

**REPORT TO MAYOR AND COUNCIL**

TO THE HONORABLE MAYOR AND COUNCIL:

DATE: June 24, 2014

SUBJECT: RESOLUTION NO. 14-51 TO CLARIFY RESOLUTION OF NECESSITY NO. 14-22 BY REPLACING THE INCORRECT LEGAL DESCRIPTIONS AND PLAT MAPS INADVERTENTLY ATTACHED AS EXHIBITS A AND B TO RESOLUTION NO. 14-22 WITH CORRECTED LEGAL DESCRIPTIONS AND PLAT MAPS THAT ACCURATELY REFLECT THE RECITALS IN RESOLUTION NO. 14-22

Report in Brief

The adoption of Resolution No. 14-51 will allow the City to replace the incorrect legal descriptions and plat maps, which, due to a clerical error, were inadvertently attached to Resolution of Necessity No. 14-22 with the correct legal descriptions and plat maps. Resolution of Necessity No. 14-22 authorized the City to acquire by eminent domain a permanent right-of-way and utility easement and a temporary construction easement from the property located at 4300 Clayton Road and 4420 through 4498 Treat Boulevard (“Property”).

Staff recommends that the City Council adopt Resolution No. 14-51 to correct this clerical error. A copy of Resolution No. 14-51 is attached hereto as Attachment 1.

Background

On April 8, 2014, after providing the Property owner with the requisite notice and opportunity to be heard, the City Council voted (5-0) to adopt Resolution of Necessity No. 14-22, which allows the City to acquire by eminent domain a 7,978 permanent right-of-way and utility easement (“Easement”) and a 9,786 temporary construction easement (“TCE”) from the property located at 4300 Clayton Road and 4420 through 4498 Treat Boulevard (“Property”), which are essential to the Clayton Road/Treat Boulevard Intersection Capacity Improvements Project (“Project”). A copy of Resolution of Necessity No. 14-22 is attached hereto as Attachment 2.

RESOLUTION NO. 14-51 TO CLARIFY RESOLUTION OF NECESSITY NO. 14-22 BY REPLACING
THE INCORRECT LEGAL DESCRIPTIONS AND PLAT MAPS INADVERTENTLY
ATTACHED AS EXHIBITS A AND B TO RESOLUTION NO. 14-22 WITH
CORRECTED LEGAL DESCRIPTIONS AND PLAT MAPS THAT ACCURATELY
REFLECT THE RECITALS IN RESOLUTION NO. 14-22

Page 2

Discussion

Subsequent to City Council approval of Resolution of Necessity No. 14-22, Staff discovered that earlier versions of the legal descriptions and plat maps for the Easement and TCE, which did not accurately reflect the square footage being taken, were attached to and incorporated by reference as Exhibits A and B of Resolution of Necessity No. 14-22. While the April 8, 2014 City Council Staff Report, the Summary of Basis of Appraisal supporting the Government Code Offer and amount of just compensation attached as Attachment No. 2 of the Staff Report, and the recitals in Resolution of Necessity No. 14-22 all provided the accurate description and square footage for the Easement and TCE, the legal descriptions and plat maps attached as Exhibits A and B of Resolution of Necessity No. 14-22 were earlier versions of the documents. A copy of the April 8, 2014 Staff Report regarding the adoption of Resolution of Necessity No. 14-22 is attached hereto as Attachment 3.

Staff has identified the correct legal descriptions and plat maps for the Easement and TCE, which accurately reflect the Property acquisition approved by the City Council on April 8, 2014. The revised legal descriptions and plat maps, which would replace the incorrect versions attached to Resolution of Necessity No. 14-22, are included as Exhibits A1 and B1 of the attached Resolution No. 14-51.

The City sent the property owner and its attorney a notice that a resolution clarifying Resolution of Necessity No. 14-22 would be considered at the June 24, 2014 City Council meeting. The property owner's attorney responded to that notice on June 16, 2014 with a letter, which included several inaccurate statements and asserted primarily the same objections that he stated on the record at the hearing where the City Council adopted Resolution of Necessity No. 14-22. A copy of the letter from the property owner's attorney is attached hereto as Attachment 4. To correct the inaccuracies in the owner's June 16, 2014 letter, the City responded on June 18, 2014. A copy of the City's letter is attached hereto as Attachment 5.

Fiscal Impact

None. The recommended resolution provides a correction to Resolution of Necessity No. 14-22 to accurately reflect the Property being acquired as approved by the City Council on April 8, 2014.

Public Contact

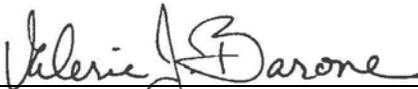
The City Council agenda was posted as required by statute. Notice that a resolution clarifying Resolution of Necessity No. 14-22 would be considered at the June 24, 2014 City Council meeting was sent to the attorney for the owner of the Property.

RESOLUTION NO. 14-51 TO CLARIFY RESOLUTION OF NECESSITY NO. 14-22 BY REPLACING
THE INCORRECT LEGAL DESCRIPTIONS AND PLAT MAPS INADVERTENTLY
ATTACHED AS EXHIBITS A AND B TO RESOLUTION NO. 14-22 WITH
CORRECTED LEGAL DESCRIPTIONS AND PLAT MAPS THAT ACCURATELY
REFLECT THE RECITALS IN RESOLUTION NO. 14-22

Page 3

Recommendation for Action

Staff Recommends the City Council adopt Resolution No. 14-51 Clarifying Resolution of Necessity No. 14-22 Which Authorized the Acquisition by Eminent Domain of a Portion of Assessor Parcel Numbers 133-150-009, 108, 121, 122, 123, and 124 (4300 Clayton Road and 4420-4498 Treat Boulevard, Concord, CA) for a Permanent Right of Way and Utility Easement and Temporary Construction Easement for the City of Concord's Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project (Code of Civil Procedure Section 1245.230) by Approving Corrected Legal Descriptions and Plat Maps And Replacing the Legal Descriptions and Plat Maps Attached as Exhibits A and B to Resolution of Necessity No. 14-22.



Valerie J. Barone
City Manager

Valerie.barone@cityofconcord.org

Prepared by: Susanne Brown
Senior Assistant City Attorney
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Reviewed by: Mark S. Coon
City Attorney
Mark.coon@cityofconcord.org

Attachment 1: Resolution No. 14-51

Attachment 2: Resolution No. 14-22

Attachment 3: Report to Council dated April 8, 2014

Attachment 4: June 16, 2014 Letter From Scott E. Jenny, Esq.

Attachment 5: June 18, 2014 Letter From Special Counsel to Scott E. Jenny, Esq

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1 **BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD**
2 **COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

3 **Clarifying Resolution No. 14-22 Which Authorized**
4 **the Acquisition by Eminent Domain of a Portion of**
5 **Assessor Parcel Numbers 133-150-009, 108, 121, 122,**
6 **123, and 124 (4300 Clayton Road and 4420-4498**
7 **Treat Boulevard, Concord, CA) for a Permanent**
8 **Right of Way and Utility Easement and Temporary**
9 **Construction Easement for the City of Concord's**
10 **Clayton Road/Treat Boulevard/Denkinger Road**
11 **Intersection Capacity Improvement Project (Code of**
12 **Civil Procedure Section 1245.230) by Approving**
13 **Corrected Legal Descriptions and Plat Maps And**
14 **Replacing the Legal Descriptions and Plat Maps**
15 **Attached as Exhibits A and B to Resolution No. 14-22**

Resolution No. 14-51

16 **WHEREAS**, the City of Concord's ("City") Clayton Road/Treat Boulevard/Denkinger Road
17 Intersection Capacity Improvement Project ("Project") is a public project intended to improve safety
18 and decrease traffic delay by widening the Treat Boulevard approach of the intersection to the
19 appropriate level to allow for an 8-phase signal operation, which will substantially increase the
20 intersection's capacity and improve its level of service; and

21 **WHEREAS**, on April 8, 2014 the City Council conducted a duly noticed public hearing to
22 receive and consider comments on the City Council's consideration of Resolution No. 14-22,
23 Authorizing the Acquisition by Eminent Domain of a Portion of Assessor Parcel Numbers 133-150-
24 009, 108, 121, 122, 123, and 124 (4300 Clayton Road and 4420-4498 Treat Boulevard, Concord, CA)
25 ("Property") for a Permanent Right of Way and Utility Easement and Temporary Construction
26 Easement for the City of Concord's Clayton Road/Treat Boulevard/Denkinger Road Intersection
27 Capacity Improvement Project (Code of Civil Procedure Section 1245.230) ("Resolution No. 14-22");
28 and

29 **WHEREAS**, Resolution No. 14-22 authorized the City to acquire by eminent domain a right-
30 of-way and utility easement consisting of 7,978 square feet (the "Easement") and a temporary
31 construction easement consisting of 9,786 square feet ("TCE") along Treat Boulevard (collectively
32 "Property"); and

33 **WHEREAS**, on January 16, 2014, the City sent an offer to the owner of the Property to

1 purchase the Easement and TCE in conformance with Government Code section 7267.2(a); and

2 **WHEREAS**, notice of the City Council’s intention to consider and adopt Resolution No. 14-
3 22 at the April 8, 2014 City Council meeting was duly given on March 14, 2014 as required by law.
4 Thereafter, a second notice of the City Council’s intention to adopt this resolution of necessity was
5 duly given on March 24, 2014 as required by law; and

6 **WHEREAS**, on the date and at the time and place fixed for the hearing Scott E. Jenny
7 appeared on behalf of the owner of the Property, Bel Air Development Company, and testified before
8 the City Council; and

9 **WHEREAS**, on the date and at the time and place fixed for the hearing, the City Council did
10 hear and consider all of the evidence presented and information related to the matter, as presented at
11 the public meetings of the City Council identified herein, including any supporting reports by City
12 Staff, and any information provided during public meetings; and

13 **WHEREAS**, on April 8, 2014, the City Council approved Resolution No. 14-22; and

14 **WHEREAS**, due to a clerical error, Exhibit A of Resolution No. 14-22, presented to the City
15 Council was not the most current version of the legal description and plat map showing the location of
16 the Easement to be acquired, however, the staff report, the appraisal supporting the amount of just
17 compensation, and the recitals in Resolution No. 14-22 did contain an accurate description of the
18 Easement; and

19 **WHEREAS**, due to a clerical error, Exhibit B of Resolution No. 14-22, presented to the City
20 Council was not the most current version of the legal description and plat map showing the location of
21 the TCE to be acquired, however, the staff report, the appraisal supporting the amount of just
22 compensation, and the recitals in Resolution No. 14-22 did contain an accurate description of the
23 TCE; and

24 **WHEREAS**, the City Council wishes to correct the clerical error by updating the legal
25 description and plat map attached as Exhibit A to Resolution No. 14-22 with the legal description and
26 plat map for the Easement set forth in **Exhibit A1**, attached hereto; and

27 **WHEREAS**, the legal description and plat map set forth for the Easement in Exhibit A1 is
28 designed to supersede that legal description and plat map in Exhibit A of Resolution No. 14-22, but

1 shall have no effect on the remainder of Resolution No. 14-22; and

2 **WHEREAS**, the City Council wishes to correct the clerical error by updating the legal
3 description and plat map attached as Exhibit B to Resolution No. 14-22 with the legal description and
4 plat map for the TCE set forth in **Exhibit B1**, attached hereto; and

5 **WHEREAS**, the legal description and plat map set forth for the TCE in Exhibit B1 is designed
6 to supersede that legal description and plat map in Exhibit B of Resolution No. 14-22, but shall have
7 no effect on the remainder of Resolution No. 14-22; and

8 **NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Concord,**
9 **that Resolution No. 14-22 is amended as follows:**

10 **1. Recitals.** The recitals to this Resolution are true and correct and material to the
11 adoption of this Resolution.

12 **2. Amendment of References to Exhibit A.** All references to Exhibit A in Resolution
13 No. 14-22 are amended in their entirety to refer to Exhibit A1.

14 **3. Amendment of References to Exhibit B.** All references to Exhibit B in Resolution
15 No. 14-22 are amended in their entirety to refer to Exhibit B1.

16 **4. Attachments.** Exhibit A to Resolution No. 14-22 is hereby replaced by Exhibit A1,
17 which is attached hereto and incorporated by this reference. Exhibit B to Resolution 14-22 is hereby
18 replaced by Exhibit B1, which is attached hereto and incorporated by this reference.

19 **5. Effect on Resolution 14-22.** Except as expressly provided for herein, the adoption of
20 this Resolution shall have no effect on Resolution No. 14-22, which shall remain in full force and
21 effect.
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23 //

24 //

25 //

26 //

27 //

28 //

EXHIBIT A-1

RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

August 14, 2013
JN: 130987
Page 1 of 2

**LEGAL DESCRIPTION
RIGHT OF WAY AND UTILITY
EASEMENT**

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 76 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532642 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 52 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°20'45" West 74.97 feet;

Thence, southeasterly and leaving said centerline South 64°39'15" East 42.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1963 in Book 4395 Official Records at Page 234 at said Office of said County Recorder and to the **TRUE POINT OF BEGINNING**;

Thence, southerly along said easterly boundary line South 25°20'45" West 422.94 feet;

Thence, easterly and leaving said easterly boundary line South 64°49'15" East 18.59 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 68°26'47" East 21.49 feet to southerly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southerly right of way line the following two (2) courses:

- 1) North 64°26'48" West 12.04 feet to a point of a tangent curve, concave southeasterly and having a radius of 20.00 feet, and
- 2) along said curve 31.41 feet and through a central angle of 89°58'27" to the **TRUE POINT OF BEGINNING**.

CONTAINING 7,978 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

Daniel W. Bustamante, PLS 7030
License Expires: September 30, 2014

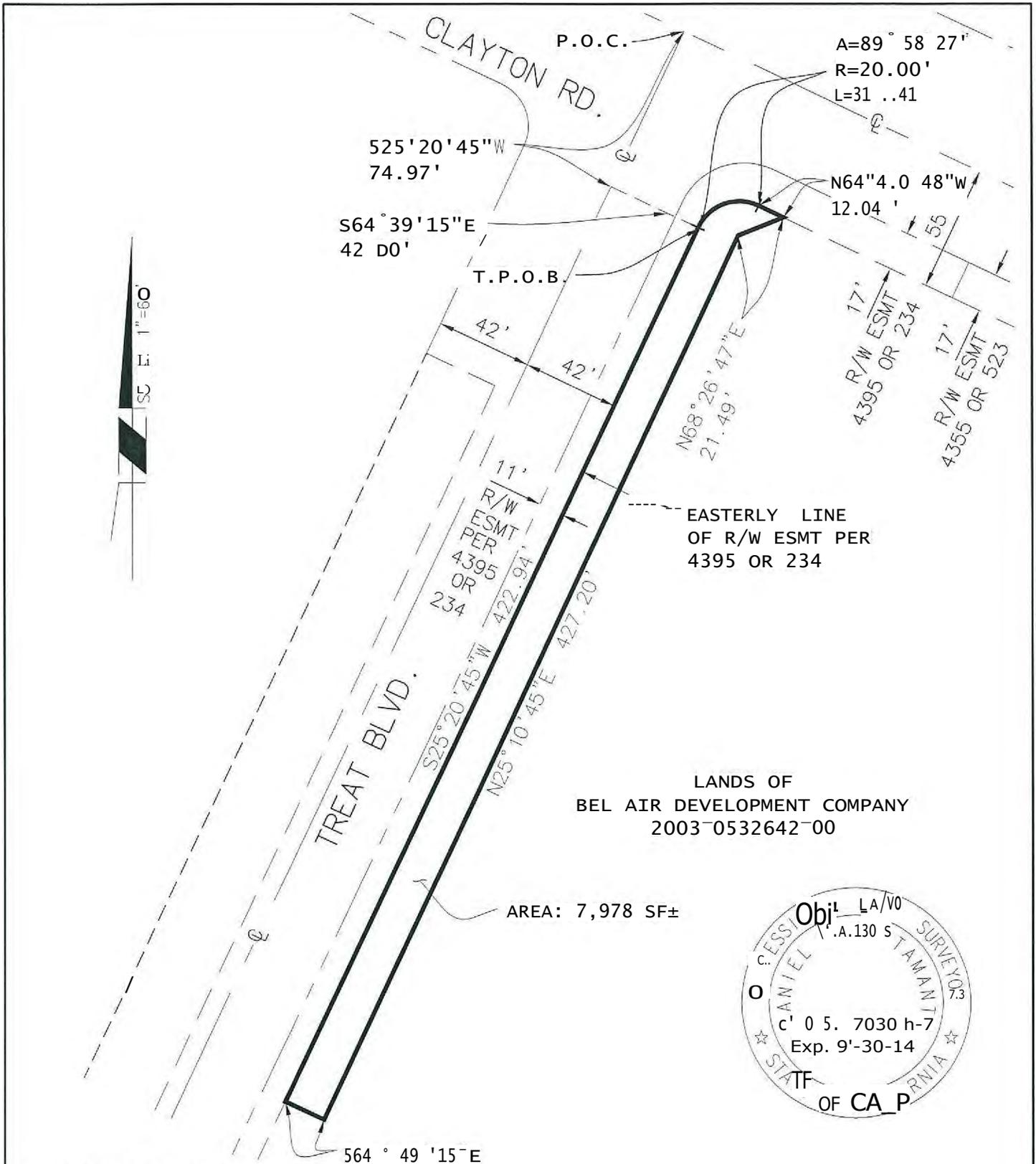


EXHIBIT "B"

SKETCH TO ACCOMPANY A
LEGAL DESCRIPTION FOR
TREAT BOULEVARD
RIGHT OF WAY EASEMENT
AND UTILITIES
CITY OF CONCORD
COUNTY OF CONTRA COSTA

SHEET 1 OF 1 SHEETS



500 YGNACIO VALLEY ROAD, SUITE 300
WALNUT CREEK CALIFORNIA 94596-3847
925.906.1460 • FAX 925406.1465 • www.FtBF.com

14, IGL:17, T 14, 2013

J.N. 130987

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EXHIBIT B-1

RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

August 14, 2013
JN: 130987
Page 1 of 2

**LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION
EASEMENT**

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 76 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532642 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 52 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°20'45" West 74.97 feet;

Thence, southeasterly and leaving said centerline South 64°39'15" East 42.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1963 in Book 4395 Official Records at Page 234 at said Office of said County Recorder;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.94 feet to the **TRUE POINT OF BEGINNING**;

Thence, easterly and leaving said easterly boundary line South 64°49'15" East 18.59 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 68°26'47" East 21.49 feet to southerly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southerly right of way line South 64°40'48" East 35.63 feet;

Thence, leaving said southerly right of way line, South 25°19'12" West 8.00 feet;

Thence, North 64°40'48" West 27.34 feet;

Thence, South 25°10'45" West 390.78 feet;

Thence, North 64°49'15" West 14.50 feet;

Thence, South 25°10'45" West 49.05 feet;

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Thence, North 64°49'15" West 27.10 feet to said easterly boundary line (4395 O.R. 234);

Thence, along said easterly boundary line North 25°20'45" East 5.00 feet to the **TRUE POINT OF BEGINNING**.

