

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: June 7-8, 2006

Reference No.: 2.4a.(2)  
Action Item

From: CINDY McKIM  
Chief Financial Officer

Prepared by: Bimla G. Rhinehart  
Division Chief  
Right of Way and Land  
Surveys

Subject: **RESOLUTIONS OF NECESSITY - APPEARANCE**

## **RECOMMENDATION:**

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-19365 summarized on the following page.

## **ISSUE:**

Prior to initiating Eminent Domain proceedings to acquire needed right of way for a programmed project, the Commission must first adopt a Resolution of Necessity (RON), stipulating specific findings identified under Section 1245.230 of the Code of Civil Procedure, which are:

1. The public interest and necessity require the project.
2. The project is planned to provide the greatest public good with the least private injury.
3. This property is required for the proposed project.
4. An offer to purchase the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property owners are contesting the RON and have requested an appearance before the Commission to discuss the outstanding issues. The issues with the property owners are related to access, the environmental document, and the design of the project.

## **BACKGROUND:**

Discussions have taken place with the owners, each of whom has been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which the owners may subsequently be entitled. Adoption of the resolution will not interrupt our efforts to secure equitable settlement. In accordance with statutory requirements, each owner has been advised the Department is requesting the resolution at this time. Adoption will assist the

Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-19365 - 49er Lease, a California Corporation

10-Cal-4-PM 21.19 - Parcel 14878 - EA 362509.

Right of Way Certification Date: 05/01/06; Ready to List Date: 06/02/06. Expressway - construct two-lane expressway. Authorizes condemnation of land in fee for a State highway and extinguishment of abutter's rights of access. Located in the City of Angels (Angels Camp) at South Main Street and Dogtown Road. Assessor's Parcel Numbers 058-017-021; 057-021-020

Attachments

## SUMMARY OF ISSUES

Mr. Richard Wilmshurst and Alan Correll are the owners of The 49er Lease, a California Corporation, located at South Main Street and Dogtown Road in the City of Angels (Angel Camp). The larger parcel (Parcel 14878) is approximately 12.764 acres, of which 2.425 acres is required for the State Route (SR) 4 Bypass project. The fee acquisition of the 2.425 acres will split the subject into two remainders; the northerly remainder is 3.218 acres, and the southerly remainder is 7.121 acres.

The Condemnation Panel Review Meeting was held at the Department's Altaville Maintenance Station on May 2, 2006, in Angels Camp. Mr. Wilmshurst and Mr. Correll were present at the meeting. The following is a description of the concerns expressed by Mr. Wilmshurst and Mr. Correll and the Department's response.

### **Owner:**

The property owner would like access.

### **Department Response:**

Since the presentation of the SR 4 Bypass Project Alternative two in 1992, and ensuing public discourse, the impact of the bypass on the property has remained unchanged. Proposed access control along the SR 4 bypass and the SR 49 frontage is illustrated in the Draft Project Report in 1995 and the Environmental Document in 2002.

The United States Fish and Wildlife Service granted approval of the Environmental Document based on controlled access with the intent of not inducing growth along the corridor.

The project report was approved by the Department on June 28, 2002, and the Commission executed the route adoption for the Angels Camp Bypass on November 17, 2002. The Controlled Access Highway Agreement was signed by the city of Angels Camp on November 4, 2003, supporting the access restriction for all abutting properties.

In addition to being under controlled access, the functional boundary of the SR 4/49 intersection stretches past the property lines. The southern remainder will be landlocked and bound on three sides by the Department's access-controlled property, and on the fourth by the Bret Hart High School and a few commercial establishments, leaving the remainder property with no viable means of access. The parcel is currently vacant.

### **Owner:**

The project is not designed in a manner that is most compatible with the public good within Angels Camp and does not allow land development within the City to be used for its highest and best use.

**Department Response:**

The SR 4 Angels Camp bypass is proposed as an access-controlled expressway. The project has widespread support from the general public, the city of Angels Camp, Calaveras County, and the Calaveras County Council of Governments. This widespread support and partnership between the Department, the City, the County and the Council of Governments demonstrates the compatibility of the project for this area.

The Department held a public hearing and several open house meetings at various times to provide the public and all interested parties with information regarding the status of the bypass project and to obtain public input. The Department has appeared at many City Council meetings, Council of Government meetings, and locally sponsored Study Sessions for the same purpose.

Mr. Wilmshurst and Mr. Correll have stated that they are in general agreement with the need and purpose of the project.

