LIPPERT, together as joint tenants.

Parcel Location: Northeast quadrant of the Route 168 freeway and Bullard Avenue

Present Use: The present use of the property is for an office building and the highest and best use is the same. The property is improved with a professional office complex

Area of Property: Total area of the parcel is 1.036HA.

Area Required: Total area of the take is .1027HA.

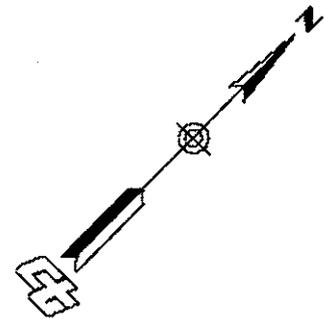
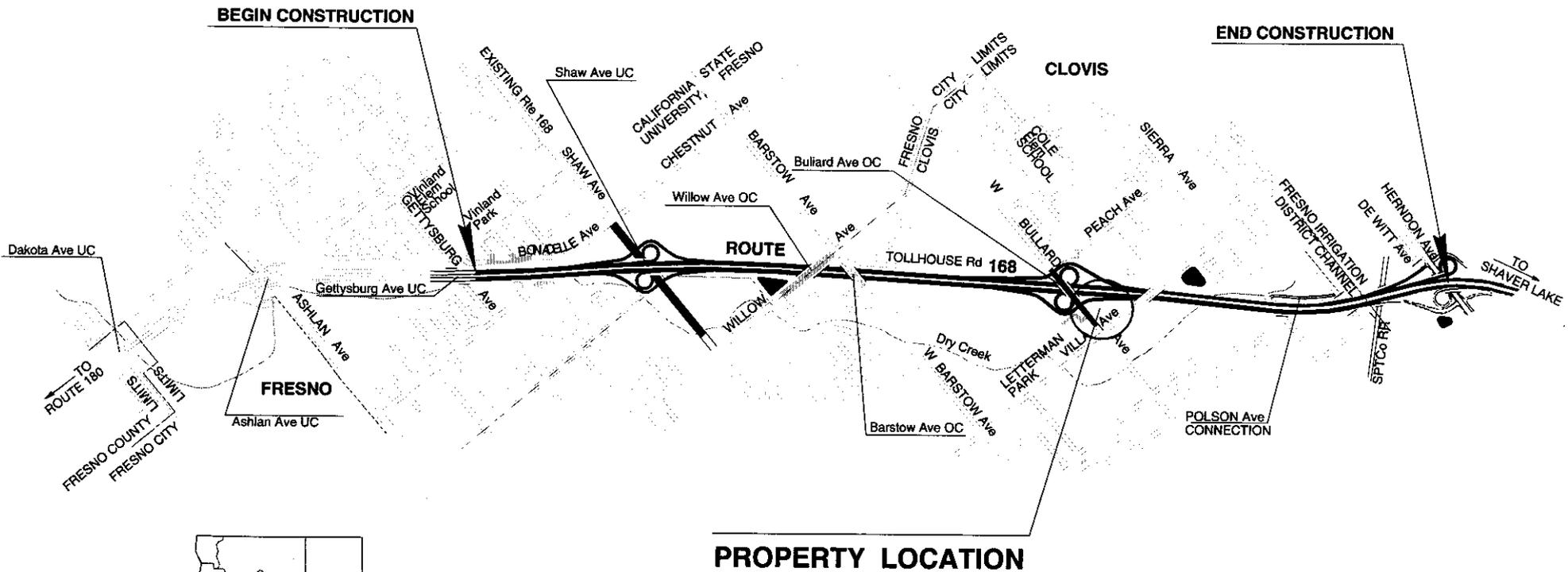


**LIPPERT PROPERTY**

Required 0.1027 ha  
Remaining 0.933 ha



**06-FRE-168**



**06-FRE-168**