CONTAINING 9,786 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

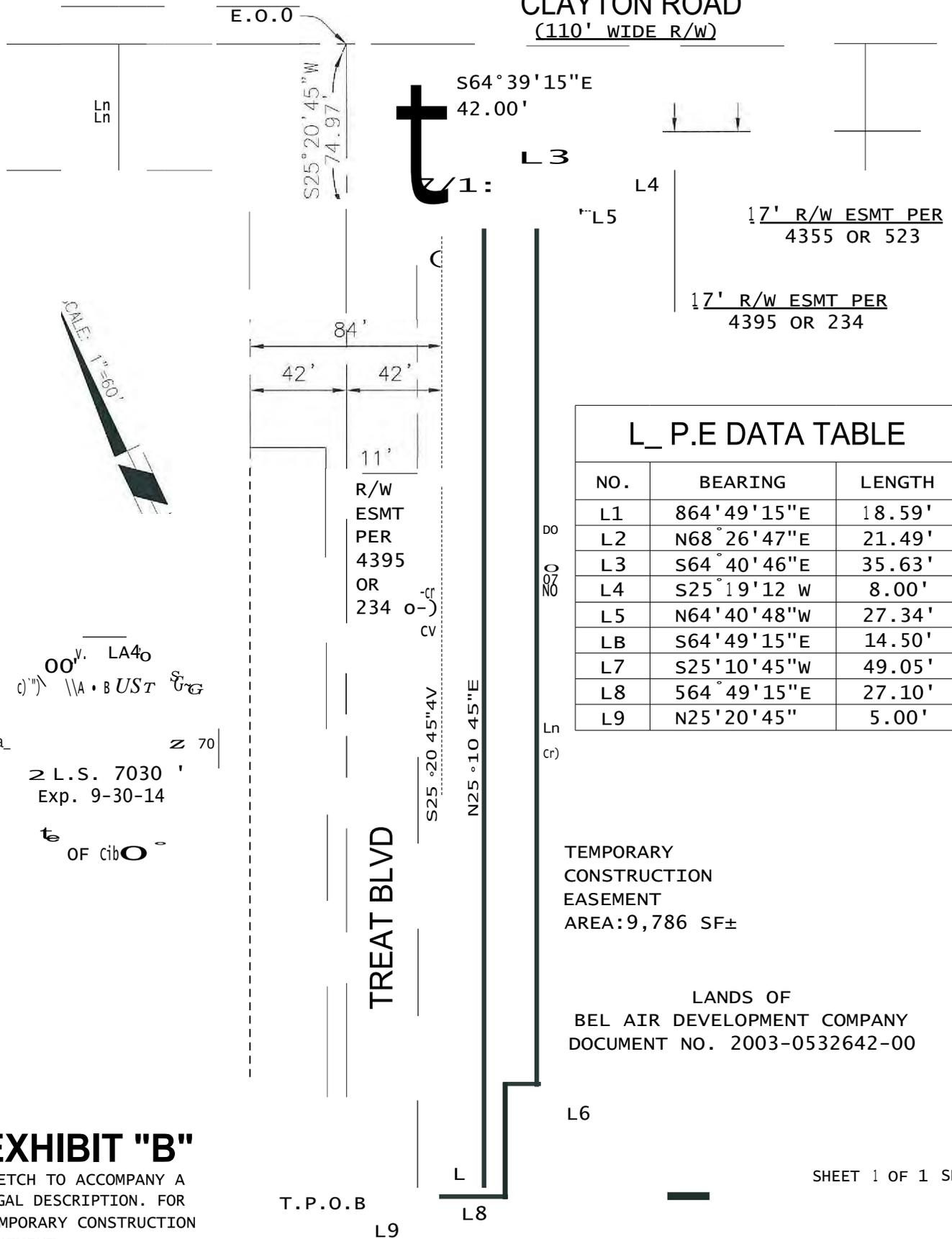
SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

Daniel W. Bustamante, PLS 7030
License Expires: September 30, 2014

CLAYTON ROAD

(110' WIDE R/W)



17' R/W ESMT PER
4355 OR 523

17' R/W ESMT PER
4395 OR 234

L_P.E DATA TABLE

NO.	BEARING	LENGTH
L1	864°49'15"E	18.59'
L2	N68°26'47"E	21.49'
L3	S64°40'46"E	35.63'
L4	S25°19'12 W	8.00'
L5	N64°40'48"W	27.34'
LB	S64°49'15"E	14.50'
L7	S25°10'45"W	49.05'
L8	564°49'15"E	27.10'
L9	N25°20'45"	5.00'

R/W
ESMT
PER
4395
OR
234

TREAT BLVD

TEMPORARY
CONSTRUCTION
EASEMENT
AREA: 9,786 SF±

LANDS OF
BEL AIR DEVELOPMENT COMPANY
DOCUMENT NO. 2003-0532642-00

SHEET 1 OF 1 SHEET

EXHIBIT "B"

SKETCH TO ACCOMPANY A
LEGAL DESCRIPTION. FOR
TEMPORARY CONSTRUCTION
EASEMENT
CITY OF CONCORD
COUNTY OF CONTRA COSTA
STATE OF CALIFORNIA

CONSULTING
A=IIICompany

500 YGNACIO VALLEY ROAD, SUITE 300
WALNUT CREEK, CALIFORNIA 94596-3047
925.906.1460 • FAX 925.906.1465 • www.RBF.mm

AUGUST 14, 2013

J.N. 130987

ORIGINAL

BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

Authorizing the Acquisition by Eminent Domain of a Portion of Assessor Parcel Numbers 133-150-009, 108, 121, 122, 123, and 124 (4300 Clayton Road and 4420-4498 Treat Boulevard, Concord, CA) for a Permanent Right of Way and Utility Easement and Temporary Construction Easement for the City of Concord's Clayton/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project (Code of Civil Procedure Section 1245.230)

Resolution No. 14-22

WHEREAS, the City of Concord's ("City") Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project ("Project") is a public project intended to improve safety and decrease traffic delay by widening the Treat Boulevard approach of the intersection to the appropriate level to allow for an 8-phase signal operation, which will substantially increase the intersection's capacity and improve its level of service; and

WHEREAS, the Project will include the construction of a paved, new (relocated), right turn lane, a replacement sidewalk for Treat Boulevard, and replacement landscaping ("Project"); and

WHEREAS, in order for the Project to proceed, it is necessary for the City to acquire a right-of-way and utility easement consisting of 7,978 square feet (the "Easement") and a temporary construction easement consisting of 9,786 square feet ("TCE") along Treat Boulevard; and

WHEREAS, the Easement to be acquired is a portion of the property described as Assessor Parcel Numbers 133-150-009, 108, 121, 122, 123, and 124 and is situated along the Treat Boulevard frontage commonly known as 4300 Clayton Road and 4420-4498 Treat Boulevard, Concord, CA. There are 24 parking spaces that will be acquired. Exhibit A, attached hereto, provides the legal description and plat map showing the location of the Easement to be acquired; and

WHEREAS, the TCE to be acquired shall be non-exclusive and is located along the Treat Boulevard frontage adjacent to the east side of the permanent easement and is improved with landscaping as well as asphalt and concrete paving, and is described as a portion of Assessor Parcel Numbers 133-150-009, 108, 121, 122, 123, and 124 commonly known as 4300 Clayton Road and 4420-4498 Treat Boulevard, Concord, CA. Exhibit B, attached hereto, provides the legal description

1 and plat map showing the location of the TCE to be acquired; and

2 **WHEREAS**, the TCE shall be non-exclusive and will be for a one year term, with a
3 possibility of a three-month extension, beginning on the date the City sends written notice to the
4 owner of the Property reflecting the City's intent to start construction on the Project and make use of
5 the TCE, and terminating one year, or one year and three months thereafter; and

6 **WHEREAS**, the City is authorized to acquire the Easement described in Exhibit A and the
7 TCE described in Exhibit B, attached hereto (collectively the "Property"), and to exercise the power of
8 eminent domain for public use in accordance with the statutes which authorize the City to acquire the
9 Property by eminent domain for the Project, including, but are not limited to, Article 1, Section 19 of
10 the Constitution of the State of California, Sections 37350.5, 40401, 40404 of the Government Code,
11 Section 10102 of the Streets and Highway Code, and Sections 1240.140 and 1230.010 et seq. of the
12 Code of Civil Procedure; and

13 **WHEREAS**, the potential environmental effects of the Project were examined as part of
14 Resolution No. 13-05 PC dated April 17, 2013, wherein the Planning Commission of the City of
15 Concord adopted a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program
16 for the Clayton Road/Treat Boulevard Intersection Capacity Improvements in conjunction with the
17 Project; and

18 **WHEREAS**, on January 16, 2014, the City sent an offer to the owner of the Property to
19 purchase the Property in conformance with Government Code section 7267.2(a); and

20 **WHEREAS**, notice of the City Council's intention to adopt this resolution of necessity was
21 duly given on March 14, 2014 as required by law, which notice is attached hereto as **Exhibit C**.
22 Thereafter, a second notice of the City Council's intention to adopt this resolution of necessity was
23 duly given on March 24, 2014 as required by law, which notice is attached hereto as **Exhibit D**; and

24 **WHEREAS**, and on the date and at the time and place fixed for the hearing, the City Council
25 did hear and consider all of the evidence presented; and

26 **WHEREAS**, the City Council has considered all information related to this matter, as
27 presented at the public meetings of the City Council identified herein, including any supporting
28 reports by City Staff, and any information provided during public meetings.

1 **NOW, THEREFORE, BE IT RESOLVED, by at least a two-thirds vote under Code of**
2 **Civil Procedure Sections 1240.030 and 1245.230, that the City Council of the City of Concord**
3 **FINDS and DETERMINES that:**

4 **Section 1.** The public interest and necessity require the Project.

5 **Section 2.** Project is planned or located in a manner that will be most compatible with the
6 greatest public good and the least private injury.

7 **Section 3.** The Property described herein in Exhibits A and B is necessary for the Project.

8 **Section 4.** The offer required by section 7267.2 of the Government Code was made to the
9 Property owner or owners of record.

10 **Section 5.** The City has complied with all conditions and statutory requirements necessary to
11 exercise the power of eminent domain to acquire the Property described herein.

12 **Section 6.** The City Council hereby finds that the facts set forth in the recitals to this
13 Resolution are true and correct, and establish the factual basis for the City Council's adoption of this
14 Resolution.

15 **Section 7.** The City Council determines that the potential environmental effects of the Project
16 were adequately examined as part of Resolution No. 13-05 PC dated April 17, 2013, wherein the
17 Planning Commission of the City of Concord adopted a Mitigated Negative Declaration and
18 Mitigation Monitoring and Reporting Program for the Clayton Road/Treat Boulevard Intersection
19 Capacity Improvements in conjunction with the Project.

20 **Section 8.** The City Attorney or his duly authorized designee is hereby authorized and
21 directed to institute and conduct to conclusion an action in eminent domain for the acquisition of the
22 Property and to take such action as he may deem advisable or necessary in connection therewith.

23 **Section 9.** The City Manager or her duly authorized designee is hereby authorized and
24 directed to accept all Regional Measure J funds appropriated for the Project.

25 **Section 10.** The City may deposit with the State Treasury the probable amount of
26 compensation and obtain an order permitting the City of Concord to take prejudgment possession of
27 the Property.

28 **Section 11.** This Resolution shall take effect immediately upon its adoption.

1 **PASSED AND ADOPTED** by the City Council of the City of Concord on April 8, 2014, by
2 the following vote:

3 **AYES:** Councilmembers - E. Birsan, D. Helix, L. Hoffmeister, R. Leone, T. Grayson

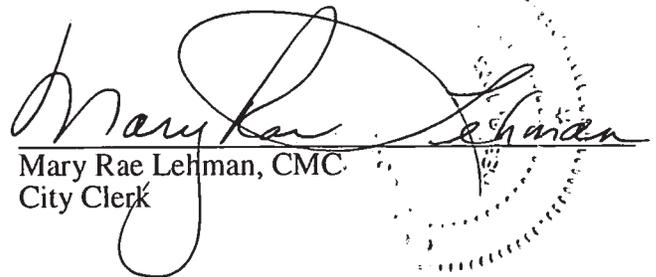
4 **NOES:** Councilmembers - None

5 **ABSTAIN:** Councilmembers - None

6 **ABSENT:** Councilmembers - None

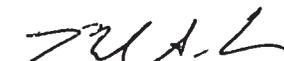
7 **I HEREBY CERTIFY** that the foregoing Resolution No. 14-22 was duly and regularly
8 adopted at a regular meeting of the City Council of the City of Concord on April 8, 2014.

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Mary Rae Lehman, CMC
City Clerk

APPROVED AS TO FORM:



Mark S. Coon
City Attorney

- Exhibit A - Legal Description and Plat Map of Easement
- Exhibit B - Legal Description and Plat Map of TCE
- Exhibit C - March 14, 2014 Notice Intention to Adopt Resolution of Necessity
- Exhibit D - March 24, 2014 Notice Intention to Adopt Resolution of Necessity

RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94585

January 08, 2013
JN: 130987
Page 1 of 2

EXHIBIT "A"
LEGAL DESCRIPTION
RIGHT OF WAY AND UTILITY
EASEMENT

A portion of the Johnson Tract, recorded on January 25, 1866, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 76 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1980 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0932842 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 62 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 76.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1983 in Book 4395 Official Records at Page 234 at said Office of said County Recorder and to the **TRUE POINT OF BEGINNING**;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet;

Thence, southeasterly and leaving said easterly boundary line South 64°49'15" East 16.60 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 68°26'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line the following two (2) courses:

- 1) North 64°28'48" West 11.18 feet to a point of a tangent curve, concave southeasterly and having a radius of 20.00 feet, and
- 2) along said curve 31.47 feet and through a central angle of 80°08'28" to the **TRUE POINT OF BEGINNING**.

CONTAINING 7.337 Square Feet, more or less.

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Page 1 of 2

DEAN CHAPMAN & ASSOCIATES, INC.

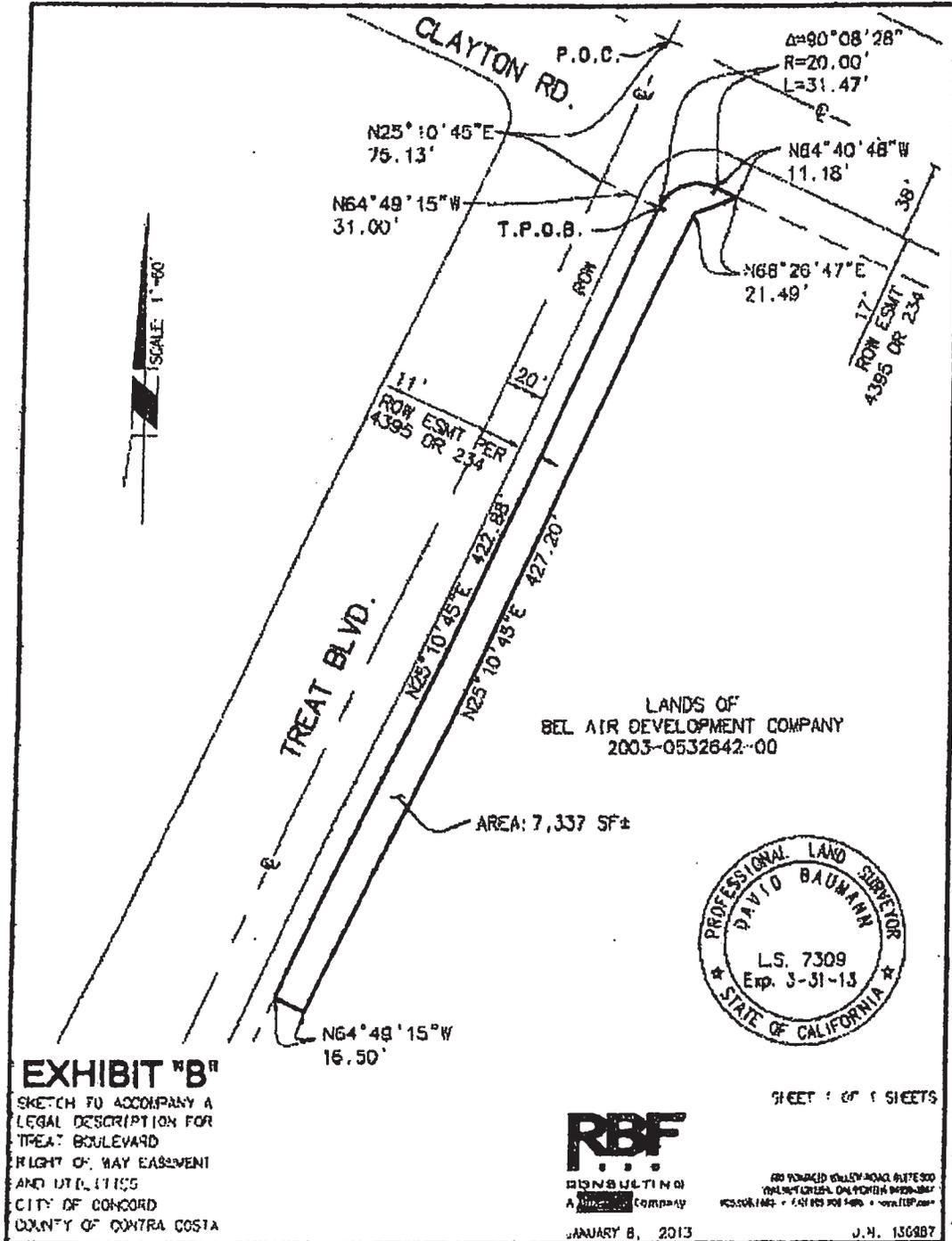
EXHIBIT A

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013



Bel Air Development Company
Concord, CA

RBF CONSULTING
800 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94598

March 4, 2013
JW: 130887
Page 1 of 2

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION
EASEMENT

A portion of the Johnson Tract, recorded on January 25, 1986, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 76 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cuffman, Trustee of the Cuffman Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0632542 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 52 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1963 in Book 4395 Official Records at Page 234 at said Office of said County Recorder;

Thence, southally along said easterly boundary line South 25°10'45" West 422.88 feet to the **TRUE POINT OF BEGINNING**;

Thence, southeasterly and leaving said easterly boundary line South 64°49'15" East 16.90 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 66°26'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line South 64°40'48" East 36.63 feet;

Thence, leaving said southeasterly right of way line, South 25°19'12" West 8.00 feet;

Thence, North 64°40'48" West 27.34 feet;

Thence, South 25°10'45" West 390.78 feet;

Thence, North 64°49'15" West 14.50 feet;

Thence, South 25°10'45" West 49.06 feet;

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Page 1 of 2

Thence, North $64^{\circ}49'16''$ West 25.00 feet to said easterly boundary line (4395 O.R. 234);

Thence, along said easterly boundary line North $25^{\circ}10'45''$ East 5.00 feet to the **TRUE POINT OF BEGINNING**.