**Owner:**

Adoption of this resolution would be in violation of federal law because the Department has failed to comply with applicable statutory procedures that are prerequisites to such a resolution, such as a formal public hearing.

**Department Response:**

The Department has followed all environmental guidelines of both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) and received full environmental clearance under both federal and state laws. All requirements on public meetings have been met.

**Owner:**

The property owner contends that the Department did not change the project in response to comments in the environmental document.

**Department Response:**

The Department has responded to all of the comments received during the public comment period. There were 19 comments to the draft environmental document; two of the comments were from local agencies, two from state agencies, and 15 comments were from individuals and groups. All of the comments received a written response in the final environmental document.

Revisions to the project were made when consistent with the scope of the project. Comments that requested access from abutting property to the new access controlled bypass expressway could not be accommodated, as this is inconsistent with the scope of the project.

**Owner:**

The manner of acquisition is not necessary for this project.

**Department Response:**

An offer for the full amount of the Department's approved appraisal was made to the property owners, in full compliance with Government Code 7267.2.

Attachments

## **Resolution of Necessity Appearance Fact Sheet**

**PROJECT DATA:**

10-Cal-4-PM 20.94/23.30 (KP R33.7/R37.5)

Expenditure Authorization (EA): 362501

Location:

State Route (SR) 4 in Calaveras County, in and near the City of Angels (Angels Camp)

Limits:

From 0.19 PM (0.3 km) west of SR 4/49 Intersection and 0.56 PM (0.9 km) east of Roller Bypass Road.

Cost:

Current construction cost estimate \$26.9 million

Current right of way cost estimate \$10.2 million

Funding Source:

STIP (201.310)

Number of Lanes:

Existing: N/A

Proposed: two lanes

Proposed Major Features

Two-lane expressway on new alignment

Four structures: Gardner Lane Undercrossing, Murphys Grade Road Undercrossing, Penstock Bridge, and Angels Creek Bridge.

Traffic:

Existing (1997): 8,200 Average Daily Total (ADT)

Proposed (year 2025): 17,400 ADT

**PARCEL DATA:**

Property Owner:

The 49er Lease, a California Corporation

Richard Wilmshurst and Alan Correll

Parcel Location:

Assessor's Parcel Number 058-017-021 and 057-021-020

South Main Street and Dogtown Road, Angels Camp

Present Use:

Vacant

Zoning:

Suburban Commercial (SC)

Area of Property:

Parcel 14878 - 12.764 acres

Area Required:

Parcel 14878- 2.425 acres - fee acquisition

Remainder Area:

3.218 acres - Northern remainder

7.121 acres - Southern remainder

## **RESOLUTION OF NECESSITY REVIEW PANEL REPORT**

The Condemnation Panel (Panel) met at the Department's Altaville Maintenance Station on May 2, 2006, in the City of Angels (Angels Camp). The Panel members consisted of Donald Grebe, Department of Transportation (Department) Headquarters (HQ's) Division of Right of Way and Land Surveys; Richard Williams, Department Sacramento Legal Division; Linda Fong, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Mr. Richard Wilmshurst and Mr. Alan Correll, the property owners were present at the meeting.

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.

### **NEED FOR THE PROJECT**

State Route (SR) 4 is one of two state highways providing access to Angels Camp, the other being SR 49. SR 49 runs through Angels Camp in a north and south direction leading southbound traffic to the recreational areas of the New Melones Dam, to the city of Sonora in Tuolumne County, and northbound traffic to the Calaveras County seat at San Andreas. From San Joaquin County, SR 4 heads easterly through Calaveras County and meets SR 49 in Altaville, at the north end of Angels Camp. SR 4 has a route break at this location and starts again at the SR 49 junction at the south end of the City about 1.4 miles through Angels Camp, then continues easterly towards Ebbett's Pass. Traffic wishing to stay on SR 4 through Angels Camp must take SR 49 (Main Street) through the downtown area. It is the only roadway in the County providing access directly to the High Sierras.

Angels Camp is a growing community at the junction of SR 4 and SR 49 in the Sierra Nevada foothills. There has been commercial strip development along the same portion of SR 4 and SR 49, which functions as the town's main street and main north and south arterial. This development, as well as constantly increasing interregional traffic on both routes, generates substantial main road versus cross-traffic conflicts, and nearly every intersection along the route experiences congestion and delay. During the periods of peak recreational traffic, the problem is exacerbated.

