

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: December 12-13, 2007

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

From: CINDY McKIM
Chief Financial Officer

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

Subject: **RESOLUTIONS OF NECESSITY - APPEARANCE**

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-19762 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, 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 and located in a manner that will be most compatible with the greatest public good with the least private injury.
3. This property is necessary for the proposed project.
4. An offer to acquire the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property owner's heirs (owner) are contesting the resolution and have requested an appearance before the Commission to discuss the outstanding issue, which is that the acquisition will impact safe access to the property.

BACKGROUND:

Discussions have taken place with the owner, who has been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which the owner may subsequently be entitled. Adoption of the Resolution will not interrupt the Department's efforts to secure equitable settlement. In accordance with statutory requirements, the owner has been advised that 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-19762 – The Heirs and Devises of Hazelann Parker, etc., et al.

10-Mer-140-PM 36.6 - Parcel 15246-1, 2 - EA 0J8109.

Right of Way Certification Date: 12/14/07; Ready to List Date: 04/01/08. Conventional highway - signal installation. Authorizes condemnation of land in fee for State highway purposes and a temporary construction easement. Located in the city of Merced at 1825 East 21st Street. Assessor's Parcel Number 034-123-012.

Attachments:

Attachment A – Project Information

Attachment B – Parcel Panel Report

PROJECT INFORMATION

| | |
|---------------------------------|---|
| PROJECT DATA | 10-Mer-140-PM 36.6 Expenditure Authorization (EA) 0J8109 |
| <u>Location:</u> | State Route (SR) 140 in Merced County |
| <u>Limits:</u> | In the city of Merced, between Marthella Avenue and Andregg Avenue on SR 140. |
| <u>Cost:</u> | Programmed construction cost: \$779,000 Current right of way cost estimate: \$20,500 |
| <u>Funding Source:</u> | Minor A HB1 Safety Improvements (201.010) |
| <u>Number of Lanes:</u> | Existing: two-lane mixed flow Proposed: two-lane mixed flow |
| <u>Proposed Major Features:</u> | Intersection signalization and westbound right-turn lane on SR 140 |
| <u>Traffic:</u> | Existing (year 2007): 14,100 Average Annual Daily Traffic (AADT) Proposed (year 2027): 24,100 AADT |

NEED FOR THE PROJECT

The main purpose and need of this project is to address the high number of accidents related to turning movements around the intersection of SR 140 and East 21st Street. This intersection currently exceeds the statewide average accident rate for similar facilities. This location was the subject of a safety investigation after it appeared on the Traffic Accident Surveillance and Analysis System (TASAS) Table C list in the third quarter of 1999. As a result of the safety investigation, a Signal Warrant Study was done and Signal Warrants were met. This project is expected to improve the safety of the traveling public by controlling all traffic movements through the intersection.

The Traffic Operations Analysis resulted in the following recommendations:

- For eastbound SR 140 traffic, provide a left turn lane at East 21st Street.
- For westbound SR 140 traffic, provide a left turn lane at Marthella Avenue.
- The eastbound left turn lane from SR 140 to East 21st Street will accommodate U-turns for the westbound traffic originating from Carol Avenue.
- Eastbound SR 140 access to Carol Avenue will be restricted to right-in and right-out by placing a raised median. This will eliminate westbound access to SR 140 from Carol Avenue.

The Department determined that all of the traffic operations recommendations should be incorporated into the project scope.

PROJECT PLANNING AND LOCATION

Existing SR 140 begins at Interstate 5 in Merced County, near the Merced/Stanislaus County line, and runs east through Merced County ending at the Yosemite National Park boundary near the community of El Portal in Mariposa County. SR 140 is included in the California Freeway/Expressway System and the National Highway System. It is also a Terminal Access Route for the National Truck Network.

East 21st Street intersects SR 140 at a non-signalized, skewed T-intersection. Currently, access from East 21st Street onto SR 140 is controlled by stop signs with SR-140 in free flow. At this location, SR 140 is a two-lane east/west conventional highway with 12-foot lanes, 8-foot shoulders, and a 16-foot wide 2-way left turn lane. East 21st Street is a 2-lane urban street that intersects SR 140 at-grade in a north/south direction. The right of way width on SR 140 is 42 feet to the south of the centerline and 41 feet to the north.

This project is to construct intersection improvements that include signal standards, paved shoulders, sidewalks, revised pedestrian refuge areas, and improved drainage. The Department will acquire a triangular parcel of land located on the northeast corner of the intersection to accommodate traffic signals and the new right-turn lane. There are several private businesses on the northeast and northwest corners of the intersection. The southern portion of the intersection has private businesses on the western side and an undeveloped vacant lot on the eastern side. There are several high-risk underground utility lines located within the vacant lot. The posted speed limit along SR-140 approaching the intersection from both directions is 40 miles per hour.