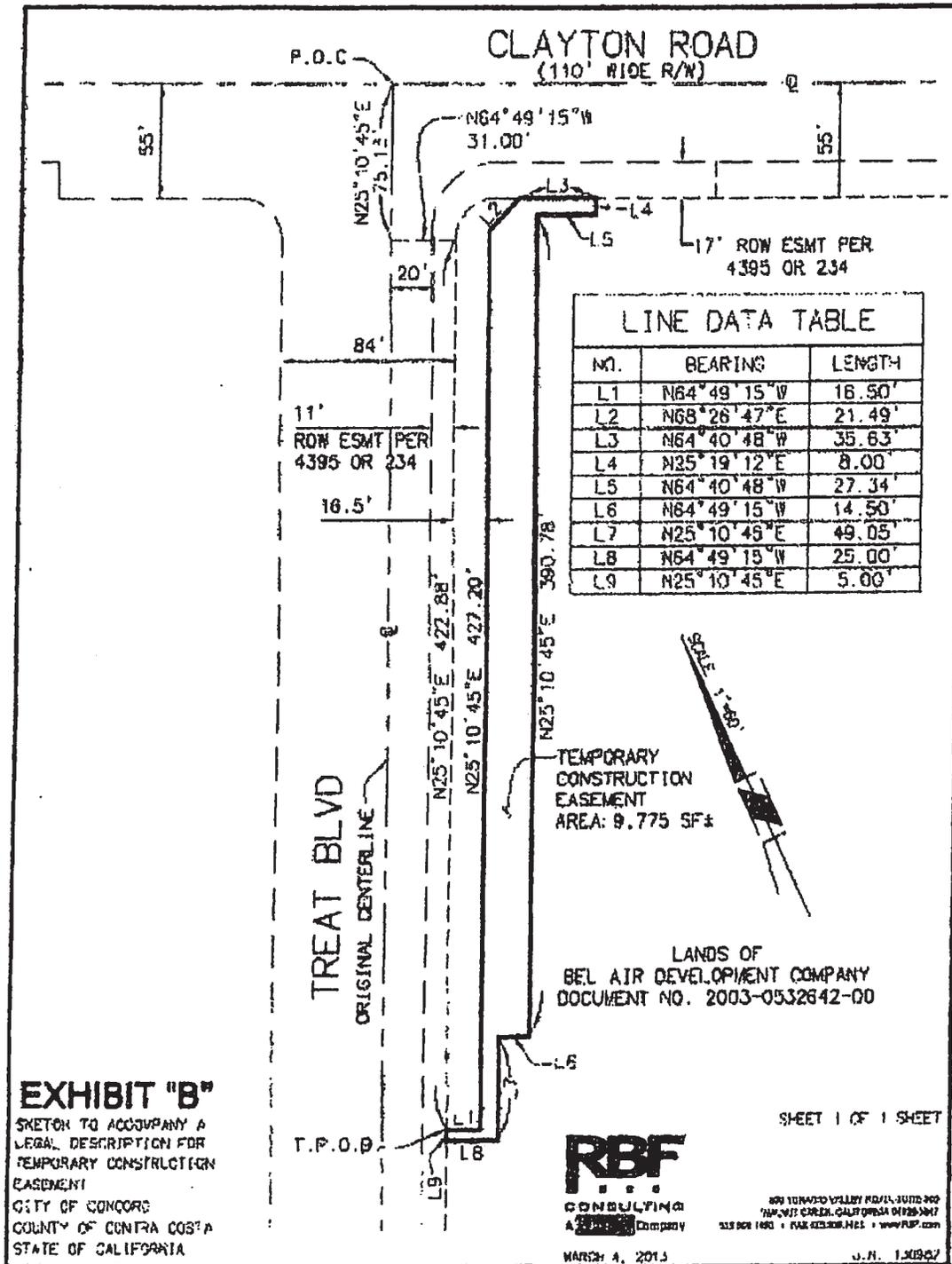
CONTAINING 9,775 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013





*mailed
3-14-14*

City of Concord
1950 Parkside Drive, MS/03
Concord, CA 94519-2578
FAX: (925) 671-3375
Telephone: (925) 671-3430

LETTER OF TRANSMITTAL

Bel Air Development Company
c/o Zimmerman Management
1330 Broadway, Suite 1060
Oakland, CA 94612



DATE: March 14, 2014

RE: Notice of Intention to Adopt a Resolution of Necessity –
Clayton Road/Treat/Denkinger Rd. Capacity Improvement Project.

The attached document is transmitted for your records.

Enclosed please find the original copy of the "Notice of Intention to Adopt A Resolution of Necessity to Acquire Property by Eminent Domain" within the City of Concord for the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project. Please note that a **Public Hearing** on this matter will be held on **Tuesday, April 8, 2014 at 6:30 p.m.**, or as soon thereafter as the matter may be heard, in the **City Council Chamber** located at **1950 Parkside Drive in Concord.**

Sincerely,

Mary Rae Lehman
City Clerk

Enclosure

cc: Scott Jenny, Attorney at Law – 738 Ferry Street, Martinez, CA 94553
Megan A. Burke, Burke, Williams & Sorensen – 1901 Harrison St., 9th Fl. Oakland, CA 94612

COPY

Bel Air Development Company
c/o Zimmerman Management
1330 Broadway, Suite 1060
Oakland, CA 94612

RE: APNs: 133-150-009, 108, 121, 122, 123, 124

**NOTICE OF INTENTION
TO ADOPT A RESOLUTION OF NECESSITY
TO ACQUIRE PROPERTY BY EMINENT DOMAIN**

CITY OF CONCORD

**Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement
Project**

Re: Notice of Hearing Regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain [California Code of Civil Procedure section 1245.235].

1. **Notice of Hearing Regarding Intent of the City Council of the City of Concord to Consider the Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain.** The City Council of the City of Concord intends to hold a hearing to consider whether a Resolution of Necessity should be adopted which, if adopted, will authorize the City of Concord ("City") to acquire the real property described herein by eminent domain for the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project ("Project"). Attached hereto as Exhibit "A" are legal descriptions and plat maps depicting the right of way and utility easement and temporary construction easement which are required for the Project ("Property"). If the Resolution of Necessity is adopted after the hearing, it will authorize the City to acquire the Property by eminent domain for construction of public improvements for the Project. You are being sent this notice as your name appears on the last equalized Contra Costa County assessment roll.

DATE OF HEARING: April 8, 2014

TIME OF HEARING: 6:30 p.m., or as soon thereafter as the matter may be heard.

PLACE OF HEARING: The regular meeting place of the City Council of the City of Concord, City Council Chamber, Concord Civic Center, 1950 Parkside Drive, Concord, CA.

2. **Notice of Your Right to Appear and Be Heard.** You have a right to appear and be heard before the City Council at the above scheduled hearing on the following matters and issues, and to have the City Council give consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity:

a. Whether the public interest and necessity require the proposed Project;

- b. Whether the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. Whether the Property described in the Resolution of Necessity is necessary for the Project;
- d. Whether the offer required by Government Code section 7267.2, together with the accompanying statement and summary of the basis for the amount established as just compensation, was actually made to the owner of record and whether said offer and statement and summary were in a form and contained all of the factual information required by Government Code section 7267.2;
- e. Whether the City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the "right to take") to acquire the Property described herein, as well as any other matter regarding the right to take the Property by eminent domain;
- f. Whether the City has statutory authority to acquire the Property by eminent domain; and
- g. Whether the necessary notification of the Notice of Hearing, as required by the California Code of Civil Procedure section 1245.235 was given in regard to the Property.

The statutes which authorize the City to acquire the Property by eminent domain for the Project include, but are not limited to, Article 1, Section 19 of the Constitution of the State of California, Sections 37350.5 of the Government Code, Section 10102 of the Streets and Highway Code, and Section 1230.010 et seq. of the Code of Civil Procedure.

3. Failure to File a Written Request to Be Heard within Fifteen (15) Days After the Notice Was Mailed Will Result in Waiver of the Right to Appear and Be Heard. If you desire to be heard, please be advised that you must file a written request with the City Clerk within fifteen (15) days after this notice was mailed. You must file your request to be heard with the City Clerk, 1950 Parkside Drive, Concord, CA 94519. Should you elect to mail your request to the City Clerk, it must be actually received by the clerk for filing within fifteen (15) days after this notice was mailed. The date of mailing appears at the end of this notice.

If you file a written request to appear, it should include a statement of the condition(s) that you feel are pertinent to your Property. The seven conditions that may affect your Property are set forth above, designated as (a), (b), (c), (d), (e), (f), and (g). By designating which condition(s) forms the basis of your concerns, and why, you will enable the City Council to have a full and expeditious review made of the Project's effect on your Property.

California Code of Civil Procedure section 1245.235(b)(3) provides that "[f]ailure to file a written request to appear and be heard within 15 days after the notice was mailed will result in

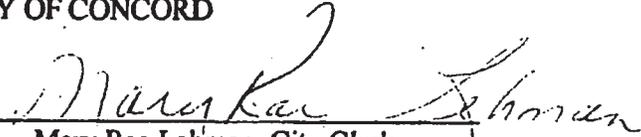
waiver of the right to appear and be heard" on the above matters and issues which are the subject of the hearing.

4. You Will Not Waive the Right to Claim Greater Compensation if You Do Not Appear at The Hearing. The amount of the compensation to be paid for the interest, if any, that you may have in the property related to the City's proposed property acquisition is not a matter or issue being heard by the City Council at this time. Your nonappearance at this noticed hearing will not prevent you from claiming greater compensation, as determined by a court of law in accordance with the laws of the State of California. This notice is not intended to foreclose future negotiations between you and the representatives of the City on the amount of compensation to be paid for your property.

However, if you elect not to appear and be heard, you will be foreclosed from raising in a court of law the issues which are the subject of this noticed hearing and which are concerned with the right to take the Property by eminent domain.

If the City Council elects to adopt the Resolution of Necessity, then within six months of the adoption of the Resolution of Necessity, the City of Concord will commence eminent domain proceedings in Superior Court. In that proceeding, the Court will determine the amount of compensation to which you are entitled.

CITY OF CONCORD

By: 
Mary Rae Lehman, City Clerk

Dated and mailed on: 3/14/14

cc: Scott Jenny

EXHIBIT A

RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94688

January 08, 2013
Jt 130867
Page 1 of 2

EXHIBIT "A"
LEGAL DESCRIPTION
RIGHT OF WAY AND UTILITY
EASEMENT

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California, is in map book D at page 78 and being a portion of land as described in a Quitclaim Deed from Beverly D. Gulien, Trustee of the Gulien Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532642 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 82 of Maps at Pages 4-13 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1181.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 28, 1993 in Book 4399 Official Records at Page 234 at said Office of said County Recorder and to the **TRUE POINT OF BEGINNING**;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet;

Thence, southeasterly and leaving said easterly boundary line South 64°49'15" East 16.50 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 68°29'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4399 OR 234);

Thence, along said southeasterly right of way line the following two (2) courses:

- 1) North 64°28'48" West 11.16 feet to a point of a tangent curve, concave southeasterly and having a radius of 20.00 feet, and
- 2) along said curve 31.47 feet and through a central angle of 80°08'28" to the **TRUE POINT OF BEGINNING**.

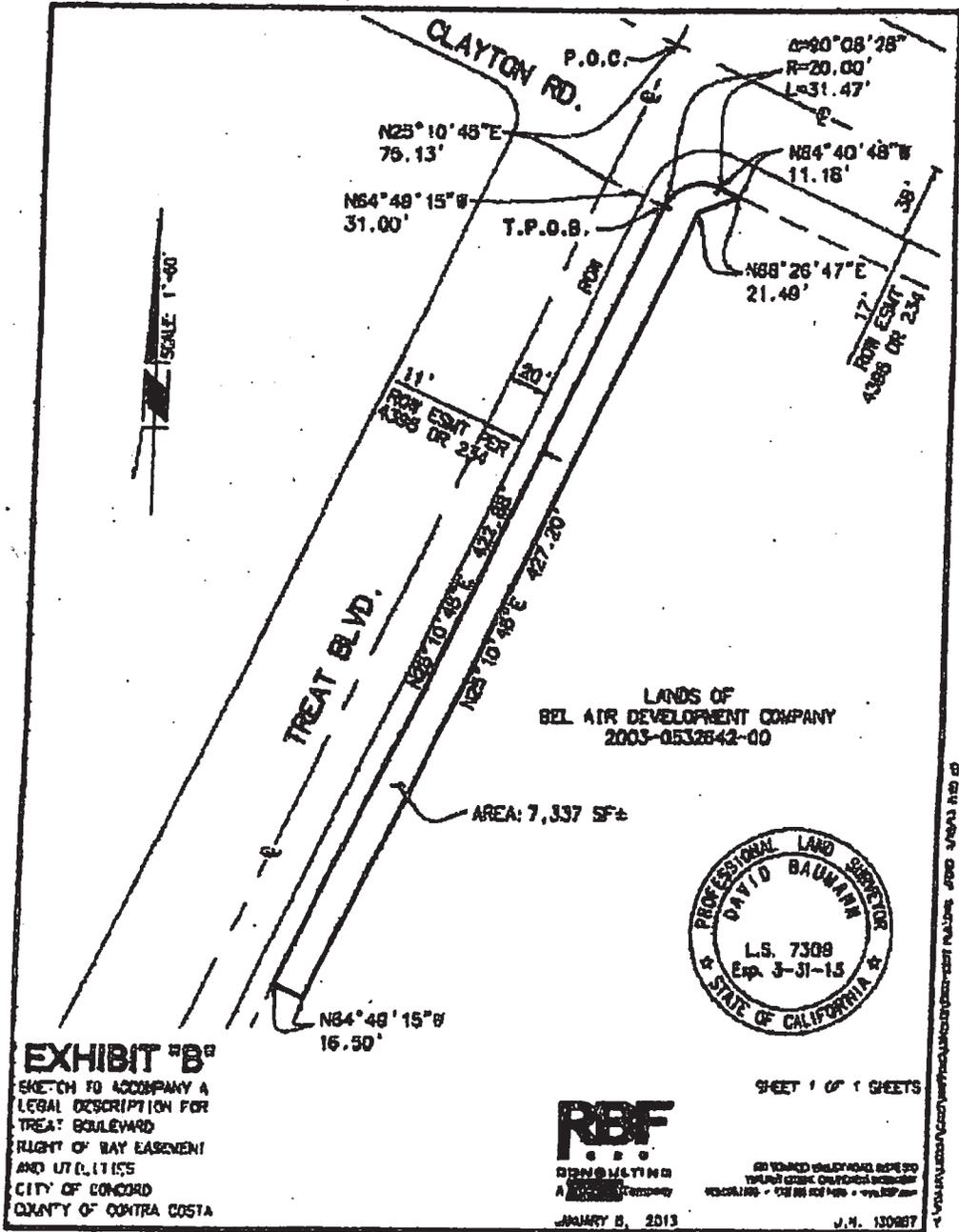
CONTAINING 7.337 Square Feet, more or less

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013



LANDS OF
BEL AIR DEVELOPMENT COMPANY
2003-0532842-00



EXHIBIT "B"
SKETCH TO ACCOMPANY A
LEGAL DESCRIPTION FOR
TREAT BOULEVARD
RIGHT OF WAY EASEMENT
AND UTILITIES
CITY OF CONCORD
COUNTY OF CONTRA COSTA

RBF
SURVEYING & MAPPING
A [unclear] Company
JANUARY 8, 2013

SHEET 1 OF 1 SHEETS

DO NOT SCALE THIS DRAWING
FOR ANY PURPOSES
UNLESS SPECIFICALLY NOTED OTHERWISE
BY THE SURVEYOR
J.M. 130287

RBF CONSULTING
600 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

March 4, 2013
JN: 130897
Page 1 of 2

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION
EASEMENT

A portion of the Johnson Tract, recorded on January 25, 1888, in the Office of the County Recorder, Contra Costa County, California filed in map book D at page 79 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532642 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 62 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South $25^{\circ}10'45''$ West 75.13 feet

Thence, southeasterly and leaving said centerline South $64^{\circ}49'15''$ East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel B. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1993 in Book 4395 Official Records at Page 234 at said Office of said County Recorder;

Thence, southeasterly along said easterly boundary line South $25^{\circ}10'45''$ West 422.88 feet to the **TRUE POINT OF BEGINNING**;

Thence, southeasterly and leaving said easterly boundary line South $64^{\circ}49'15''$ East 16.90 feet

Thence, North $25^{\circ}10'45''$ East 427.20 feet;

Thence, North $69^{\circ}29'47''$ East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line South $64^{\circ}40'48''$ East 35.83 feet;

Thence, leaving said southeasterly right of way line, South $25^{\circ}19'12''$ West 8.00 feet

Thence, North $64^{\circ}47'48''$ West 27.34 feet;

Thence, South $25^{\circ}10'45''$ West 380.76 feet

Thence, North $64^{\circ}49'15''$ West 14.60 feet;

Thence, South $25^{\circ}10'45''$ West 49.06 feet;

Thence, North $64^{\circ}49'16''$ West 25.00 feet to said easterly boundary line (4396 O.R. 234);

Thence, along said easterly boundary line North $25^{\circ}10'45''$ East 5.00 feet to the TRUE POINT OF BEGINNING.