In an effort to avoid the congestion associated with downtown Angels Camp, a substantial amount of interregional traffic uses Murphys Grade Road as an alternate route to the Sierras. This county road/city street begins at SR 49, south of the north SR 4 junction and rejoins SR 4 in the community of Murphys, approximately eight miles from Angels Camp. Unfortunately, motorists using this route to avoid cross-traffic and congestion in historic downtown Angels Camp experience similar conditions in historic downtown Murphys before rejoining SR 4.

It is expected that the bypass will divert the majority of interregional traffic on SR 4 from Murphys Grade Road and downtown Angels Camp. The new roadway will essentially act as a bypass for two communities.

SR 49 in the downtown area had an Average Daily Total (ADT) of 14,400 in 1997, and that is expected to more than double to 35,400 by the year 2025. That will yield a LOS (Level of Service) of F. The Bypass is expected to divert roughly 40 percent of that ADT, leaving a remainder ADT of 25,600 vehicles on SR 49, yielding a LOS of E.

The bypass will be an access-controlled two-lane expressway approximately 2.3 miles in length. It is considered to be the ultimate SR 4 facility in this area and no substantial expansions to the bypass are expected after its completion.

A north SR 4 bypass will divert traffic from the SR 4/49 section, relieving some of the chronic congestion that route currently suffers. It will also divert traffic from several key intersections in Angels Camp. The number of conflicting vehicles at the south SR 4/49 junction will decrease due to the diminished volumes of traffic of SR 4/49, decreasing delay. The SR 49/Murphys Grade Road intersection will also show a significant decrease in conflicting traffic. However, the north SR 4/49 junction will have an increase in conflicting vehicles due to the addition of the fourth leg to the existing three-legged intersection.

### **PROJECT PLANNING AND LOCATION**

The SR 49 Main Street section starts out as a two-lane facility with a continuous left-turn lane at the north end of Angels Camp and narrows down to a two-lane street through historic downtown. Future widening is restricted through the downtown area because of historical and commercial buildings located on either side of the street.

The section of SR 4 from the south junction of SR 4/49 easterly is a two-lane conventional highway with four-foot shoulders. It runs parallel to Angels Creek from the south SR 4/49 junction to Roller Bypass Road, a distance of 0.85 miles.

This project is included in the city of Angels Camp General Plan. This project is the number one priority for State highway projects for the Calaveras County Council of Governments, the city of Angels Camp, and Calaveras County (County).

### **NEED FOR SUBJECT PROPERTY**

The SR 4 bypass project requires 2.425 acres for the proposed new expressway alignment. This parcel cannot be avoided because the parcel is in the area of the new alignment. The project also requires full access control along the new alignment of SR 4.

The project will split the subject parcel into two remainders. The northerly remainder is 3.218 acres and will retain access from Dogtown Road. The southerly 7.121 acre remainder will lose all access due to the Department's requirement for access control along the proposed right of way. An offer to acquire the southerly 7.121 acres was made to the owner, along with the offer of the required 2.425 acres. The property owners elected to retain the southerly land-locked remainder.

The following is a description of the concerns, which the property owner has expressed and the Department's response:

**Owner:**

The property owner would like access to SR 4.

**Department Response:**

Since the presentation of the SR 4 bypass project Alternative two in 1992, and ensuing public discourse, the impact of the bypass on the property has remained unchanged. Proposed access control along the SR 4 bypass and the SR 49 frontage is illustrated in the Draft Project Report in 1995 and the Environmental Document in 2002.

The United States Fish and Wildlife Service granted approval of the Environmental Document based on controlled access with the intent of not inducing growth along the corridor.

The project report was approved by the Department on June 28, 2002, and the Commission executed the route adoption for the Angels Camp Bypass on November 7, 2002. The Controlled Access Highway Agreement was signed by the city of Angels Camp on November 4, 2003, supporting the access restriction for all abutting properties.

In addition to being under controlled access, the functional boundary of the SR 4/49 intersection stretches past the property lines. The southern remainder will be landlocked and bound on three sides by the Department's access-controlled property, and on the fourth by the Bret Hart High School and a few commercial establishments, leaving the remainder property with no viable means of access. The parcel is currently vacant.

**Owner:**

The project is not designed in a manner that is most compatible with the public good within Angels Camp and does not allow land development within the City to be used for its highest and best use.