The Conceptual Report (CR) for this project was prepared by the Department's Traffic Safety Branch and approved on February 4, 2003. The approved CR proposed the installation of traffic signals at the SR 140 and East 21st Street intersection in the city of Merced to reduce the number of accidents occurring at this location. Based on input from the City of Merced, the Department expanded the scope of the project to include the construction of a westbound right-turn lane between Anderegg Avenue and East 21st Street, along with a raised median island between Marthella Avenue and East 21st Street. Right of way acquisitions are required for the right turn lane and to provide room for the traffic signal poles.

Proposed Project

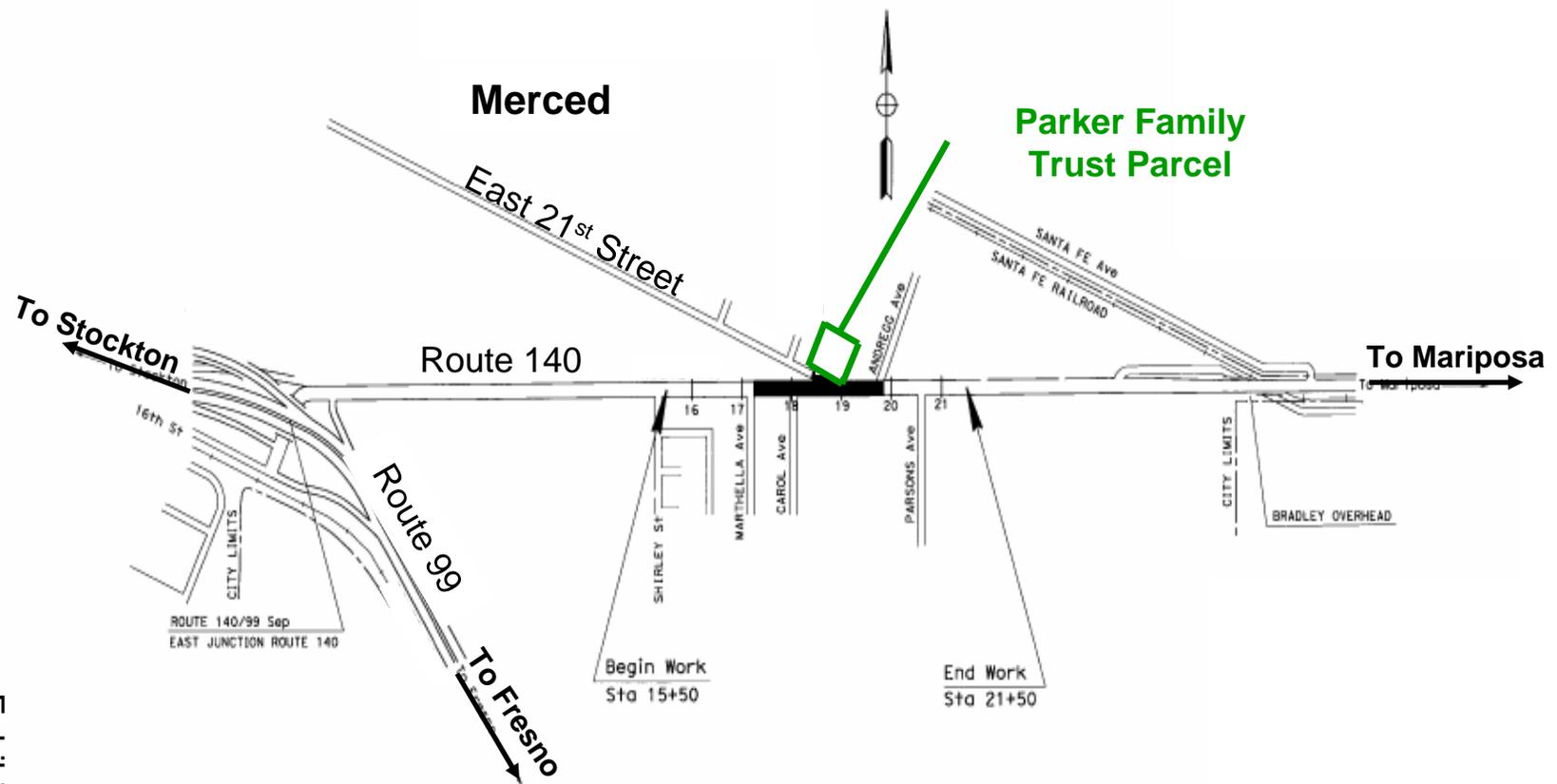


Exhibit A1

Proposed Project

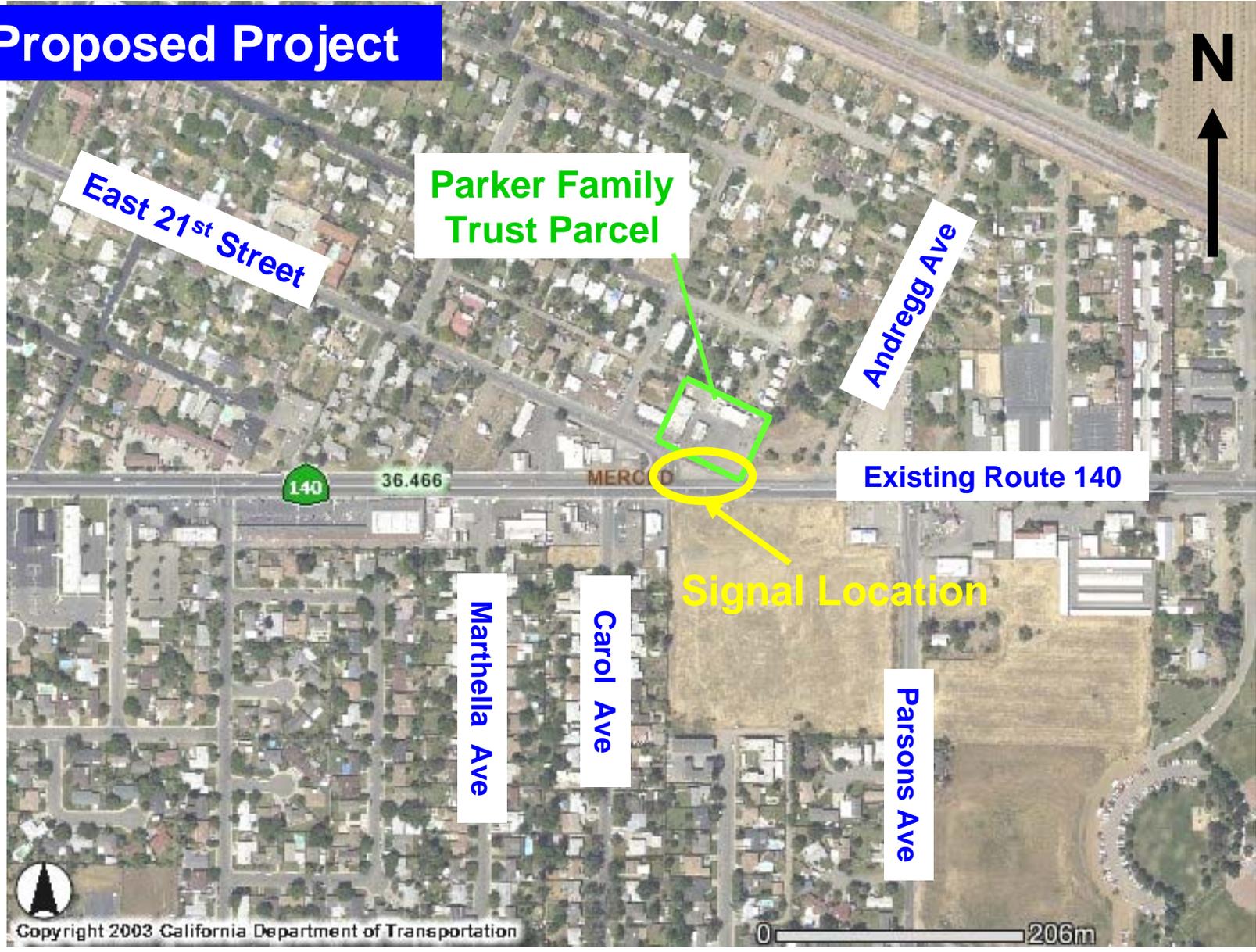


Exhibit A2

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PARCEL PANEL REPORT

PARCEL DATA

Property Owner: The Heirs and Devisees of Hazelann Parker, Sole Trustee of the Wilfred R. Parker and Hazelann Parker Family Trust

Parcel Location: At the northeast corner of the intersection of State Route (SR) 140 and East 21st Street
1825 East 21st Street, Merced
Assessor's Parcel Number 034-123-012

Present Use: Three commercial buildings on site
Zoned General Commercial (C-2)

Area of Property: 1.06 acres (46,174 square feet)

Area Required: Parcel 15426-1 = 1,014 (.02 acres) square feet in fee
Parcel 15426-2 = 432 square feet (.009 acres) in temporary construction easement

PARCEL DESCRIPTION

The subject parcel is located in the county of Merced and is identified as Assessor's Parcel Number 034-123-012. The property is approximately 1.06 acres, is rectangular in shape, has approximately 200 feet of frontage on East 21st Street, and 72 feet of east side boundary is on SR 140. The topography of the land is generally level and at grade with both SR 140 and East 21st Street.

The parcel is improved with three commercial buildings. The commercial buildings are outside of the proposed right of way and are not directly impacted by the acquisition. The required area is asphalt paved and has an outdoor advertising sign.