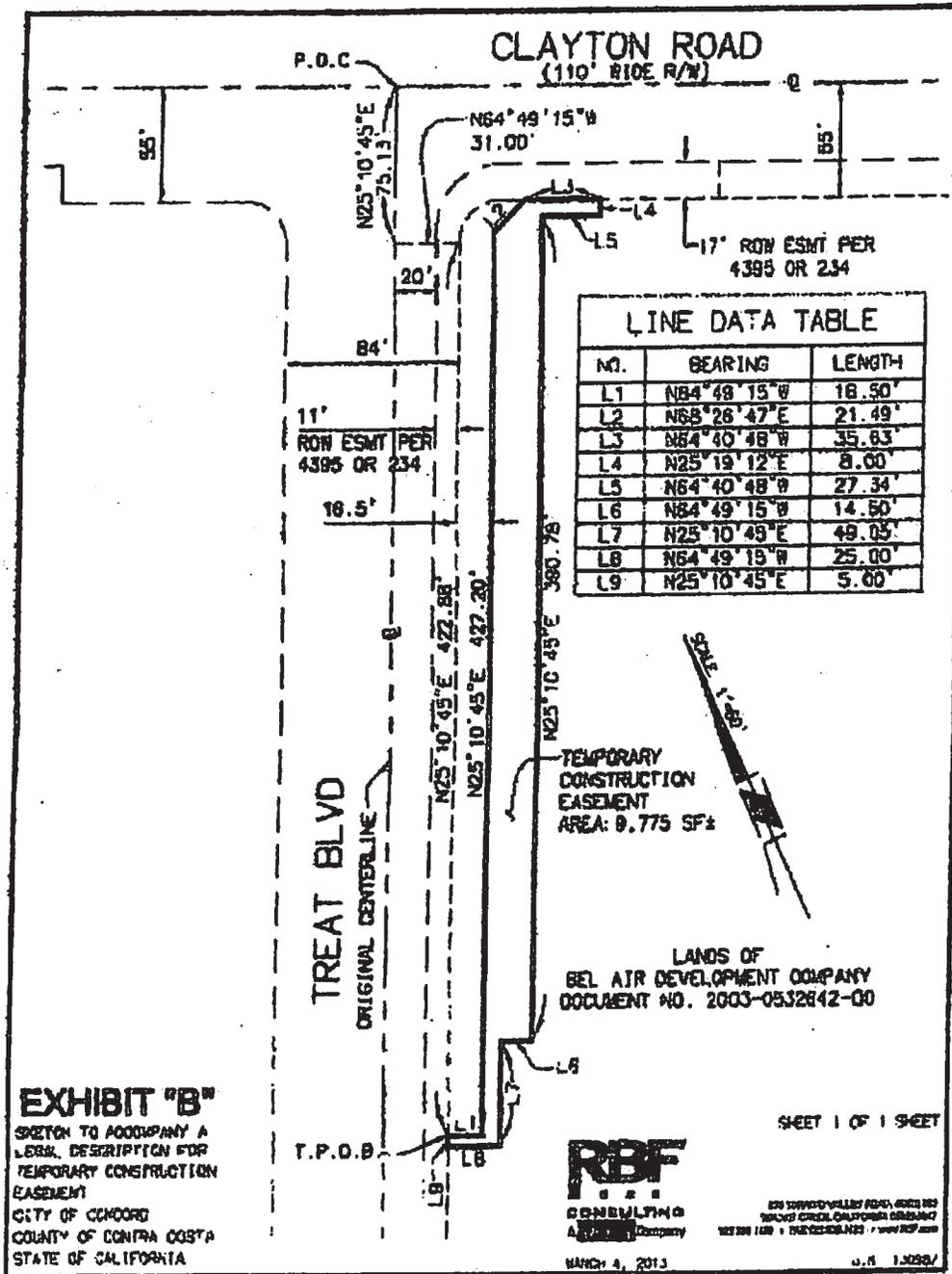
CONTAINING 0.775 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7308
License Expires March 31, 2013



CLAYTON ROAD
(110' R/W)

LINE DATA TABLE

NO.	BEARING	LENGTH
L1	N84°48'15"W	18.50'
L2	N88°26'47"E	21.49'
L3	N84°40'48"W	35.83'
L4	N25°19'12"E	8.00'
L5	N64°40'48"W	27.34'
L6	N84°49'15"W	14.50'
L7	N25°10'49"E	49.05'
L8	N64°49'19"W	25.00'
L9	N25°10'45"E	5.00'

EXHIBIT "B"
 SKETCH TO ACCOMPANY A
 LEGAL DESCRIPTION FOR
 TEMPORARY CONSTRUCTION
 EASEMENT
 CITY OF CONCORD
 COUNTY OF CONTRA COSTA
 STATE OF CALIFORNIA



SHEET 1 OF 1 SHEET

MARCH 4, 2013

200 WINDY VALLEY ROAD, SUITE 100
 TRUCKEE, CALIFORNIA 96161
 916.881.1100 • FAX 916.881.1102 • www.rbf.com

U.S. 130297

*mailed
3-24-14*

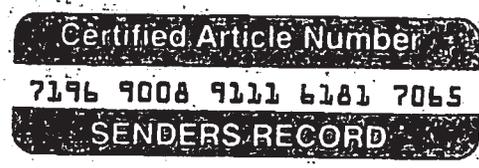
Exhibit D



City of Concord
1950 Parkside Drive, MS/03
Concord, CA 94519-2578
FAX: (925) 671-3375
Telephone: (925) 671-3430

LETTER OF TRANSMITTAL

Bel Air Development Company
c/o Zimmerman Management
1330 Broadway, Suite 1060
Oakland, CA 94612



DATE: March 24, 2014

RE: Second Notice of Intention to Adopt a Resolution of Necessity to Acquire Property by Eminent Domain

The attached document is transmitted for your records.

On March 14, 2014 the City of Concord sent you a "Notice of Intention to Adopt a Resolution of Necessity to Acquire Property by Eminent Domain" within the City of Concord for the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project. That notice complied with all applicable legal requirements, including, but not limited to, Code of Civil Procedure section 1245.235. Scott Jenny, attorney for Bel Air Development Company, sent the City's attorneys correspondence on March 19, 2014, which raised certain objections to the March 14, 2014 notice. Those objections have no merit. However, in order to provide you with additional information, the City is sending you the enclosed "Second Notice of Hearing Regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain."

Please note that a **Public Hearing** on this matter will be held on **Tuesday, April 8, 2014 at 6:30 p.m.**, or as soon thereafter as the matter may be heard, in the **City Council Chamber** located at **1950 Parkside Drive in Concord.**

Sincerely,

Mary Rae Lehman
City Clerk

cc: Scott Jenny, Attorney at Law - 738 Ferry Street, Martinez, CA 94553
Megan A Burke - Burke, Williams & Sorenson - 1901 Harrison St., 9th Fl. Oakland, CA 94612

Bel Air Development Company
c/o Zimmerman Management
1330 Broadway, Suite 1060
Oakland, CA 94612

RE: APNs: 133-150-009, 108, 121, 122, 123, 124

**SECOND NOTICE OF INTENTION
TO ADOPT A RESOLUTION OF NECESSITY
TO ACQUIRE PROPERTY BY EMINENT DOMAIN**

CITY OF CONCORD

**Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement
Project**

Re: **Second Notice of Hearing Regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain [California Code of Civil Procedure section 1245.235].**

1. Notice of Hearing Regarding Intent of the City Council of the City of Concord to Consider the Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain. The City Council of the City of Concord intends to hold a hearing to consider whether a Resolution of Necessity should be adopted which, if adopted, will authorize the City of Concord ("City") to acquire the real property described herein by eminent domain for the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project ("Project"). Attached hereto as Exhibit "A" are legal descriptions and plat maps depicting the right of way and utility easement ("Easement") and temporary construction easement ("TCE") which are required for the Project ("Property"). The Easement is a permanent acquisition that includes all of the surface use and air rights, as well as partial sub-surface (utilities) rights. The TCE is non-exclusive and will be for a one year term, with a possibility of a three month extension. The TCE will begin on the date the City sends written notice to the owner of the Property reflecting the City's intent to start construction of the Project and make use of the TCE and will terminate one year, or one year and three months, thereafter. If the Resolution of Necessity is adopted after the hearing, it will authorize the City to acquire the Property by eminent domain for construction of public improvements for the Project. You are being sent this notice as your name appears on the last equalized Contra Costa County assessment roll.

DATE OF HEARING: April 8, 2014

TIME OF HEARING: 6:30 p.m., or as soon thereafter as the matter may be heard.

PLACE OF HEARING: The regular meeting place of the City Council of the City of Concord, City Council Chamber, Concord Civic Center, 1950 Parkside Drive, Concord, CA.

2. Notice of Your Right to Appear and Be Heard. You have a right to appear and be heard before the City Council at the above scheduled hearing on the following matters and

issues, and to have the City Council give consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity:

- a. Whether the public interest and necessity require the proposed Project;
- b. Whether the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. Whether the Property described in the Resolution of Necessity is necessary for the Project;
- d. Whether the offer required by Government Code section 7267.2, together with the accompanying statement and summary of the basis for the amount established as just compensation, was actually made to the owner of record and whether said offer and statement and summary were in a form and contained all of the factual information required by Government Code section 7267.2;
- e. Whether the City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the "right to take") to acquire the Property described herein, as well as any other matter regarding the right to take the Property by eminent domain;
- f. Whether the City has statutory authority to acquire the Property by eminent domain; and
- g. Whether the necessary notification of the Notice of Hearing, as required by the California Code of Civil Procedure section 1245.235 was given in regard to the Property.

The statutes which authorize the City to acquire the Property by eminent domain for the Project include, but are not limited to, Article 1, Section 19 of the Constitution of the State of California, Sections 37350.5 of the Government Code, Section 10102 of the Streets and Highway Code, and Section 1230.010 et seq. of the Code of Civil Procedure.

3. Failure to File a Written Request to Be Heard within Fifteen (15) Days After the Notice Was Mailed Will Result in Waiver of the Right to Appear and Be Heard. If you desire to be heard, please be advised that you must file a written request with the City Clerk within fifteen (15) days after this notice was mailed. You must file your request to be heard with the City Clerk, 1950 Parkside Drive, Concord, CA 94519. Should you elect to mail your request to the City Clerk, it must be actually received by the clerk for filing within fifteen (15) days after this notice was mailed. The date of mailing appears at the end of this notice.

If you file a written request to appear, it should include a statement of the condition(s) that you feel are pertinent to your Property. The seven conditions that may affect your Property are set forth above, designated as (a), (b), (c), (d), (e), (f), and (g). By designating which

condition(s) forms the basis of your concerns, and why, you will enable the City Council to have a full and expeditious review made of the Project's effect on your Property.

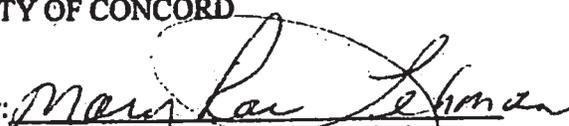
California Code of Civil Procedure section 1245.235(b)(3) provides that "[f]ailure to file a written request to appear and be heard within 15 days after the notice was mailed will result in waiver of the right to appear and be heard" on the above matters and issues which are the subject of the hearing.

4. You Will Not Waive the Right to Claim Greater Compensation if You Do Not Appear at The Hearing. The amount of the compensation to be paid for the interest, if any, that you may have in the property related to the City's proposed property acquisition is not a matter or issue being heard by the City Council at this time. Your nonappearance at this noticed hearing will not prevent you from claiming greater compensation, as determined by a court of law in accordance with the laws of the State of California. This notice is not intended to foreclose future negotiations between you and the representatives of the City on the amount of compensation to be paid for your property.

However, if you elect not to appear and be heard, you will be foreclosed from raising in a court of law the issues which are the subject of this noticed hearing and which are concerned with the right to take the Property by eminent domain.

If the City Council elects to adopt the Resolution of Necessity, then within six months of the adoption of the Resolution of Necessity, the City of Concord will commence eminent domain proceedings in Superior Court. In that proceeding, the Court will determine the amount of compensation to which you are entitled.

CITY OF CONCORD

By: 
Mary Rae Lehman, City Clerk

Dated and mailed on: 3/24/14

cc: Scott Jenny

EXHIBIT A

RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94688

January 08, 2013
JL 130887
Page 1 of 2

EXHIBIT "A"
LEGAL DESCRIPTION
RIGHT OF WAY AND UTILITY
EASEMENT

A portion of the Johnson Tract, recorded on January 28, 1888, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 78 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0332842 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 62 of Maps at Pages 4-19 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South $25^{\circ}10'45''$ West 76.13 feet;

Thence, southwesterly and leaving said centerline South $64^{\circ}49'15''$ East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.99 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 28, 1888 in Book 4389 Official Records at Page 234 in said Office of said County Recorder and to the **TRUE POINT OF BEGINNING**;

Thence, southerly along said easterly boundary line South $25^{\circ}10'45''$ West 422.88 feet;

Thence, southeasterly and leaving said easterly boundary line South $64^{\circ}49'15''$ East 16.50 feet

Thence, North $25^{\circ}10'45''$ East 427.20 feet;

Thence, North $66^{\circ}26'47''$ East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4389 OR 234);

Thence, along said southeasterly right of way line the following two (2) courses:

- 1) North $64^{\circ}28'48''$ West 11.18 feet to a point of a tangent curve, concave southeasterly and having a radius of 20.00 feet, and
- 2) along said curve 31.47 feet and through a central angle of $60^{\circ}08'28''$ to the **TRUE POINT OF BEGINNING**.

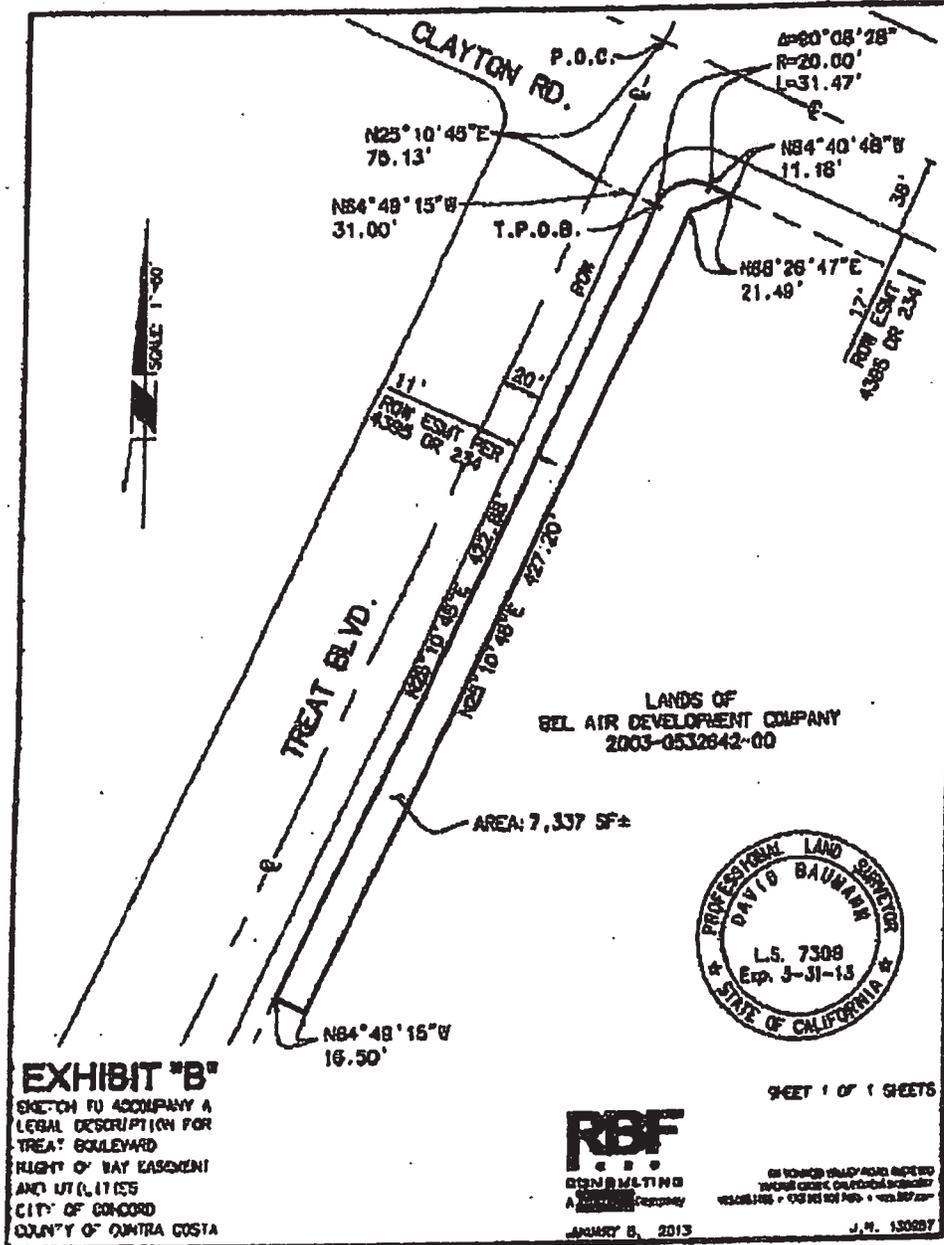
CONTAINING 7.337 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7308
License Expires March 31, 2013



RBF CONSULTING
600 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94598

March 4, 2013
JN: 130897
Page 1 of 2

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION
EASEMENT

A portion of the Johnson Tract, recorded on January 25, 1990, in the Office of the County Recorder, Contra Costa County, California filed in map book D of page 79 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0492842 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Trest Boulevard (84.00 feet wide) designated as Trest Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 62 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Trest Boulevard South $25^{\circ}10'45''$ West 75.13 feet;

Thence, southwesterly and leaving said centerline South $64^{\circ}48'15''$ East 31.00 feet to northern terminus of that certain course with a designated distance of "1191.38 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel B. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1993 in Book 4395 Official Records at Page 234 at said Office of said County Recorder;

Thence, easterly along said easterly boundary line South $25^{\circ}10'45''$ West 422.88 feet to the **TRUE POINT OF BEGINNING**;

Thence, southeasterly and leaving said easterly boundary line South $64^{\circ}48'15''$ East 16.50 feet;

Thence, North $25^{\circ}10'45''$ East 427.20 feet;

Thence, North $68^{\circ}28'47''$ East 21.48 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line South $64^{\circ}40'48''$ East 35.63 feet;

Thence, leaving said southeasterly right of way line, South $25^{\circ}18'12''$ West 8.00 feet;

Thence, North $64^{\circ}47'48''$ West 27.34 feet;

Thence, South $25^{\circ}10'45''$ West 390.78 feet;

Thence, North $64^{\circ}48'15''$ West 14.50 feet;

Thence, South $25^{\circ}10'45''$ West 49.05 feet;

Thence, North $64^{\circ}48'16''$ West 25.00 feet to said easterly boundary line (4895 O.R. 234);

Thence, along said easterly boundary line North $25^{\circ}10'45''$ East 5.00 feet to the **TRUE POINT OF BEGINNING**.

CONTAINING 0.775 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of **CCS 83 (Epoch 2007.00) Zone 3.**

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013



TO THE HONORABLE MAYOR AND CITY COUNCIL:

DATE: April 8, 2014

SUBJECT: RESOLUTION NO. 14-22 ADOPTING A RESOLUTION OF NECESSITY TO ACQUIRE PROPERTY BY EMINENT DOMAIN FOR THE CLAYTON ROAD/TREAT BOULEVARD/DENKINGER ROAD INTERSECTION CAPACITY IMPROVEMENT PROJECT (MEASURE J FUNDS)

Report in Brief

The adoption of Resolution of Necessity No. 14-22 will allow the City to acquire by eminent domain a permanent right-of-way and utility easement and a temporary construction easement from the property located at 4300 Clayton Road and 4420 through 4498 Treat Boulevard (“Property”), which are essential to the Clayton Road/Treat Boulevard Intersection Capacity Improvements Project (“Project”). The City has obtained a final appraisal of the Property, placing the value at \$361,149. This amount includes an option to extend the 12-month temporary construction easement for an additional 3 months.

Staff recommends that the City Council adopt Resolution of Necessity No. 14-22 to allow the City to begin eminent domain proceedings to acquire the proposed Property. A copy of Resolution of Necessity No. 14-22 is attached hereto as **Attachment 1**.

Background

The Central County Action Plan identifies Clayton Road/Treat Boulevard/Denkinger Road as a key intersection of two Routes of Regional Significance (Clayton Road and Treat Boulevard) within Central Contra Costa County. This intersection is heavily traveled during the PM peak period due to its central location within the City of Concord.