**Department Response:**

The SR 4 Angels Camp bypass is proposed as an access-controlled expressway. The project has widespread support from the general public, the city of Angels Camp, Calaveras County, and the Calaveras County Council of Governments. This widespread support and partnership between the Department, the City, the County, and the Council of Governments demonstrates the compatibility of the project for this area.

The Department held a public hearing and several open house meetings at various times to provide the public and all interested parties with information regarding the status of the bypass project, and to obtain public input. The Department has appeared at many City Council meetings, Council of Government meetings, and locally sponsored Study Sessions for the same purpose.

Mr. Wilmshurst and Mr. Correll have stated that they are in general agreement with the need and purpose of the project.

**Owner:**

Adoption of this resolution would be in violation of federal law because the Department has failed to comply with applicable statutory procedures that are prerequisites to such a resolution, such as a Formal Public Hearing.

**Department Response:**

The Department has followed all environmental guidelines of both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) and received full environmental clearance under both federal and state laws. All requirements on public meetings have been met.

**Owner:**

The property owner contends that the Department did not change the project in response to comments in the environmental document.

**Department Response:**

The Department has responded to all of the comments received during the public comment period. There were 19 comments to the draft environmental document; two of the comments were from local agencies, two from state agencies, and 15 comments were from individuals and groups. All of the comments received a written response in the final environmental document.

Revisions to the project were made when consistent with the scope of the project. Comments that requested access from abutting property to the new access controlled bypass expressway could not be accommodated, as this was inconsistent with the scope of the project.

**Owner:**

The manner of acquisition is not necessary for this project.

**Department Response:**

An offer for the full amount of the Department's approved appraisal was made to the property owners, in full compliance with Government Code 7267.2.

**PARCEL DESCRIPTION**

The subject parcel, Parcel Number 14878, is identified as Assessor's Parcel Numbers 058-017-021 and 058-021-20. The larger parcel is 12.764 acres in size and zoned Suburban Commercial (SC). The parcel has physical and legal access from Dogtown Road.

The property is vacant with rolling topography. All utilities are currently available.

**STATUTORY OFFER TO PURCHASE**

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record as required by Government Code Section 7267.2.

**PANEL RECOMMENDATION**

The Panel concludes that the Department's design complies with Section 1245.230 of the Code of Civil Procedure in that:

- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property to be condemned is necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

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

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DONALD E. GREBE, Chief  
Office of Project Delivery  
Division of Right of Way and Land Surveys  
Panel Chair

I concur with the Panel's recommendation:

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RICHARD D. LAND  
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING  
HEARING ON MAY 2, 2006**

Donald Grebe, Headquarters Division of Right of Way and Land Surveys, Panel Chair

Yvonne von Brauchitsch, Sacramento Legal Office Attorney, Panel Member

Linda Fong, Headquarters Division of Design, Panel Member

Deborah Gebers, Headquarters Division of Right of Way and Land Surveys, Panel Secretary

Richard Wilmshurst, Owner

Alan Correll, Property Owner

Tad Folendorf

Dennis J. Agar, District 10 Deputy District Director, Program / Project Management

Terry Ogle, Central Region Design

Michael Rodrigues, Central Region Right of Way

Ken Cozad, Headquarters Division of Design

Mike Hutchison, Central Region Design

Sharon Parsons, District 10 Right of Way

Maryann Jacobs, District 10 Right of Way

EXHIBIT A



Section 27

NO SCALE

T.3 N., R.13 E., M.D.B. & M.

Section 28

DOG TOWN RD.

CITY LIMITS  
14878

DOG TOWN RD.

NORTH

MAIN

STATE HWY. 4

TO

MURPHYS

RD.

OLD HWY. 4

TO

MURPHYS

RD.

ANGELS

CAMP

RESOLUTION OF NECESSITY

AREA MAP

10-CAL-4

K.P. 34.1

ANGELS

CAMP

CALAVERAS COUNTY

RESOLUTION OF NECESSITY

AREA MAP

10-CAL-4

K.P. 34.1

MURPHYS GRADE ROAD

ROLLERI BYPASS

PROPOSED

AQUEDUCT

China Gulch

MAIN ST.