NEED FOR SUBJECT PROPERTY

This parcel is needed for a safety project to signalize the intersection of SR 140 and East 21st Street. The subject property is located at the northeast corner of SR 140 and East 21st Street, in Merced County, and is accessed from a commercial driveway on East 21st Street and an undocumented opening on the corner of SR 140 and East 21st Street. The larger parcel has an area of 1.06 acres, of which 432 square feet is needed for a temporary construction easement and 1,014 square feet in fee acquisition is required for the placement of a right-turn pocket along westbound SR 140, the extension of the existing shoulder, the placement of traffic control equipment and utilities required for the traffic signals. The fee acquisition required for the project

is located in front of this parcel, at the southeast corner. The California Department of Transportation (Department) recommends inclusion of the dedicated right-turn lane in this project for better traffic operations on SR 140. Under the existing lane configuration with a shared thru/right lane scenario, traffic backs up to the next intersection (SR 140 and North Parsons Avenue) and has a negative effect, as westbound vehicles must decelerate within that intersection. The addition of a dedicated right turn lane decreases the potential of traffic safety and operational concerns on the State Highway System in this area.

There are no compensable improvements in the proposed purchase area.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met at the Department's Sacramento Headquarters office on May 22, 2007. The Panel members included Donald Grebe, Panel Chair, Department Headquarters (HQ's) Division of Right of Way and Land Surveys; Richard B. 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. Representing the property owner, The Heirs and Devises of Hazelann Parker, Sole Trustee of the Wilfred R. Parker and Hazelann Parker Family Trust, were two of the heirs, Rolanda Phillips and Gary Parker. Legal counsel for the property owner, Mr. Terry Allen, was present by telephone.

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 Department's Chief Engineer. The property owner does not contest the purpose and need for the project. The outstanding concern of the Parker family is that they believe the acquisition will impact safe access to the property.

The following is a description of the concerns expressed by the owner, followed by the Department's response:

Owner:

"This is a formal statement to declare it is our sincere belief that the proposed plans for Parcel 15246-1; 10-Mer-140: KP58.9; EA: 0J8109, will create inefficient and dangerous traffic patterns for pedestrian and vehicle traffic and will be caused by eliminating the driveway access to Lot 9, according to Map of Spaugh's Addition to Merced R.M.Vol. 6, PG 3. We strongly object to eliminating the primary driveway access for this parcel; it has been used for more than 60 years and is located on East 21st Street, not the State highway. Eliminating the driveway will devalue the property and potential for future development."

"We formally request including a driveway access to the property in your plans."

Department Response:

The closure of the undocumented access opening on the corner of SR 140 and East 21st Street is necessary for the project. The acquisition of the triangular southeast corner of the property is needed to create the westbound right-turn lane from SR 140 to East 21st Street, as well as the addition of a sidewalk, curb, gutter, and needed drainage for the project.

The larger parcel, identified as lots 9, 10 and 11, have two shared access openings allowing ingress and egress. Lot 9 has undocumented access and lots 10 and 11 share access on East 21st Street. The larger parcel also has access to an alley located on the northerly portion of the parcel. The larger parcel has the same ownership and shared parking, and currently shares access. The undocumented access to lot 9 currently allows cars direct access from SR 140 onto the larger parcel.

In the after condition, the undocumented opening on lot 9 will be eliminated and the larger parcel will have access from the existing driveway from the adjoining lots 10 and 11. By accessing the parcel from the existing driveway on East 21st Street, there will be a reduced potential for conflicts with intersection traffic because it is downstream of the signalized intersection. Removal of this access point will greatly increase public safety and improve traffic operations to motorists as the conflicting movements of the driveway users and the public's use of the right-turn lane will be eliminated.

Hardship or devaluation of the property, and potential for future development, is a valuation issue that is addressed in the appraisal and offer to the property owner. An offer of just compensation, as required by Government Code Section 7267.2, has been made to the owners of record.

Owner:

The property owner voiced concern about the ability of trucks to access the larger parcel with the closure of the undocumented access opening.

Department Response:

It is the Department's position that the undocumented access opening is not a legal opening. The issue of the access opening is a legal issue that will be determined in a court of law. Should the court determine the parcel has legal access, any damage to the remainder (including limitations of truck access) is a valuation issue that will also be determined in a court of law.

Owner:

Currently, a serious drainage problem exists (during heavy rains) on the parcel.

Department Response:

The Department's Hydraulics and Maintenance Division staff note that run-off is actually from surrounding businesses, not from the State right of way. Upon completion of the proposed safety project, the improvements include closing the undocumented access opening on the corner of East 21st Street and SR 140 with a curb, gutter and drainage inlet. In the after condition there should not be any drainage problems.

The owner was satisfied that the drainage issue was resolved.

Owner:

With regards to the fair market value, this property has been misrepresented as "vacant land".

Department Response:

The Department's appraisal methods provide for consideration of the "highest and best use" of the parcel. Although the parcel has existing improvements on it, the highest and best use in the current market is as vacant land ready for development. The appraisal and offer to the owner provides for the best-case scenario and is actually in the owners' best interest.