Eastbound Clayton Road is the most impacted approach at this intersection during the PM peak period, and traffic demand on this approach far exceeds the intersection’s capacity to discharge the vehicle queue on one signal cycle. As a result, the queue grows and a bottleneck is formed on this approach during the evening commute, causing excessive delay to motorists to clear the intersection.

The proposed capital improvement project (which was approved by the City Council in FY 2011-12) will widen the Treat Boulevard approach of the intersection to the appropriate level to allow for an 8-phase signal operation, substantially increasing the intersection’s capacity and improving its level of service during the PM peak period. Vehicle delay and traffic backups on the eastbound approach of the intersection will also improve significantly as a result of this project, under both existing and future traffic conditions. Additionally,

**ADOPTION OF RESOLUTION OF NECESSITY NO. 14-22 TO ACQUIRE A
PORTION OF 4300 CLAYTON RD AND 4420 THROUGH 4498 TREAT
BOULEVARD CONCORD, CALIFORNIA BY EMINENT DOMAIN**

April 8, 2014

Page 2

the new 8-phase signal operation will make it possible to improve the quality of signal synchronization along Clayton Road for improved traffic flow during the peak periods.

The need for this project was first identified by City staff in the early 1990s. However, the necessary funding to design and implement the project was not made available until 2010, when the Contra Costa Transportation Authority (CCTA) agreed to provide \$2 million in Regional Measure J funds for the project. The project is also eligible for supplemental Off-site Street Improvement Program (OSIP) funds, if needed. Significantly, no general funds will be used for the project work or right-of-way acquisition. Additionally, Local Measure J Funds have been allocated for this project to cover legal costs for acquisition, including eminent domain proceedings, if necessary

Discussion

The City is authorized to acquire the Property and to exercise the power of eminent domain for public use in accordance with Article 1, Section 19 of the Constitution of the State of California, Sections 37350.5, 40401, 40404 of the Government Code, Section 10102 of the Streets and Highway Code, and Sections 1240.140 and 1230.010 et seq. of the Code of Civil Procedure.

The potential environmental effects of the Project were examined as part of Resolution No. 13-05 PC dated April 17, 2013, wherein the Planning Commission of the City of Concord adopted a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Clayton Road/Treat Boulevard Intersection Capacity Improvements in conjunction with the Project.

A hearing on a Resolution of Necessity must be held and the resolution approved by a two-thirds (2/3) vote of all the members of the City Council prior to the City moving forward with the eminent domain process. Since there are five City Council members, a two-thirds (2/3) vote requires four out of five members (4/5) to vote to adopt the Resolution of Necessity. Adoption of the Resolution of Necessity authorizes the City to deposit the probable amount of just compensation with the State Treasury and obtain an order for prejudgment possession of the Property. The purpose of the hearing on the Resolution of Necessity is to provide the property owners with an opportunity to address the City Council on this matter. However, the amount of compensation owed for the acquisitions will be decided by a court of law or through negotiations, and is not a proper matter to be discussed at the public hearing.

A. Findings for Adoption of Resolution of Necessity:

State law requires that the City Council make certain findings with respect to the adoption of the Resolution of Necessity. Below is a list of findings necessary for the adoption of the Resolution of Necessity at the hearing of the City.

1) The Public Interest and Necessity Require the Project.

The public interest and necessity require the Project. The City will be utilizing the Property to upgrade the intersection traffic signal phasing and widen the eastbound Treat Boulevard approach to include two exclusive left-turn lanes, two through lanes and one right-turn lane. The proposed improvements will

**ADOPTION OF RESOLUTION OF NECESSITY NO. 14-22 TO ACQUIRE A
PORTION OF 4300 CLAYTON RD AND 4420 THROUGH 4498 TREAT
BOULEVARD CONCORD, CALIFORNIA BY EMINENT DOMAIN**

April 8, 2014

Page 3

improve the system-wide signal coordination along Clayton Road during the peak periods. The Project is intended to improve safety and decrease traffic delay by widening the Treat Boulevard approach to the appropriate level to allow for an 8-phase signal operation, which will substantially increase the intersection's capacity and improve its level of service.

2) The Property Sought to be Acquired is Necessary for the Project.

As described previously, the interests in the Property sought to be acquired by eminent domain are necessary for the proposed Project. The Project improvements required to widen the eastbound Treat Boulevard approach and increase the intersection's capacity cannot be completed without the Property interests sought to be acquired by eminent domain.

3) Greatest Public Good and Least Private Injury.

The Property is a portion of real property owned by the owner. The City is only proposing to acquire a 7,978 square foot right-of-way and utility easement ("Permanent Easement"), as well as a 9,786 square foot 12-month temporary construction easement with an option to extend for 3 additional months ("TCE"). The Permanent Easement will include an exclusive right to construct a paved, new (relocated) right turn lane, a replacement sidewalk for Treat Boulevard, and replacement landscaping. The non-exclusive TCE will be used for the construction of street improvements.

Rather than acquiring the property interest in fee, the City has limited its acquisition to the Permanent Easement. By limiting its acquisition to the Permanent Easement, which is the minimum property interest required to complete the Project, the City has planned the Project in a manner that is most compatible with the greatest public good and the least private injury.

4) Government Code Offer.

On January 16, 2014, the City extended purchase offers in conformance with Government Code section 7267.2(a) to the owner of record. A copy of the Government Code Offer is attached hereto as **Attachment 2**. Subsequent negotiations did not result in an agreement as to the fair market value for the Property. Accordingly, on March 14, 2014, the owner was provided with a Notice of Intention to Adopt a Resolution of Necessity to Acquire Property by Eminent Domain ("Notice") at its regular meeting of Tuesday April 8, 2014. A copy of the Notice is attached hereto as **Attachment 3**.

B. Response to Property Owner's Written Objections:

On March 19, 2014, the owner's attorney sent the City a letter, which presented several objections to the City's adoption of the Resolution of Necessity. A copy of that letter is attached hereto as **Attachment 4**. Below is a discussion of each of the objections raised in that letter.

1) The City Must Provide the Property Owner With a Full Appraisal.

**ADOPTION OF RESOLUTION OF NECESSITY NO. 14-22 TO ACQUIRE A
PORTION OF 4300 CLAYTON RD AND 4420 THROUGH 4498 TREAT
BOULEVARD CONCORD, CALIFORNIA BY EMINENT DOMAIN**

April 8, 2014

Page 4

The City is not required to provide the owner with a full appraisal. The City's offer to purchase the property under Government Code 7267.2 included a Statement and Summary of the Basis for Appraisal ("Statement of Appraisal") for the Property, which satisfied all applicable legal requirements.

2) Notice Was Vague as to Property Rights Being Acquired.

The owner also claimed that the City's Notice was vague as to the property being acquired for the Permanent Easement and the TCE. These claims are meritless. The Notice provided a "description of the general location and extent of the property being taken, with sufficient detail for reasonable identification." Despite this, in response to the owner's objections, the City sent a Second Notice of Intention to Adopt a Resolution of Necessity to Acquire Property by Eminent Domain ("Second Notice") to the owner on March 24, 2014, more than fifteen days prior to the April 8, 2014 Resolution of Necessity hearing. The Second Notice described the property rights being taken by the Permanent Easement and the length and beginning of the TCE in accordance with the owner's request. A copy of the Second Notice is attached hereto as **Attachment 5**.

3) The Government Code Offer did not Properly Analyze Severance Damages

The Statement of Appraisal concluded that the Property would not incur any severance damages as a result of the acquisition. As such, no discussion of the amount or calculation of severance damages was necessary or required.

4) The City's Calculation of Just Compensation in the Statement Was Invalid Because it Utilized a Zones of Value Approach.

The Statement of Appraisal properly determined a single value for the Property. As such, it did not utilize an impermissible valuation approach.

5) The Acquisition Does Not Provide for the Greatest Public Good With the Least Private Injury

As explained above, the City's acquisition is limited to the minimum property interest required to complete the Project. Therefore, the City has planned the Project in a manner that is most compatible with the greatest public good and the least private injury.

Fiscal Impact

Sufficient Funds are available in the budget for the Project for acquisition of the necessary right of way. This Project is mainly funded through Regional Measure J funds approved by CCTA, and City staff requests that the City Council authorize the City Manager to accept those funds as part of the approval of the Resolution of Necessity. No General Funds will be used for the Project work or acquisition.

**ADOPTION OF RESOLUTION OF NECESSITY NO. 14-22 TO ACQUIRE A
PORTION OF 4300 CLAYTON RD AND 4420 THROUGH 4498 TREAT
BOULEVARD CONCORD, CALIFORNIA BY EMINENT DOMAIN**

April 8, 2014

Page 5

Public Contact

The City Council agenda was posted as required by statute. Notice of the Resolution of Necessity hearing was sent to the owners of the Property in accordance with Code of Civil Procedure section 1245.235. The notice of public hearing was posted, published, and mailed in accordance with the law.

Recommendation for Action

Staff recommends the City Council open the hearing on the Resolution of Necessity, take testimony, close the hearing and consider adopting Resolution No. 14-22, a resolution of necessity authorizing the acquisition of the Property by eminent domain for 4300 Clayton Road, 4420-4498 Treat Boulevard, through the use of Regional Measure J Funds approved by CCTA, and authorize the City Manager to accept the funds as part of the approval of the Resolution of Necessity.



Valerie J. Barone
City Manager

Valerie.barone@cityofconcord.org

Prepared by: Susanne Brown
Senior Assistant City Attorney
Susanne.brown@cityofconcord.org

Reviewed by: Mark S. Coon
City Attorney
Mark.coon@cityofconcord.org

Attachment No. 1 – Resolution No. 14-22 (including Exhibits A, B & C)

Attachment No. 2 - Government Code Offer (including Exhibits A, B & C)

Attachment No. 3 – Notice of Intention to Consider Adoption of Resolution of Necessity

Attachment No. 4 – March 19, 2014 Letter from Scott E. Jenny

Attachment No. 5 – Second Notice of Intention to Consider Adoption of Resolution of Necessity

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Attachment 1 to Staff Report

Resolution No. 14-22

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**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

Authorizing the Acquisition by Eminent Domain of a Portion of Assessor Parcel Numbers 133-150-009, 108, 121, 122, 13, and 124 (4300 Clayton Road and 4420-4498 Treat Boulevard, Concord, CA) for a Permanent Right of Way and Utility Easement and Temporary Construction Easement for the City of Concord’s Clayton/Treat Boulevard/Dekinger Road Intersection Capacity Improvement Project (Code of Civil Procedure Section 1245.230)

Resolution No. 14-22

WHEREAS, the City of Concord’s (“City”) Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project (“Project”) is a public project intended to improve safety and decrease traffic delay by widening the Treat Boulevard approach of the intersection to the appropriate level to allow for an 8-phase signal operation, which will substantially increase the intersection’s capacity and improve its level of service; and

WHEREAS, the Project will include the construction of a paved, new (relocated), right turn lane, a replacement sidewalk for Treat Boulevard, and replacement landscaping (“Project”); and

WHEREAS, in order for the Project to proceed, it is necessary for the City to acquire a right-of-way and utility easement consisting of 7,978 square feet (the "Easement") and a temporary construction easement consisting of 9,786 square feet (“TCE”) along Treat Boulevard; and

WHEREAS, the Easement to be acquired is a portion of the property described as Assessor Parcel Numbers 133-150-009, 108, 121, 122, 123, and 124 and is situated along the Treat Boulevard frontage commonly known as 4300 Clayton Road and 4420-4498 Treat Boulevard, Concord, CA. There are 24 parking spaces that will be acquired. **Exhibit A**, attached hereto, provides the legal description and plat map showing the location of the Easement to be acquired; and

WHEREAS, the TCE to be acquired shall be non-exclusive and is located along the Treat Boulevard frontage adjacent to the east side of the permanent easement and is improved with landscaping as well as asphalt and concrete paving, and is described as a portion of Assessor Parcel Numbers 133-150-009, 108, 121, 122, 123, and 124 commonly known as 4300 Clayton Road and 4420-4498 Treat Boulevard, Concord, CA. **Exhibit B**, attached hereto, provides the legal description

1 and plat map showing the location of the TCE to be acquired; and

2 **WHEREAS**, the TCE shall be non-exclusive and will be for a one year term, with a
3 possibility of a three-month extension, beginning on the date the City sends written notice to the
4 owner of the Property reflecting the City's intent to start construction on the Project and make use of
5 the TCE, and terminating one year, or one year and three months thereafter; and

6 **WHEREAS**, the City is authorized to acquire the Easement described in Exhibit A and the
7 TCE described in Exhibit B, attached hereto (collectively the "Property"), and to exercise the power of
8 eminent domain for public use in accordance with the statutes which authorize the City to acquire the
9 Property by eminent domain for the Project, including, but are not limited to, Article 1, Section 19 of
10 the Constitution of the State of California, Sections 37350.5, 40401, 40404 of the Government Code,
11 Section 10102 of the Streets and Highway Code, and Sections 1240.140 and 1230.010 et seq. of the
12 Code of Civil Procedure; and

13 **WHEREAS**, the potential environmental effects of the Project were examined as part of
14 Resolution No. 13-05 PC dated April 17, 2013, wherein the Planning Commission of the City of
15 Concord adopted a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program
16 for the Clayton Road/Treat Boulevard Intersection Capacity Improvements in conjunction with the
17 Project; and

18 **WHEREAS**, on January 16, 2014, the City sent an offer to the owner of the Property to
19 purchase the Property in conformance with Government Code section 7267.2(a); and

20 **WHEREAS**, notice of the City Council's intention to adopt this resolution of necessity was
21 duly given on March 14, 2014 as required by law, which notice is attached hereto as **Exhibit C**.
22 Thereafter, a second notice of the City Council's intention to adopt this resolution of necessity was
23 duly given on March 24, 2014 as required by law, which notice is attached hereto as **Exhibit D**; and

24 **WHEREAS**, and on the date and at the time and place fixed for the hearing, the City Council
25 did hear and consider all of the evidence presented; and

26 **WHEREAS**, the City Council has considered all information related to this matter, as
27 presented at the public meetings of the City Council identified herein, including any supporting
28 reports by City Staff, and any information provided during public meetings.

1 **NOW, THEREFORE, BE IT RESOLVED, by at least a two-thirds vote under Code of**
2 **Civil Procedure Sections 1240.030 and 1245.230, that the City Council of the City of Concord**
3 **FINDS and DETERMINES that:**

4 **Section 1.** The public interest and necessity require the Project.

5 **Section 2.** Project is planned or located in a manner that will be most compatible with the greatest
6 public good and the least private injury.

7 **Section 3.** The Property described herein in Exhibits A and B is necessary for the Project.

8 **Section 4.** The offer required by section 7267.2 of the Government Code was made to the Property
9 owner or owners of record.

10 **Section 5.** The City has complied with all conditions and statutory requirements necessary to exercise
11 the power of eminent domain to acquire the Property described herein.

12 **Section 6.** The City Council hereby finds that the facts set forth in the recitals to this Resolution are
13 true and correct, and establish the factual basis for the City Council’s adoption of this Resolution.

14 **Section 7.** The City Council determines that the potential environmental effects of the Project were
15 adequately examined as part of Resolution No. 13-05 PC dated April 17, 2013, wherein the Planning
16 Commission of the City of Concord adopted a Mitigated Negative Declaration and Mitigation
17 Monitoring and Reporting Program for the Clayton Road/Treat Boulevard Intersection Capacity
18 Improvements in conjunction with the Project.

19 **Section 8.** The City Attorney or his duly authorized designee is hereby authorized and directed to
20 institute and conduct to conclusion an action in eminent domain for the acquisition of the Property and
21 to take such action as he may deem advisable or necessary in connection therewith.

22 **Section 9.** The City Manager or her duly authorized designee is hereby authorized and directed to
23 accept all Regional Measure J funds appropriated for the Project.

24 **Section 10.** The City may deposit with the State Treasury the probable amount of compensation and
25 obtain an order permitting the City of Concord to take prejudgment possession of the Property.

26 **Section 11.** This Resolution shall take effect immediately upon its adoption.
27
28

Resolution No. 14-22

Exhibit A

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RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94606

January 08, 2013
JN 130987
Page 1 of 2

**EXHIBIT "A"
LEGAL DESCRIPTION
RIGHT OF WAY AND UTILITY
EASEMENT**

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 76 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532642 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 52 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1969 in Book 4395 Official Records at Page 234 at said Office of said County Recorder and to the **TRUE POINT OF BEGINNING**;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet;

Thence, southeasterly and leaving said easterly boundary line South 64°49'15" East 16.60 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 68°26'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line the following two (2) courses:

- 1) North 64°26'48" West 11.18 feet to a point of a tangent curve, concave southeasterly and having a radius of 20.00 feet, and
- 2) along said curve 31.47 feet and through a central angle of 90°08'28" to the **TRUE POINT OF BEGINNING**.