TO SONORA

GARDNER LANE

STATE HWY. 49 SOUTH

ANDREAS

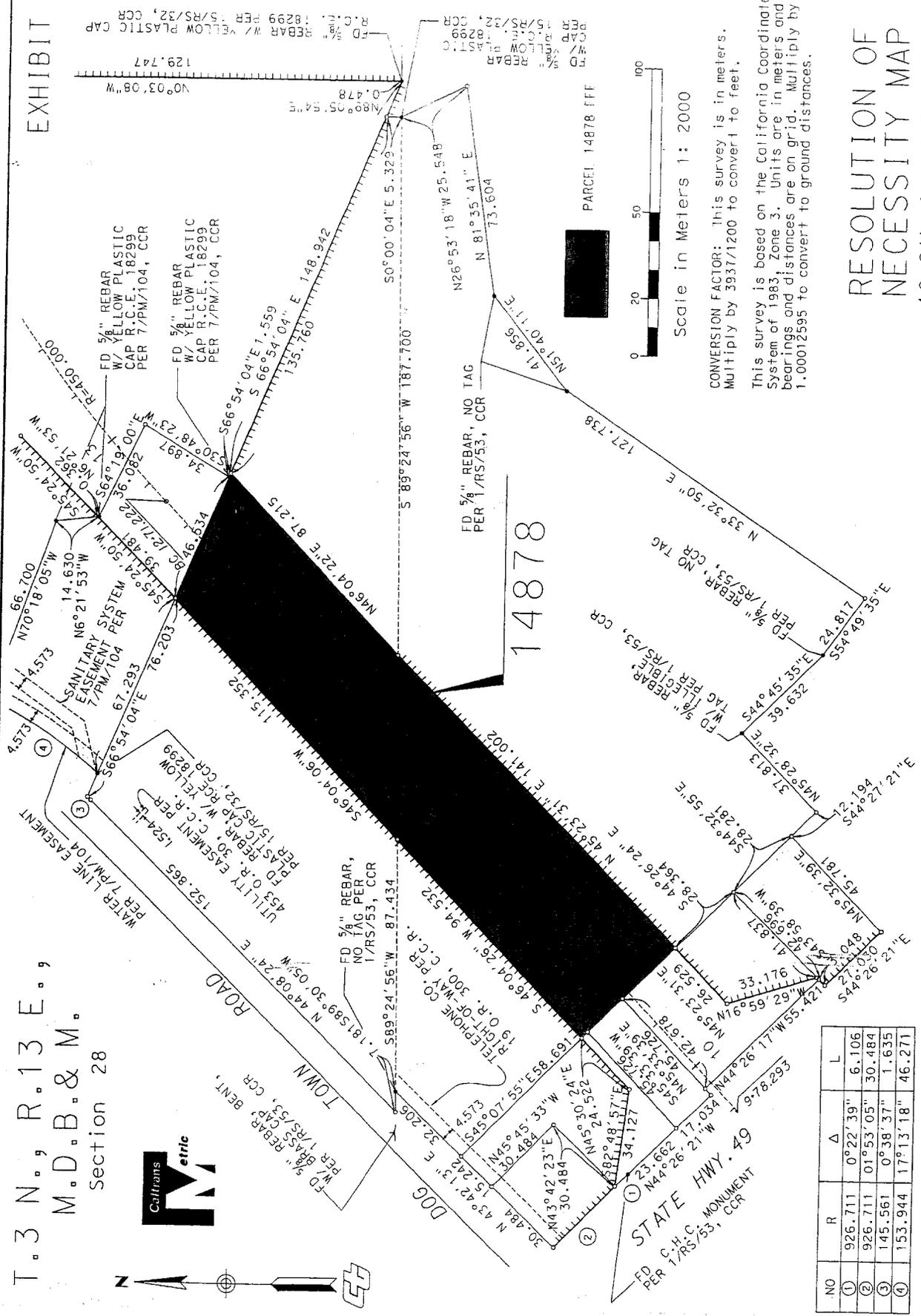
DEMAREST ST.

ANGELS CAMP  
CALAVERAS COUNTY

T. 3 N., R. 13 E.,  
M.D.B. & M.  
Section 28



EXHIBIT B



CONVERSION FACTOR: This survey is in meters.  
Multiply by 3937/1200 to convert to feet.

This survey is based on the California Coordinate System of 1983, Zone 3. Units are in meters and bearings and distances are on grid. Multiply by 1.00012595 to convert to ground distances.

RESOLUTION OF  
NECESSITY MAP  
10-CAL-4 K.P. 34.1

NO	R	Δ	L
①	926.711	0°22'39"	6.106
②	926.711	01°53'05"	30.484
③	145.561	0°38'37"	1.635
④	153.944	17°13'18"	46.271