The Department is in full compliance with Government Code 7267.2, and a written offer for the full amount of the current appraisal has been made. The Department will continue to review new or additional information as it becomes available to update and revise the appraisal as appropriate. The property owner was notified that issues related to compensation are outside the purview of the California Transportation Commission (Commission) and will not be heard or considered by the Commission, and are instead an issue for the courts.

Owner:

The property now has an overhead light that illuminated the parcel at night. In the after condition the light will be removed.

Department Response:

The Department will work with the utility company and the property owner to assure that the light is replaced on the parcel in a location that is agreeable to the owners.

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 project 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 rights to be condemned are 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 Commission.

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:

RICHARD D. LAND
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING
HEARING ON MAY 22, 2007**

Donald Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair
Richard B. Williams, Sacramento Legal Office Attorney, Panel Member
Linda Fong, HQ's Division of Design, Panel Member
Deborah Gebers, HQ's Division of Right of Way and Land Surveys, Panel Secretary

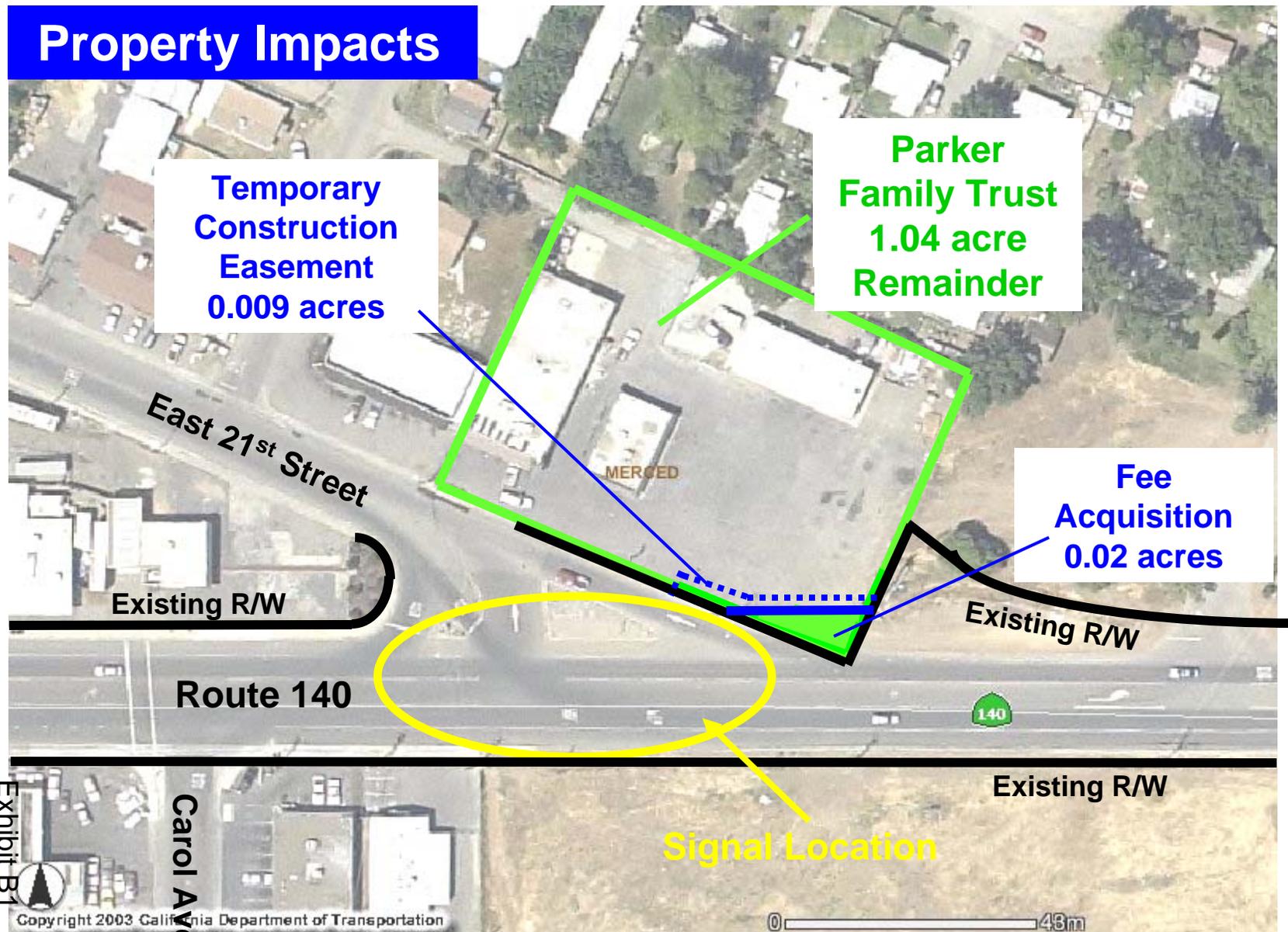
Gary Parker, Owner of the Property
Rhonda M. Phillips, Owner of the Property