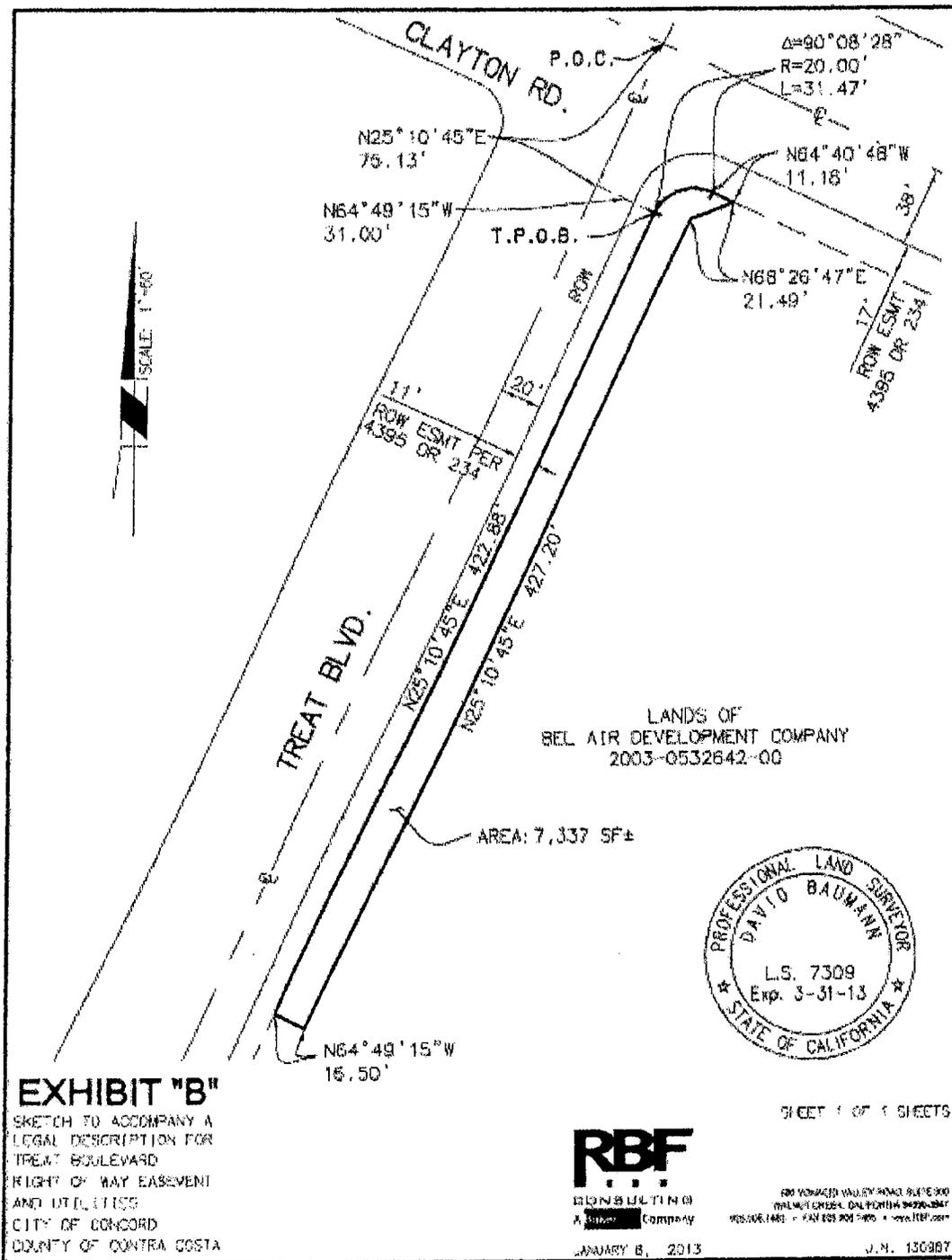
CONTAINING 7.337 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013



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Resolution No. 14-22

Exhibit B

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RBF CONSULTING
800 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94595

March 4, 2013
JN: 130987
Page 1 of 2

**EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION
EASEMENT**

A portion of the Johnson Tract, recorded on January 25, 1888, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 78 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532642 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 52 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1963 in Book 4395 Official Records at Page 234 at said Office of said County Recorder;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet to the **TRUE POINT OF BEGINNING**;

Thence, southeasterly and leaving said easterly boundary line South 64°49'15" East 18.50 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 68°26'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line South 64°40'48" East 35.63 feet;

Thence, leaving said southeasterly right of way line, South 25°19'12" West 8.00 feet;

Thence, North 64°40'48" West 27.34 feet;

Thence, South 25°10'45" West 390.78 feet;

Thence, North 64°49'15" West 14.50 feet;

Thence, South 25°10'45" West 49.05 feet;

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Thence, North 64°49'15" West 25.00 feet to said easterly boundary line (4395 O.R. 234);

Thence, along said easterly boundary line North 25°10'45" East 5.00 feet to the **TRUE POINT OF BEGINNING**.

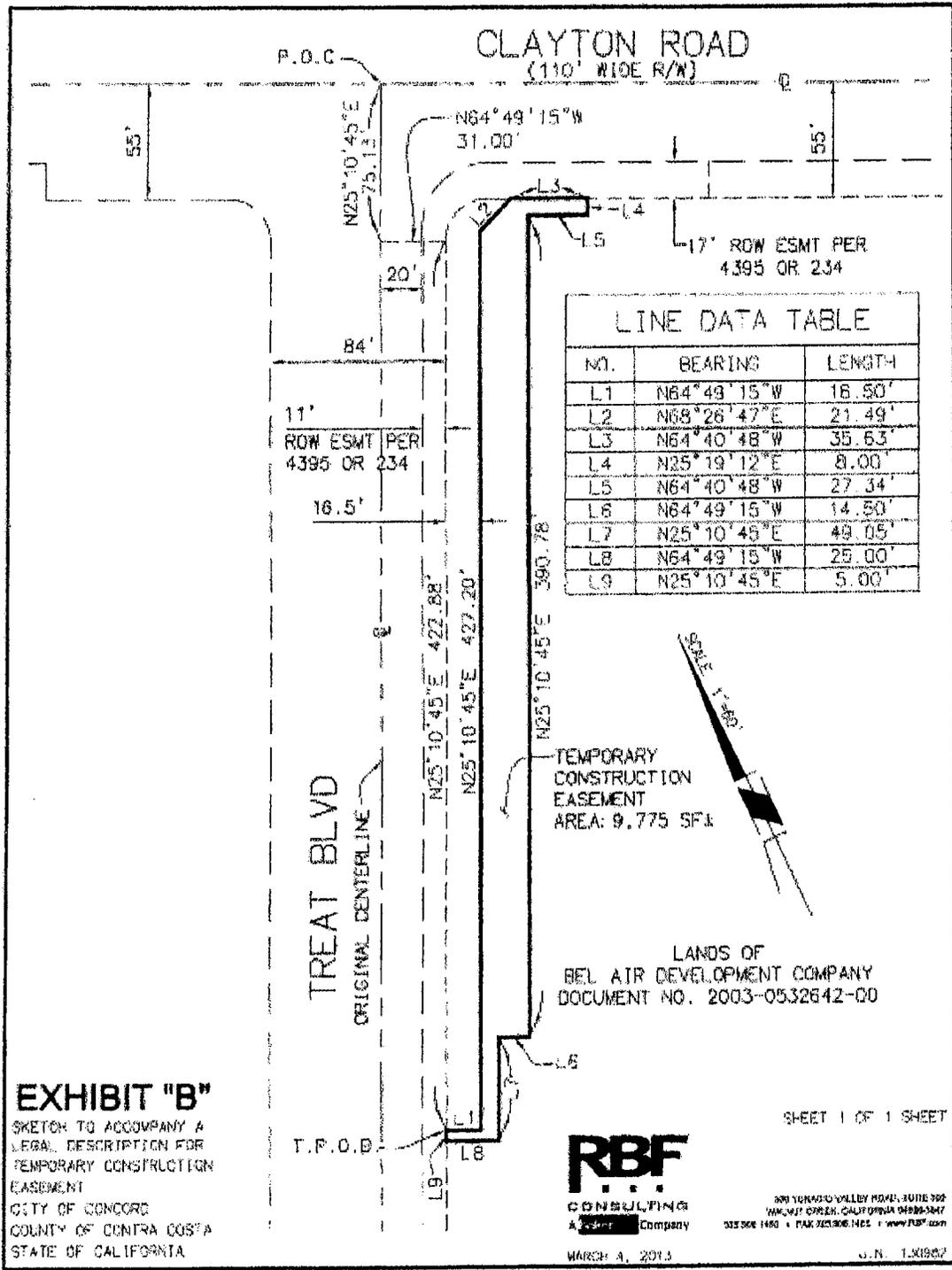
CONTAINING 9,775 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013



Intentionally left blank

Resolution No. 14-22

Exhibit C

Intentionally left blank



*mailed
3-14-14*

City of Concord
1950 Parkside Drive, MS/03
Concord, CA 94519-2578
FAX: (925) 671-3375
Telephone: (925) 671-3430

LETTER OF TRANSMITTAL

Bel Air Development Company
c/o Zimmerman Management
1330 Broadway, Suite 1060
Oakland, CA 94612

Certified Article Number
7196 9008 9111 6181 7164
SENDERS RECORD

DATE: March 14, 2014
RE: Notice of Intention to Adopt a Resolution of Necessity –
Clayton Road/Treat/Denkinger Rd. Capacity Improvement Project.

The attached document is transmitted for your records.

Enclosed please find the original copy of the "Notice of Intention to Adopt A Resolution of Necessity to Acquire Property by Eminent Domain" within the City of Concord for the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project. Please note that a **Public Hearing** on this matter will be held on **Tuesday, April 8, 2014 at 6:30 p.m.**, or as soon thereafter as the matter may be heard, **in the City Council Chamber** located at **1950 Parkside Drive in Concord.**

Sincerely,

Mary Rae Lehman
City Clerk

Enclosure

cc: Scott Jenny, Attorney at Law – 738 Ferry Street, Martinez, CA 94553
Megan A. Burke, Burke, Williams & Sorensen – 1901 Harrison St., 9th Fl. Oakland, CA 94612

COPY

Bel Air Development Company
c/o Zimmerman Management
1330 Broadway, Suite 1060
Oakland, CA 94612

RE: APNs: 133-150-009, 108, 121, 122, 123, 124

**NOTICE OF INTENTION
TO ADOPT A RESOLUTION OF NECESSITY
TO ACQUIRE PROPERTY BY EMINENT DOMAIN**

**CITY OF CONCORD
Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement
Project**

Re: Notice of Hearing Regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain [California Code of Civil Procedure section 1245.235].

1. Notice of Hearing Regarding Intent of the City Council of the City of Concord to Consider the Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain. The City Council of the City of Concord intends to hold a hearing to consider whether a Resolution of Necessity should be adopted which, if adopted, will authorize the City of Concord ("City") to acquire the real property described herein by eminent domain for the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project ("Project"). Attached hereto as Exhibit "A" are legal descriptions and plat maps depicting the right of way and utility easement and temporary construction easement which are required for the Project ("Property"). If the Resolution of Necessity is adopted after the hearing, it will authorize the City to acquire the Property by eminent domain for construction of public improvements for the Project. You are being sent this notice as your name appears on the last equalized Contra Costa County assessment roll.

DATE OF HEARING: April 8, 2014

TIME OF HEARING: 6:30 p.m., or as soon thereafter as the matter may be heard.

PLACE OF HEARING: The regular meeting place of the City Council of the City of Concord, City Council Chamber, Concord Civic Center, 1950 Parkside Drive, Concord, CA.

2. Notice of Your Right to Appear and Be Heard. You have a right to appear and be heard before the City Council at the above scheduled hearing on the following matters and issues, and to have the City Council give consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity:

- a. Whether the public interest and necessity require the proposed Project;

- b. Whether the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. Whether the Property described in the Resolution of Necessity is necessary for the Project;
- d. Whether the offer required by Government Code section 7267.2, together with the accompanying statement and summary of the basis for the amount established as just compensation, was actually made to the owner of record and whether said offer and statement and summary were in a form and contained all of the factual information required by Government Code section 7267.2;
- e. Whether the City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the "right to take") to acquire the Property described herein, as well as any other matter regarding the right to take the Property by eminent domain;
- f. Whether the City has statutory authority to acquire the Property by eminent domain; and
- g. Whether the necessary notification of the Notice of Hearing, as required by the California Code of Civil Procedure section 1245.235 was given in regard to the Property.

The statutes which authorize the City to acquire the Property by eminent domain for the Project include, but are not limited to, Article 1, Section 19 of the Constitution of the State of California, Sections 37350.5 of the Government Code, Section 10102 of the Streets and Highway Code, and Section 1230.010 et seq. of the Code of Civil Procedure.

3. Failure to File a Written Request to Be Heard within Fifteen (15) Days After the Notice Was Mailed Will Result in Waiver of the Right to Appear and Be Heard. If you desire to be heard, please be advised that you must file a written request with the City Clerk within fifteen (15) days after this notice was mailed. You must file your request to be heard with the City Clerk, 1950 Parkside Drive, Concord, CA 94519. Should you elect to mail your request to the City Clerk, it must be actually received by the clerk for filing within fifteen (15) days after this notice was mailed. The date of mailing appears at the end of this notice.

If you file a written request to appear, it should include a statement of the condition(s) that you feel are pertinent to your Property. The seven conditions that may affect your Property are set forth above, designated as (a), (b), (c), (d), (e), (f), and (g). By designating which condition(s) forms the basis of your concerns, and why, you will enable the City Council to have a full and expeditious review made of the Project's effect on your Property.

California Code of Civil Procedure section 1245.235(b)(3) provides that "[f]ailure to file a written request to appear and be heard within 15 days after the notice was mailed will result in

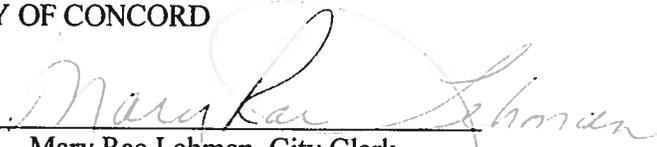
waiver of the right to appear and be heard” on the above matters and issues which are the subject of the hearing.

4. You Will Not Waive the Right to Claim Greater Compensation if You Do Not Appear at The Hearing. The amount of the compensation to be paid for the interest, if any, that you may have in the property related to the City’s proposed property acquisition is not a matter or issue being heard by the City Council at this time. Your nonappearance at this noticed hearing will not prevent you from claiming greater compensation, as determined by a court of law in accordance with the laws of the State of California. This notice is not intended to foreclose future negotiations between you and the representatives of the City on the amount of compensation to be paid for your property.

However, if you elect not to appear and be heard, you will be foreclosed from raising in a court of law the issues which are the subject of this noticed hearing and which are concerned with the right to take the Property by eminent domain.

If the City Council elects to adopt the Resolution of Necessity, then within six months of the adoption of the Resolution of Necessity, the City of Concord will commence eminent domain proceedings in Superior Court. In that proceeding, the Court will determine the amount of compensation to which you are entitled.

CITY OF CONCORD

By: 
Mary Rae Lehman, City Clerk

Dated and mailed on: 3/14/14

cc: Scott Jenny

EXHIBIT A

R&F CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

January 08, 2013
JN: 130987
Page 1 of 2

**EXHIBIT "A"
LEGAL DESCRIPTION
RIGHT OF WAY AND UTILITY
EASEMENT**

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 78 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0332842 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 82 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South $25^{\circ}10'45''$ West 76.13 feet;

Thence, southeasterly and leaving said centerline South $64^{\circ}49'15''$ East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1963 in Book 4395 Official Records at Page 234 at said Office of said County Recorder and to the **TRUE POINT OF BEGINNING**;

Thence, southerly along said easterly boundary line South $25^{\circ}10'45''$ West 422.88 feet;

Thence, southeasterly and leaving said easterly boundary line South $64^{\circ}49'15''$ East 16.50 feet;

Thence, North $25^{\circ}10'45''$ East 427.20 feet;

Thence, North $68^{\circ}28'47''$ East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line the following two (2) courses:

- 1) North $64^{\circ}28'48''$ West 11.16 feet to a point of a tangent curve, concave southeasterly and having a radius of 20.00 feet, and
- 2) along said curve 31.47 feet and through a central angle of $90^{\circ}08'28''$ to the **TRUE POINT OF BEGINNING**.

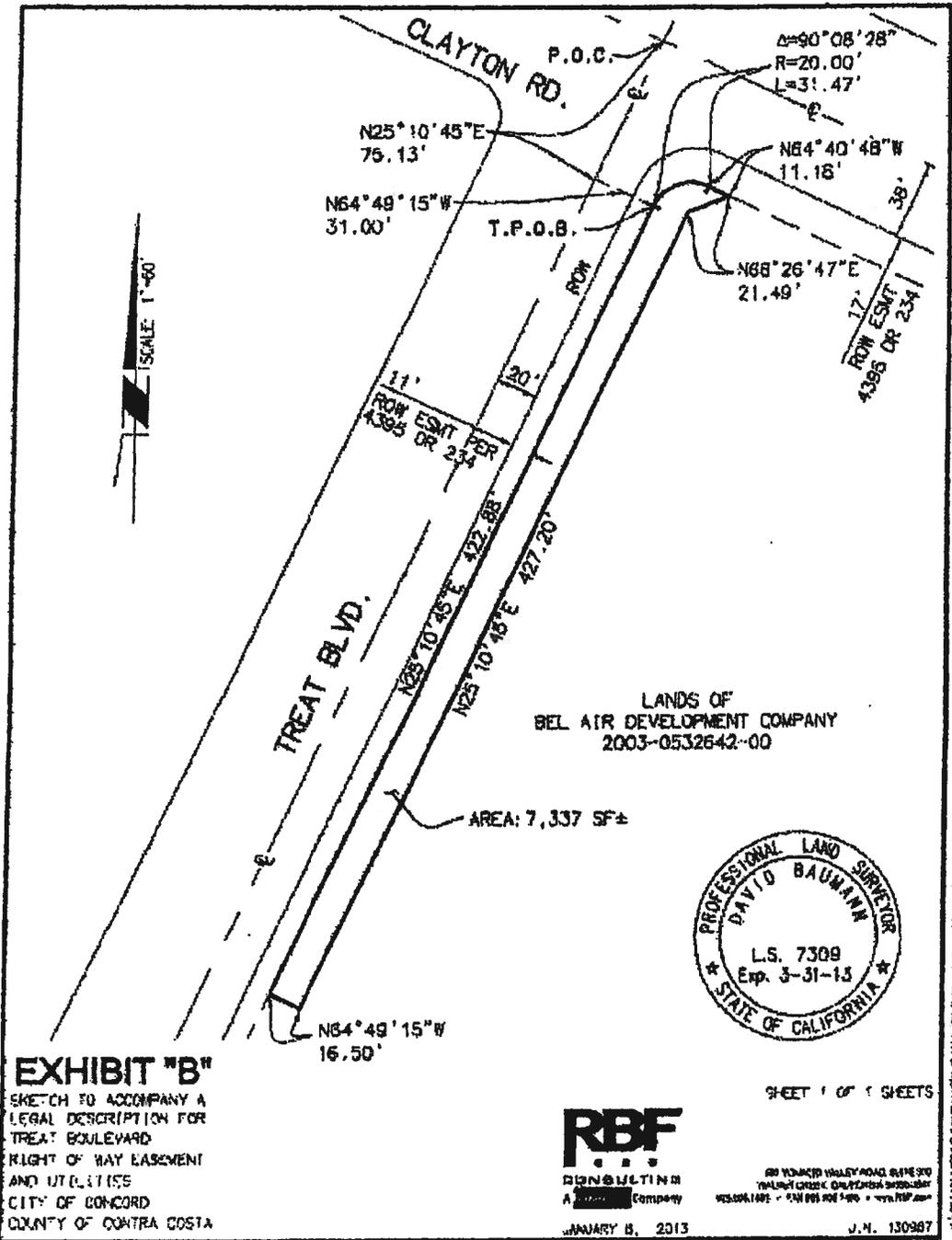
CONTAINING 7.337 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013



LANDS OF
BEL AIR DEVELOPMENT COMPANY
2003-0532642-00

AREA: 7,337 SF±



EXHIBIT "B"
SKETCH TO ACCOMPANY A
LEGAL DESCRIPTION FOR
TREAT BOULEVARD
RIGHT OF WAY EASEMENT
AND UTILITIES
CITY OF CONCORD
COUNTY OF CONTRA COSTA



SHEET 1 OF 1 SHEETS

JANUARY 8, 2013

J.N. 130987

2013 JAN 08 10:00 AM

RBF CONSULTING
800 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

March 4, 2013
JN: 130887
Page 1 of 2

**EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION
EASEMENT**

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California filed in map book D at page 78 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532542 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 52 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1983 in Book 4395 Official Records at Page 234 at said Office of said County Recorder;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet to the **TRUE POINT OF BEGINNING**;

Thence, southeasterly and leaving said easterly boundary line South 64°49'15" East 15.90 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 66°26'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line South 64°40'48" East 35.63 feet;

Thence, leaving said southeasterly right of way line, South 25°19'12" West 8.00 feet;

Thence, North 64°40'48" West 27.34 feet;

Thence, South 25°10'45" West 390.78 feet;

Thence, North 64°49'15" West 14.60 feet;

Thence, South 25°10'45" West 49.06 feet;

Thence, North $64^{\circ}49'16''$ West 25.00 feet to said easterly boundary line (4395 O.R. 234);

Thence, along said easterly boundary line North $25^{\circ}10'45''$ East 5.00 feet to the **TRUE POINT OF BEGINNING**.

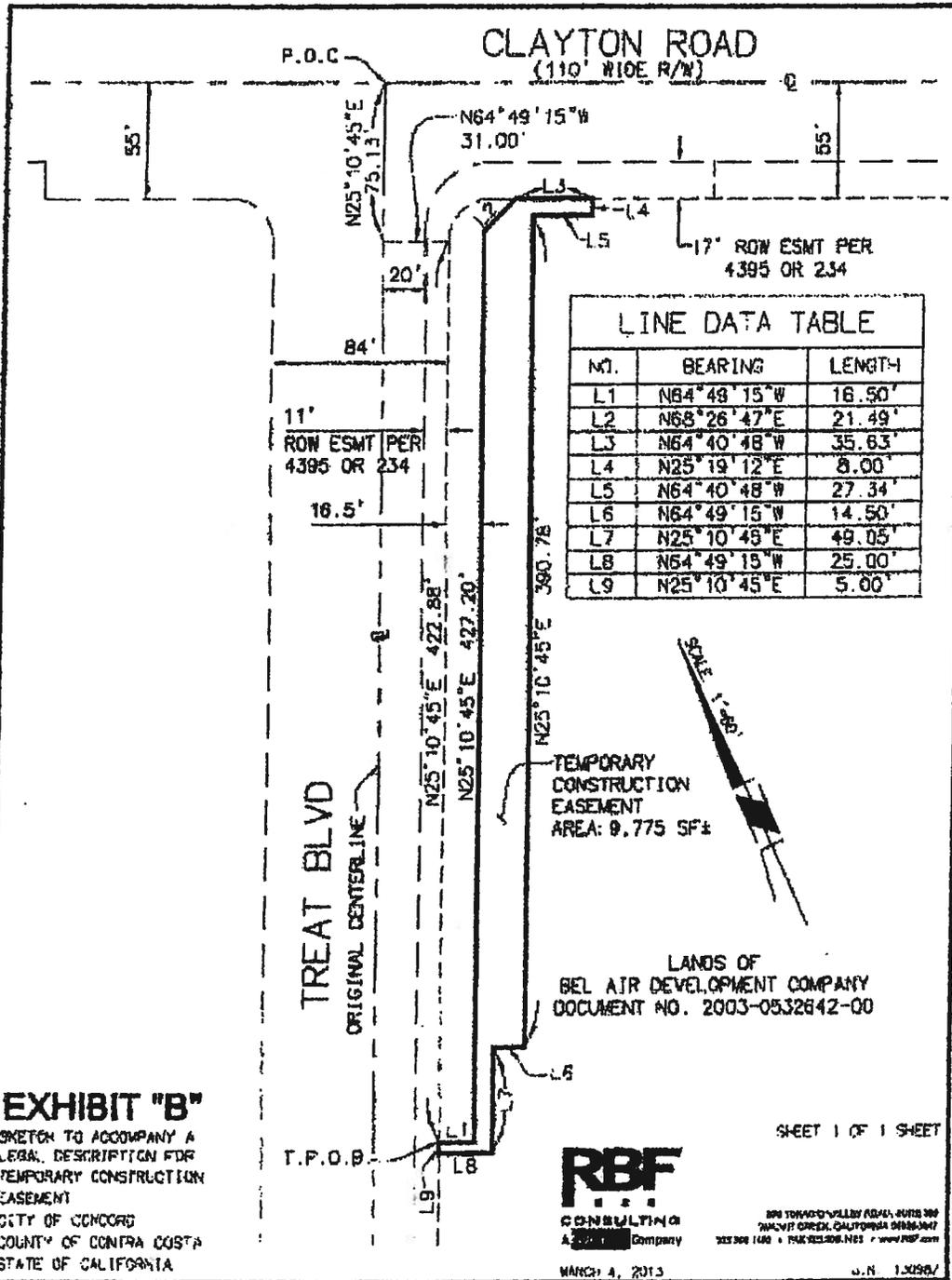
CONTAINING 9,775 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013



Intentionally left blank

Resolution No. 14-22

Exhibit D

Intentionally left blank

*Mailed
3-24-14*



City of Concord
1950 Parkside Drive, MS/03
Concord, CA 94519-2578
FAX: (925) 671-3375
Telephone: (925) 671-3430

LETTER OF TRANSMITTAL

Bel Air Development Company
c/o Zimmerman Management
1330 Broadway, Suite 1060
Oakland, CA 94612

Certified Article Number
7196 9008 9111 6181 7065
SENDERS RECORD

DATE: March 24, 2014

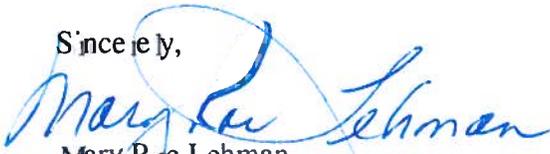
RE: Second Notice of Intention to Adopt a Resolution of Necessity to Acquire Property by Eminent Domain

The attached document is transmitted for your records.

On March 14, 2014 the City of Concord sent you a "Notice of Intention to Adopt a Resolution of Necessity to Acquire Property by Eminent Domain" within the City of Concord for the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project. That notice complied with all applicable legal requirements, including, but not limited to, Code of Civil Procedure section 1245.235. Scott Jenny, attorney for Bel Air Development Company, sent the City's attorneys correspondence on March 19, 2014, which raised certain objections to the March 14, 2014 notice. Those objections have no merit. However, in order to provide you with additional information, the City is sending you the enclosed "Second Notice of Hearing Regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain."

Please note that a **Public Hearing** on this matter will be held on **Tuesday, April 8, 2014 at 6:30 p.m.**, or as soon thereafter as the matter may be heard, in the **City Council Chamber** located at **1950 Parkside Drive in Concord.**

Sincerely,


Mary Rae Lehman
City Clerk

cc: Scott Jenny, Attorney at Law – 738 Ferry Street, Martinez, CA 94553
Meghan A Burke - Burke, Williams & Sorenson – 1901 Harrison St., 9th Fl. Oakland, CA 94612

Bel Air Development Company
c/o Zimmerman Management
1330 Broadway, Suite 1060
Oakland, CA 94612

RE: APNs: 133-150-009, 108, 121, 122, 123, 124

**SECOND NOTICE OF INTENTION
TO ADOPT A RESOLUTION OF NECESSITY
TO ACQUIRE PROPERTY BY EMINENT DOMAIN**

**CITY OF CONCORD
Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement
Project**

Re: Second Notice of Hearing Regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain [California Code of Civil Procedure section 1245.235].

1. Notice of Hearing Regarding Intent of the City Council of the City of Concord to Consider the Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain. The City Council of the City of Concord intends to hold a hearing to consider whether a Resolution of Necessity should be adopted which, if adopted, will authorize the City of Concord ("City") to acquire the real property described herein by eminent domain for the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project ("Project"). Attached hereto as Exhibit "A" are legal descriptions and plat maps depicting the right of way and utility easement ("Easement") and temporary construction easement ("TCE") which are required for the Project ("Property"). The Easement is a permanent acquisition that includes all of the surface use and air rights, as well as partial sub-surface (utilities) rights. The TCE is non-exclusive and will be for a one year term, with a possibility of a three month extension. The TCE will begin on the date the City sends written notice to the owner of the Property reflecting the City's intent to start construction of the Project and make use of the TCE and will terminate one year, or one year and three months, thereafter. If the Resolution of Necessity is adopted after the hearing, it will authorize the City to acquire the Property by eminent domain for construction of public improvements for the Project. You are being sent this notice as your name appears on the last equalized Contra Costa County assessment roll.

DATE OF HEARING: April 8, 2014

TIME OF HEARING: 6:30 p.m., or as soon thereafter as the matter may be heard.

PLACE OF HEARING: The regular meeting place of the City Council of the City of Concord, City Council Chamber, Concord Civic Center, 1950 Parkside Drive, Concord, CA.

2. Notice of Your Right to Appear and Be Heard. You have a right to appear and be heard before the City Council at the above scheduled hearing on the following matters and

issues, and to have the City Council give consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity:

- a. Whether the public interest and necessity require the proposed Project;
- b. Whether the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. Whether the Property described in the Resolution of Necessity is necessary for the Project;
- d. Whether the offer required by Government Code section 7267.2, together with the accompanying statement and summary of the basis for the amount established as just compensation, was actually made to the owner of record and whether said offer and statement and summary were in a form and contained all of the factual information required by Government Code section 7267.2;
- e. Whether the City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the "right to take") to acquire the Property described herein, as well as any other matter regarding the right to take the Property by eminent domain;
- f. Whether the City has statutory authority to acquire the Property by eminent domain; and
- g. Whether the necessary notification of the Notice of Hearing, as required by the California Code of Civil Procedure section 1245.235 was given in regard to the Property.

The statutes which authorize the City to acquire the Property by eminent domain for the Project include, but are not limited to, Article 1, Section 19 of the Constitution of the State of California, Sections 37350.5 of the Government Code, Section 10102 of the Streets and Highway Code, and Section 1230.010 et seq. of the Code of Civil Procedure.

3. Failure to File a Written Request to Be Heard within Fifteen (15) Days After the Notice Was Mailed Will Result in Waiver of the Right to Appear and Be Heard. If you desire to be heard, please be advised that you must file a written request with the City Clerk within fifteen (15) days after this notice was mailed. You must file your request to be heard with the City Clerk, 1950 Parkside Drive, Concord, CA 94519. Should you elect to mail your request to the City Clerk, it must be actually received by the clerk for filing within fifteen (15) days after this notice was mailed. The date of mailing appears at the end of this notice.

If you file a written request to appear, it should include a statement of the condition(s) that you feel are pertinent to your Property. The seven conditions that may affect your Property are set forth above, designated as (a), (b), (c), (d), (e), (f), and (g). By designating which

condition(s) forms the basis of your concerns, and why, you will enable the City Council to have a full and expeditious review made of the Project's effect on your Property.

California Code of Civil Procedure section 1245.235(b)(3) provides that "[f]ailure to file a written request to appear and be heard within 15 days after the notice was mailed will result in waiver of the right to appear and be heard" on the above matters and issues which are the subject of the hearing.

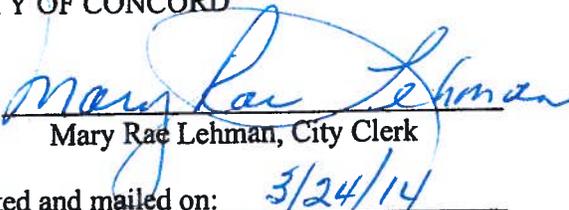
4. You Will Not Waive the Right to Claim Greater Compensation if You Do Not Appear at The Hearing. The amount of the compensation to be paid for the interest, if any, that you may have in the property related to the City's proposed property acquisition is not a matter or issue being heard by the City Council at this time. Your nonappearance at this noticed hearing will not prevent you from claiming greater compensation, as determined by a court of law in accordance with the laws of the State of California. This notice is not intended to foreclose future negotiations between you and the representatives of the City on the amount of compensation to be paid for your property.

However, if you elect not to appear and be heard, you will be foreclosed from raising in a court of law the issues which are the subject of this noticed hearing and which are concerned with the right to take the Property by eminent domain.

If the City Council elects to adopt the Resolution of Necessity, then within six months of the adoption of the Resolution of Necessity, the City of Concord will commence eminent domain proceedings in Superior Court. In that proceeding, the Court will determine the amount of compensation to which you are entitled.

CITY OF CONCORD

By:


Mary Rae Lehman, City Clerk

Dated and mailed on:

3/24/14

cc: Scott Jenny

EXHIBIT A

RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

January 08, 2013
JN: 130987
Page 1 of 2

**EXHIBIT "A"
LEGAL DESCRIPTION
RIGHT OF WAY AND UTILITY
EASEMENT**

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 78 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532842 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 52 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.99 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1993 in Book 4395 Official Records at Page 234 at said Office of said County Recorder and to the **TRUE POINT OF BEGINNING**;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet;

Thence, southeasterly and leaving said easterly boundary line South 64°49'15" East 16.50 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 64°28'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line the following two (2) courses:

- 1) North 64°28'48" West 11.18 feet to a point of a tangent curve, concave southeasterly and having a radius of 20.00 feet, and
- 2) along said curve 31.47 feet and through a central angle of 90°08'28" to the **TRUE POINT OF BEGINNING**.

CONTAINING 7.337 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7308
License Expires March 31, 2013

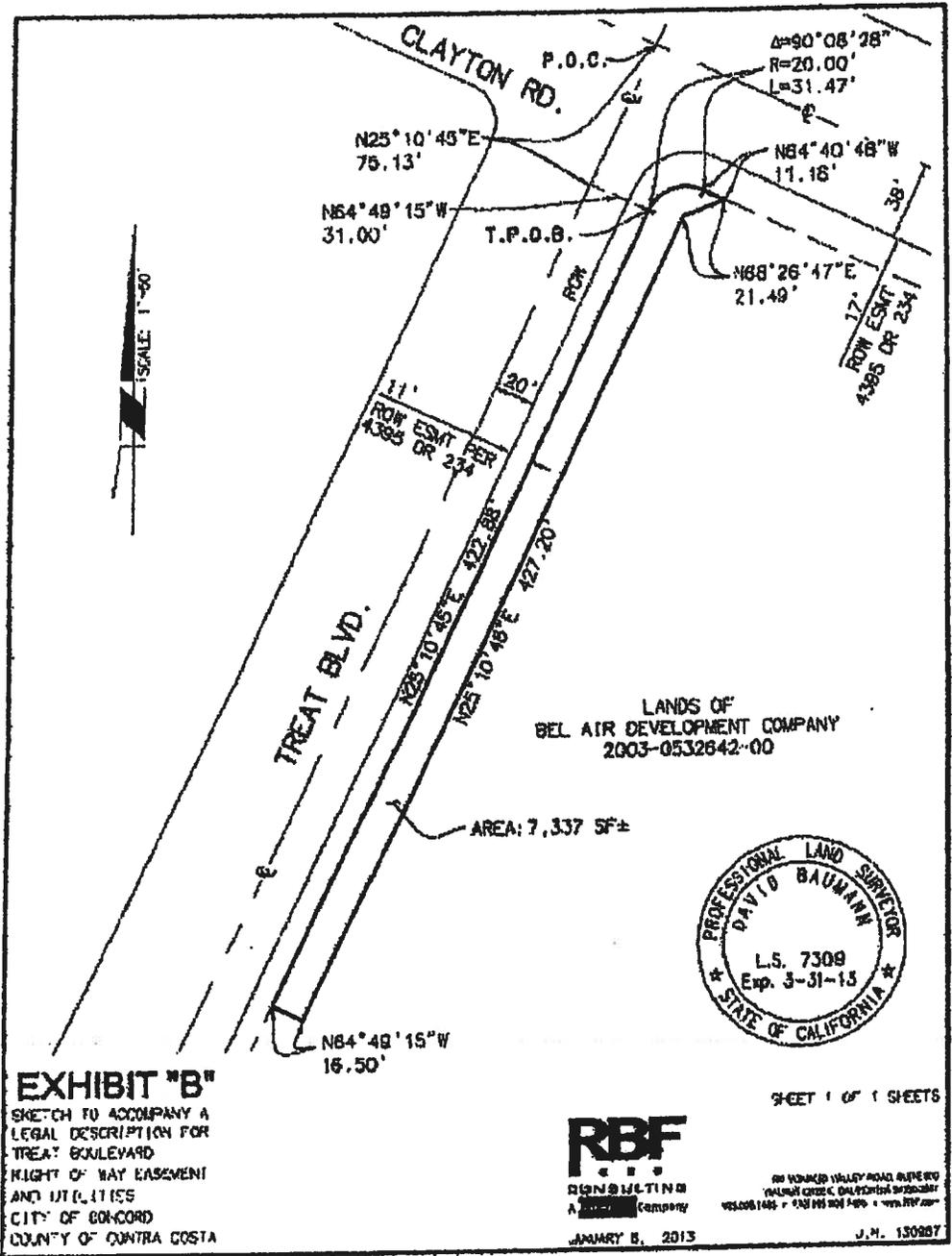


EXHIBIT "B"
 SKETCH TO ACCOMPANY A
 LEGAL DESCRIPTION FOR
 TREAT BOULEVARD
 RIGHT OF WAY EASEMENT
 AND UTILITIES
 CITY OF CONCORD
 COUNTY OF CONTRA COSTA

RBF
 CONSULTING
 A [redacted] Company
 10000 VALLEY ROAD SUITE 100
 WALNUT CREEK, CALIFORNIA 94596
 925.938.1400 • FAX 925.938.1400 • www.rbf.com

PROFESSIONAL LAND SURVEYOR
 DAVID BAUMAN
 L.S. 7308
 Exp. 3-31-13
 STATE OF CALIFORNIA

SHEET 1 OF 1 SHEETS

JANUARY 8, 2013

J.M. 130987

1. V:\2013\130987\130987.dwg (130987.dwg) 1/8/2013 1:08:48

RBF CONSULTING
800 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

March 4, 2013
JN: 130987
Page 1 of 2

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION
EASEMENT

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California filed in map book D at page 76 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cutler, Trustee of the Cutler Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532642 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 62 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1963 in Book 4395 Official Records at Page 234 at said Office of said County Recorder;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet to the **TRUE POINT OF BEGINNING**;

Thence, southeasterly and leaving said easterly boundary line South 64°49'15" East 16.90 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 66°28'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line South 64°40'48" East 35.63 feet;

Thence, leaving said southeasterly right of way line, South 25°19'12" West 8.00 feet;

Thence, North 64°40'48" West 27.34 feet;

Thence, South 25°10'45" West 390.78 feet;

Thence, North 64°49'15" West 14.50 feet;

Thence, South 25°10'45" West 49.06 feet;

Thence, North $64^{\circ}48'15''$ West 25.00 feet to said easterly boundary line (4395 O.R. 234);

Thence, along said easterly boundary line North $25^{\circ}10'45''$ East 5.00 feet to the TRUE POINT OF BEGINNING.