Kome Ajise, District 10 District Director
Dennis T. Agar, District 10 Program/ Project Manager
Terry Ogle, Central Region Design
Todd Dudley, Project Manager
Michael Rodrigues, Central Region Right of Way
Sharon Parsons, Central Region Right of Way

By Telephone:

Terry Allan, Attorney for the Owner

Property Impacts



Temporary
Construction
Easement
0.009 acres

Parker
Family Trust
1.04 acre
Remainder

Fee
Acquisition
0.02 acres

Signal Location

East 21st Street

Existing R/W

Route 140

Existing R/W

140

Existing R/W

Carol Ave

Exhibit B1

Copyright 2003 California Department of Transportation

0 48m

Parker Family Trust

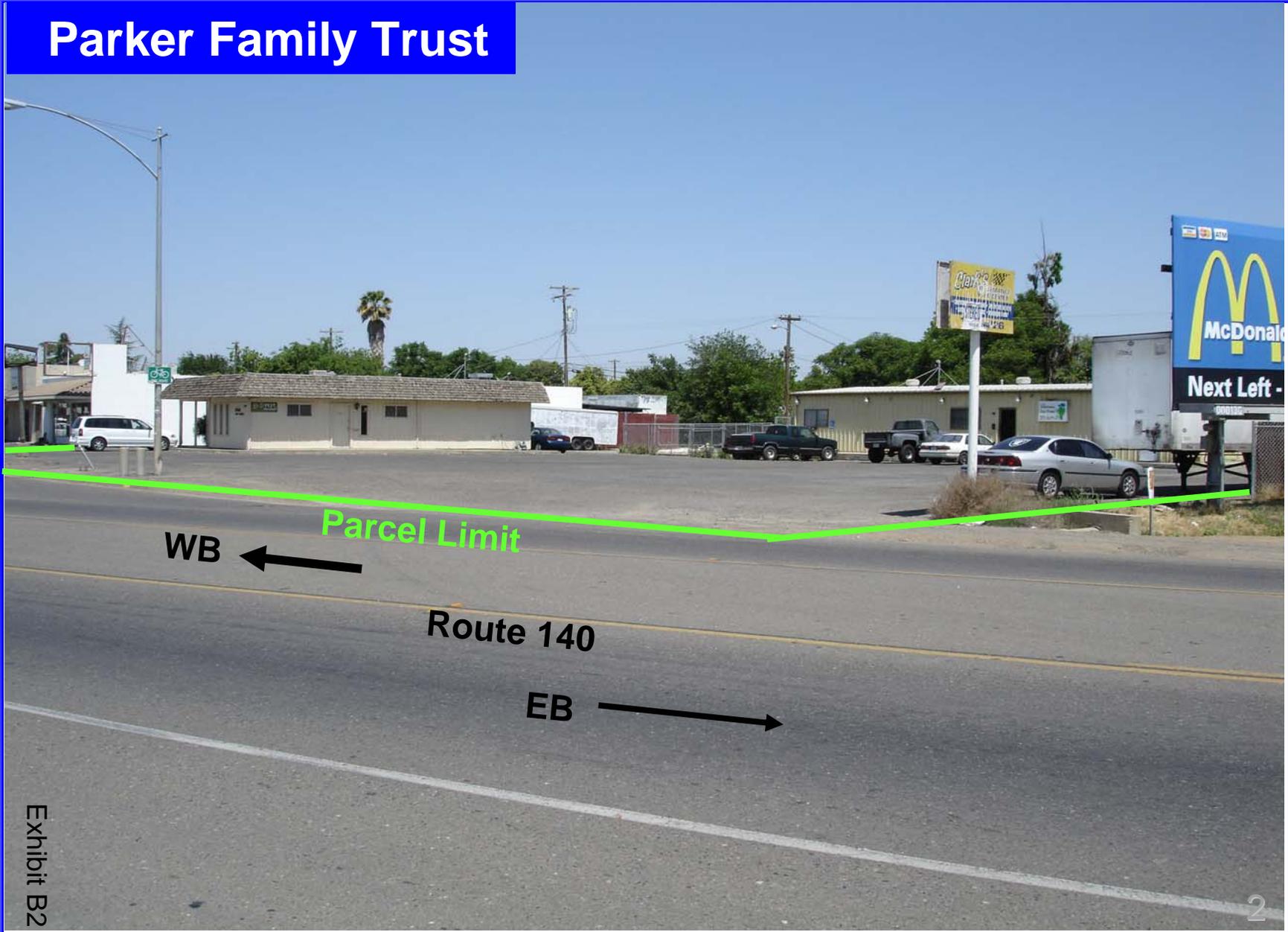


Exhibit B2

Parker Family Trust

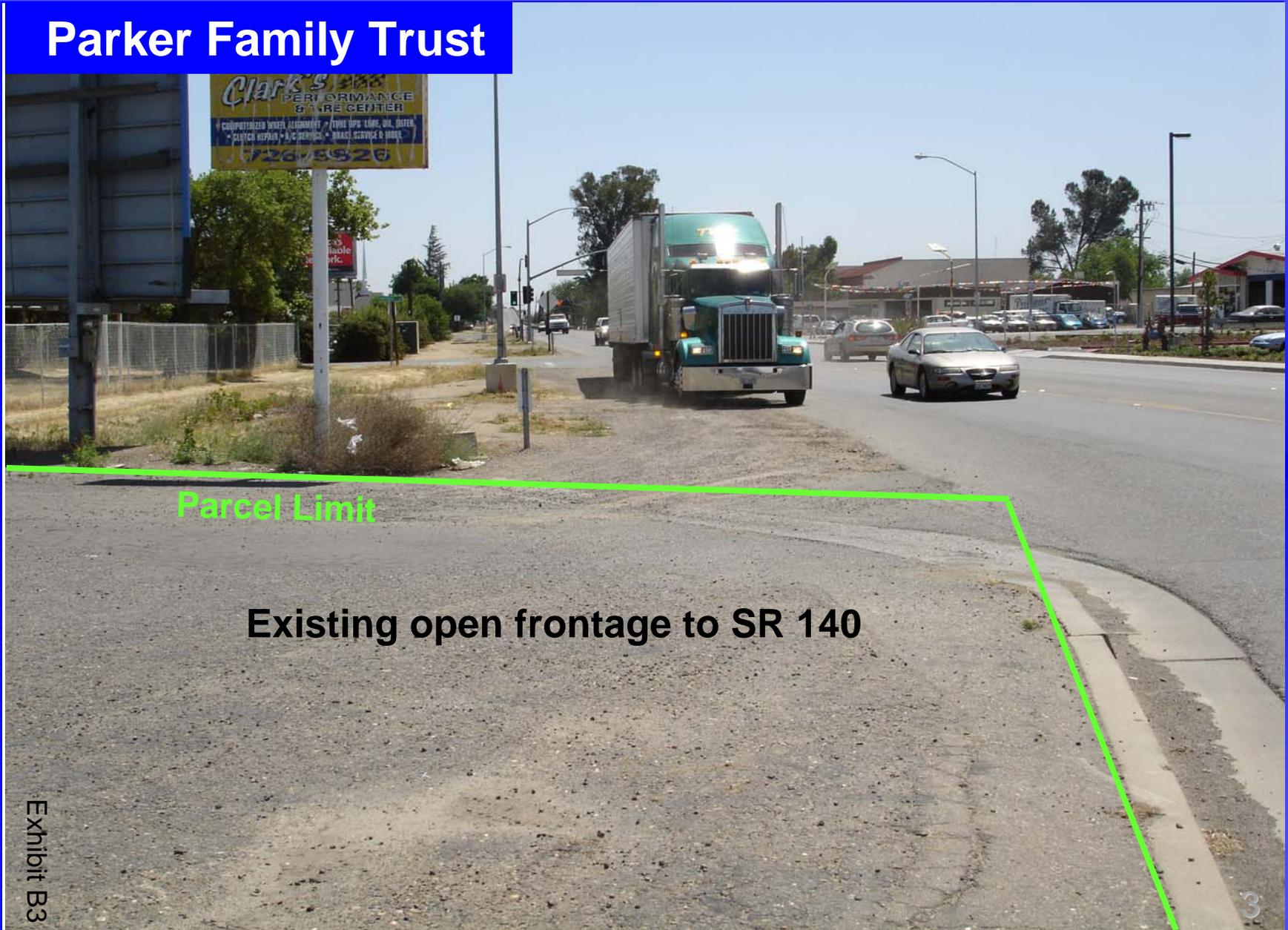


Exhibit B3

Parker Family Trust



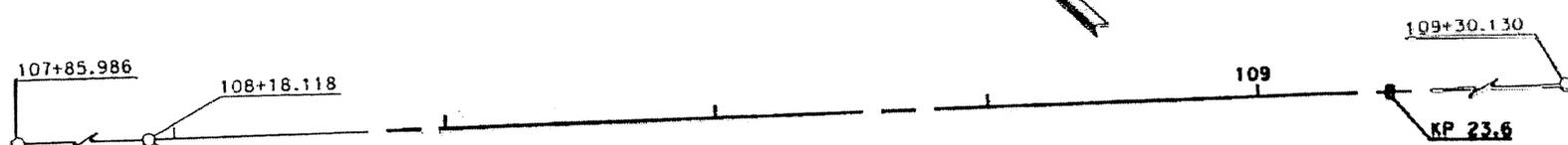
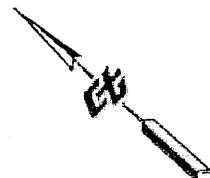
Existing driveway onto property
from East 21st Street

COUNTY OF STANISLAUS

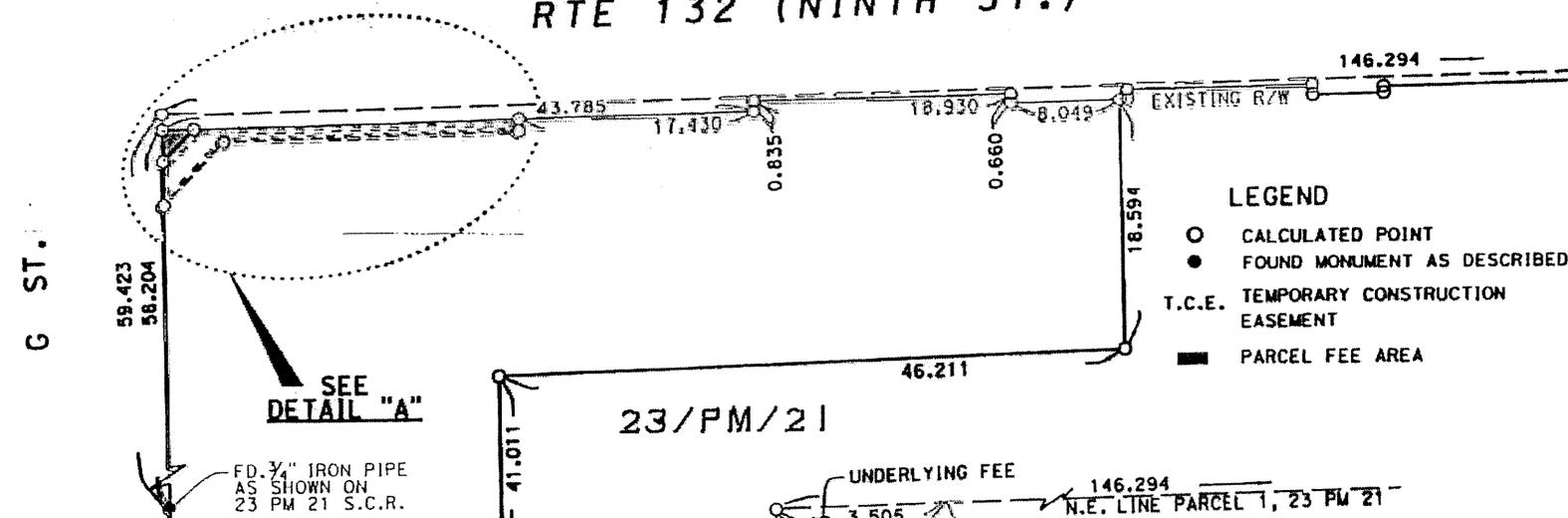
T. 3 S., R. 9 E., M.D.M.

SECTION 32

EXHIBIT C

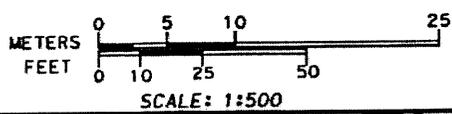


RTE 132 (NINTH ST.)

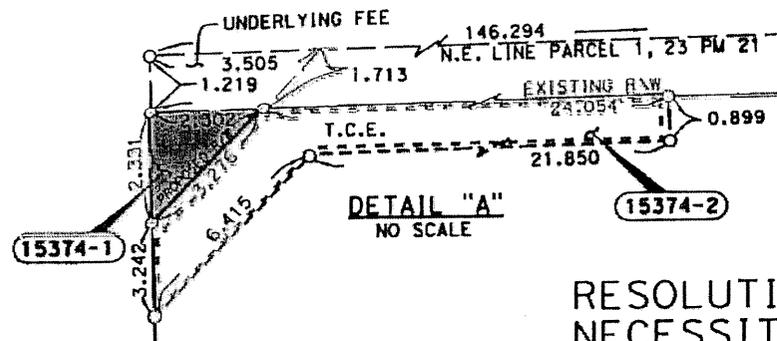


- LEGEND**
- CALCULATED POINT
 - FOUND MONUMENT AS DESCRIBED
 - T.C.E. TEMPORARY CONSTRUCTION EASEMENT
 - PARCEL FEE AREA

Coordinates and bearings are on CCS NAD83-92(1991.35) Zone 3. Distances and stationing are grid distances. Divide by 0.99993174 to obtain ground distances. All distances are in meters unless otherwise noted. To convert meters to U.S. Survey feet, multiply distance by 3937/1200.



23/PM/21



DETAIL "A"
NO SCALE

CITY OF MODESTO

RESOLUTION OF NECESSITY MAP

10 STA 132 (PM 15.0/16.8) (KP 24.1/27.0)

EXHIBIT B5