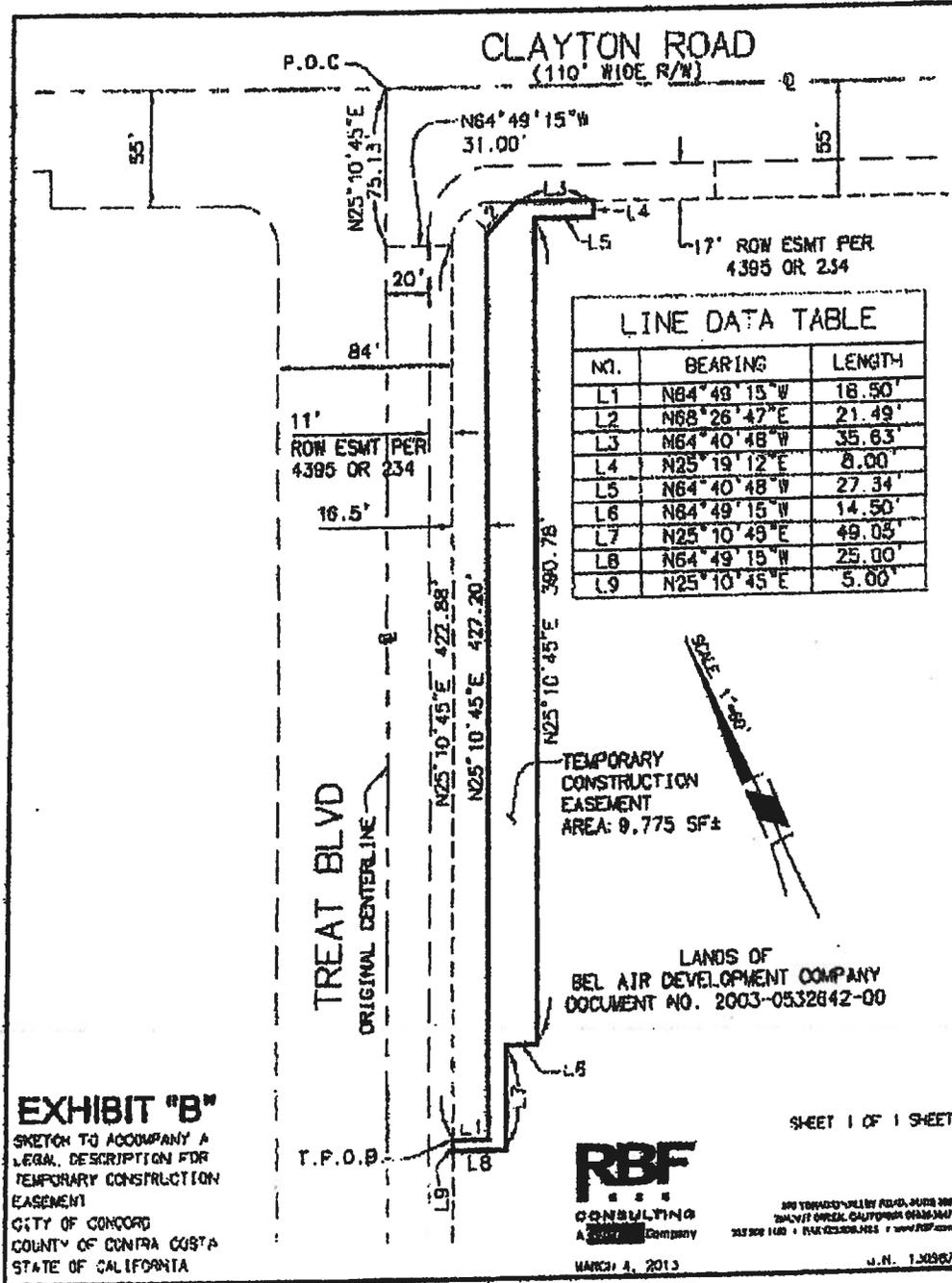
CONTAINING 9,775 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013



NO.	BEARING	LENGTH
L1	N84°49'15"W	18.50'
L2	N68°26'47"E	21.49'
L3	N64°40'48"W	35.63'
L4	N25°19'12"E	8.00'
L5	N64°40'48"W	27.34'
L6	N84°49'15"W	14.50'
L7	N25°10'49"E	49.05'
L8	N64°49'18"W	25.00'
L9	N25°10'45"E	5.00'

EXHIBIT "B"
 SKETCH TO ACCOMPANY A
 LEGAL DESCRIPTION FOR
 TEMPORARY CONSTRUCTION
 EASEMENT
 CITY OF CONCORD
 COUNTY OF CONTRA COSTA
 STATE OF CALIFORNIA

RBF
 CONSULTING
 A [Logo] Company

SHEET 1 OF 1 SHEET

300 TORRANCE HILL BLVD., SUITE 200
 DUBLIN, CALIFORNIA 94568-1647
 925.859.1188 • FAX 925.859.1655 • WWW.RBF.COM

MARCH 4, 2013

J.N. 130367

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Attachment 2 to Staff Report

Government Code Offer – including its own

Exhibits A, B & C

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BURKE, WILLIAMS & SORENSEN, LLP

1901 Harrison Street - Suite 900
Oakland, California 94612-3501
voice 510.273.8780 - fax 510.839.9104
www.bwslaw.com

Direct No.: 510.273.8785
lcastella@bwslaw.com

January 16, 2014

VIA U.S. CERTIFIED MAIL

Bel Air Development Company
c/o Zimmerman Management
1330 Broadway, Suite 1050
Oakland, CA 94612

Bel Air Development Company
c/o CVS Caremark
1 CVS Drive \ OCC EXP Dept.
Woonsocket, RI 02895

Re: Offer Pursuant to Government Code section 7267.2 to Acquire Portions of
APNs 133-150-009, 108, 121, 122, 123, 124 commonly known as 4300, 4420-
4498 Treat Boulevard, Concord, CA

Dear Property Owner:

This office represents the City Concord ("City") regarding the City's efforts to purchase portions of the above-referenced parcel numbers. As discussed further herein, the purpose of this letter is to transmit a formal Government Code Offer to purchase certain portions of your property as part of the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project ("Project").

With this Government Code Offer, the City proposes to acquire portions of Assessor Parcel 133-150-009, 108, 121, 122, 123, 124 commonly known as 4300, 4420-4498 Treat Boulevard, Concord, CA ("Subject Property") as follows: A permanent right of way and utility easement consisting of 7,978 square feet ("Permanent Easement"), and a temporary construction easement ("TCE") for 12 months in duration, with an option to extend for 3 additional months, and consisting of 9,786 square feet. Both the Permanent Easement and the TCE are located along the Treat Boulevard frontage. Enclosed as **Exhibit A** are the legal descriptions and plat maps showing the locations of the proposed Permanent Easement and TCE needed as part of the City's Project.

OAK #4842-5369-6023 v1

Bel Air Development Company
January 16, 2014
Page 2

The Proposed Permanent Easement will include exclusive right to construct a paved, new (relocated), right turn lane, a replacement sidewalk for Treat Boulevard, and replacement landscaping. The non-exclusive TCE will be used for the construction of street improvements.

The City would prefer to resolve this matter by negotiated purchase. Section 7267.2 of the California Government Code requires the City to make you an offer which represents the appraised fair market value of the property necessary for the Project. The City offers the sum of \$361,149 (Three Hundred Sixty One Thousand One Hundred Forty Nine Dollars) for the Permanent Easement and the TCE. Enclosed as **Exhibit B** is the Statement of and Summary of the Basis for the Appraisal and the Amount Established as Just Compensation, which demonstrates the value of the proposed acquisition. As provided in Government Code section 7267.2, the offer is conditioned upon the City Council's ratification of the offer by either execution of a contract of acquisition or adoption of a Resolution of Necessity.

Furthermore, pursuant to Code of Civil Procedure section 1263.025(a), the City will pay the reasonable costs, not to exceed Five Thousand Dollars (\$5,000), of an independent appraisal of the proposed acquisition, ordered by you. To be eligible for reimbursement, the independent appraisal must be conducted by an appraiser licensed by the State Office of Real Estate Appraisers. In addition, pursuant to Code of Civil Procedure section 1263.615, the City is unable to offer to lease you the Permanent Easement or the TCE for your continued use after the City acquires the property rights, because the City will begin the Project within two years of the acquisition. Finally, enclosed as **Exhibit C** is an informational pamphlet describing the eminent domain process and your rights under the Eminent Domain Law.

Please respond to this offer in writing within thirty (30) days from the date of this letter. As indicated, the City would like to resolve this matter with you by agreement, as a negotiated purchase best serves everyone's interests. If you decline the offer, you will shortly receive the City's notice of intent to consider the adoption of a Resolution of Necessity. However, this is merely a procedural step in the process, and the City would not be foreclosed from continuing negotiations by sending such a notice.

Bel Air Development Company
January 16, 2014
Page 3

Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Leah Castella", written in a cursive style.

J. LEAH CASTELLA

MAB:pvk
cc: Mark Coon
Scott Jenny

Attachments:

Legal Descriptions and Plat Maps
Statement of and Summary of the Basis for the Appraisal with Legal Descriptions
Informational Pamphlet Eminent Domain Law

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Attachment 2 - Exhibit A

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RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94696

January 08, 2013
JN 130987
Page 1 of 2

**EXHIBIT "A"
LEGAL DESCRIPTION
RIGHT OF WAY AND UTILITY
EASEMENT**

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 76 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532642 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 52 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1989 in Book 4395 Official Records at Page 234 at said Office of said County Recorder and to the **TRUE POINT OF BEGINNING**;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet;

Thence, southeasterly and leaving said easterly boundary line South 64°49'15" East 16.60 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 68°26'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line the following two (2) courses:

- 1) North 64°26'48" West 11.18 feet to a point of a tangent curve, concave southeasterly and having a radius of 20.00 feet, and
- 2) along said curve 31.47 feet and through a central angle of 90°08'28" to the **TRUE POINT OF BEGINNING**.

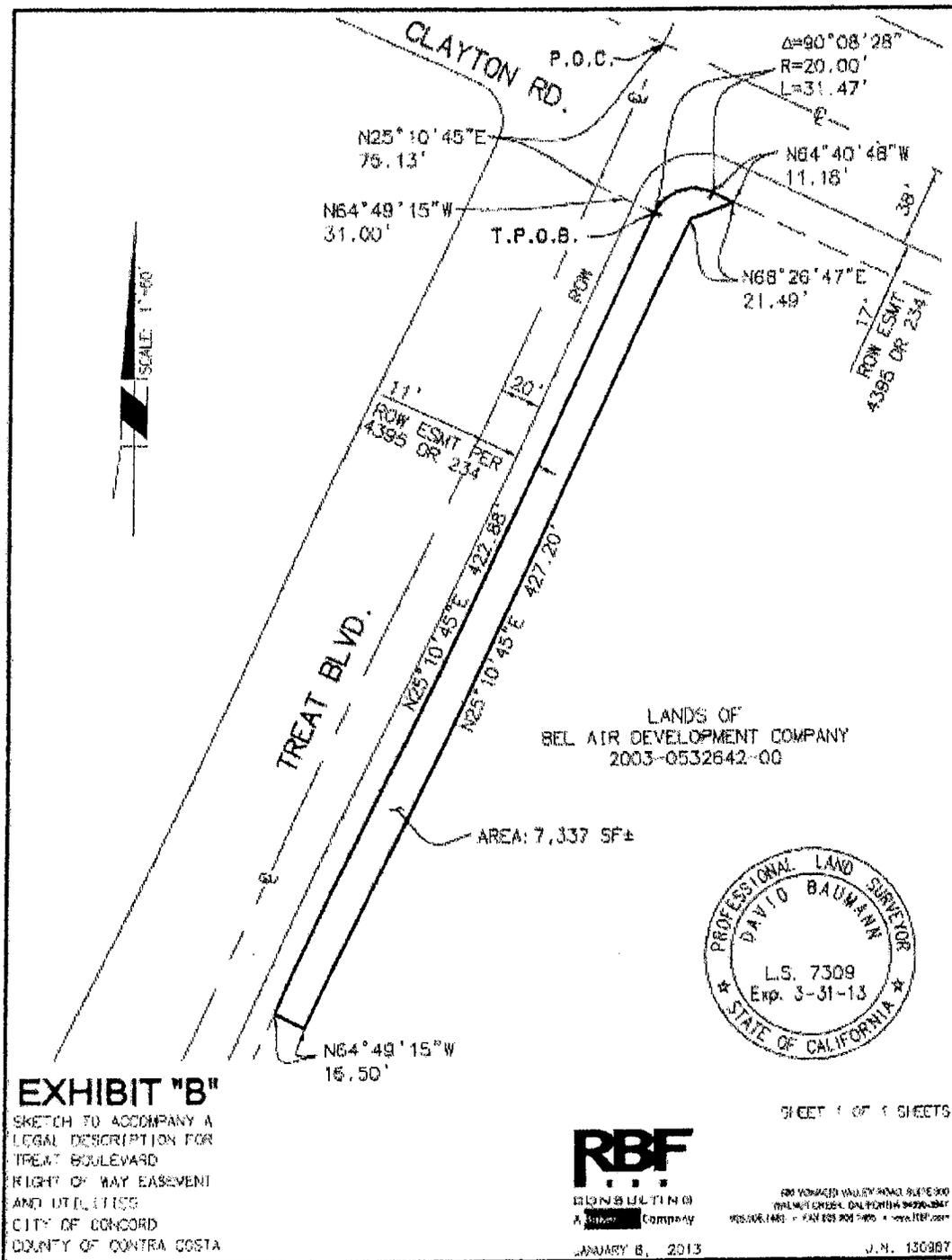
CONTAINING 7.337 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013



RBF CONSULTING
800 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94595

March 4, 2013
JN: 130987
Page 1 of 2

**EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION
EASEMENT**

A portion of the Johnson Tract, recorded on January 25, 1888, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 78 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532842 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 52 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.38 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1963 in Book 4395 Official Records at Page 234 at said Office of said County Recorder;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet to the **TRUE POINT OF BEGINNING**;

Thence, southeasterly and leaving said easterly boundary line South 64°49'15" East 18.50 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 68°26'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line South 64°40'48" East 35.63 feet;

Thence, leaving said southeasterly right of way line, South 25°19'12" West 8.00 feet;

Thence, North 64°40'48" West 27.34 feet;

Thence, South 25°10'45" West 390.78 feet;

Thence, North 64°49'15" West 14.50 feet;

Thence, South 25°10'45" West 49.05 feet;

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Thence, North 64°49'15" West 25.00 feet to said easterly boundary line (4395 O.R. 234);

Thence, along said easterly boundary line North 25°10'45" East 5.00 feet to the **TRUE POINT OF BEGINNING**.

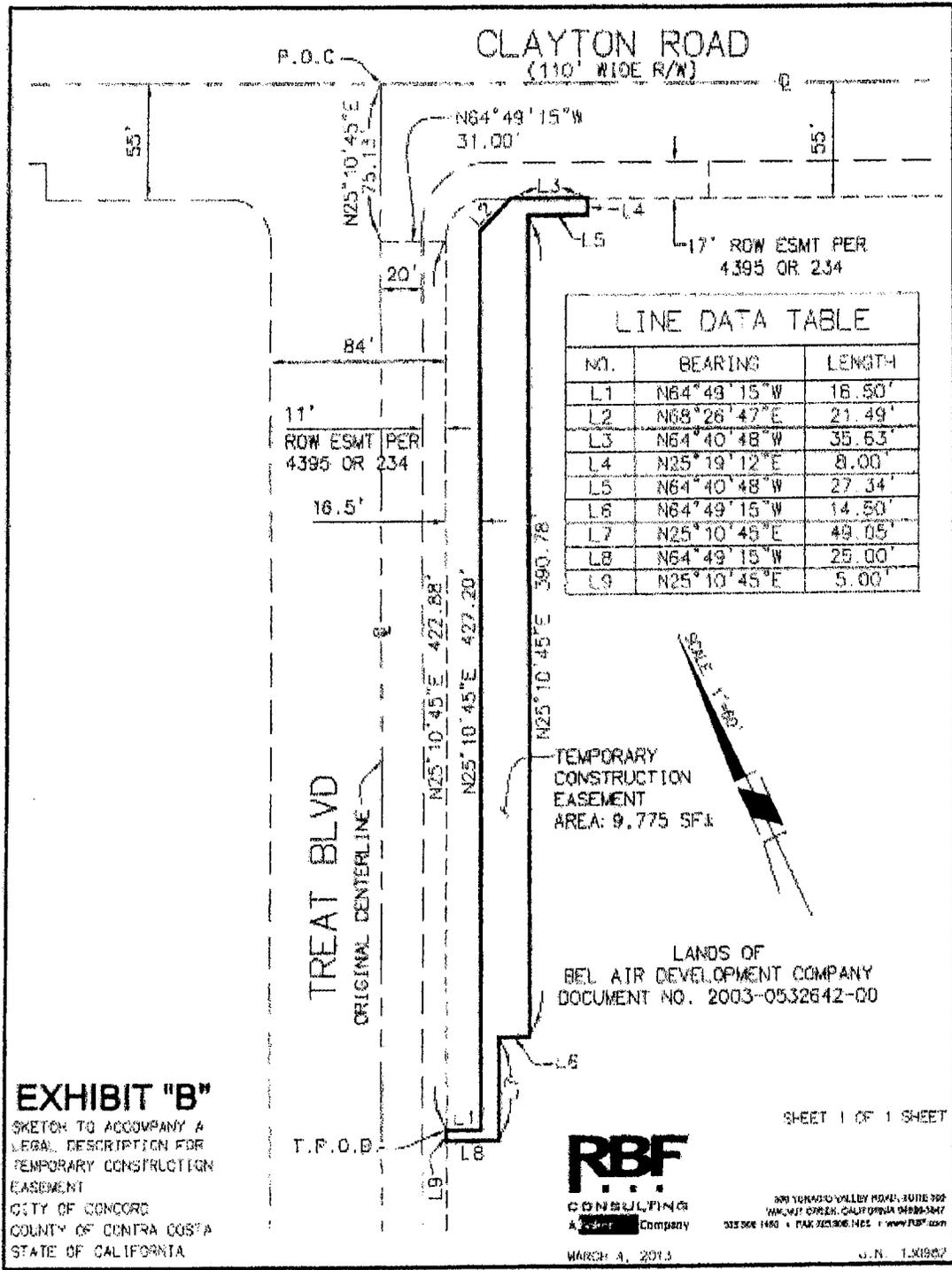
CONTAINING 9,775 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013



Attachment 2 - Exhibit B

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VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

APPRAISERS: Dean Chapman, MAI, SRA, SR/WA
Andrew C. Plaine, MAI, SRA
Dean Chapman & Associates, Inc.
108 Club Terrace
Danville, CA 94526

PROPERTY SUMMARY

OWNER: Bel Air Development Company, LLC. (per Preliminary Title Report).

ADDRESS: 1330 Broadway, Suite 1050, Oakland, CA

LEGAL LARGER PARCEL: APN: 133-150-009, 108, 121, 122, 123, 124 (Contra Costa County)

SIZE OF LEGAL PARCEL: 8.21 acres

INTEREST APPRAISED: Fee simple; partial acquisition.

ZONING: NC, Neighborhood Commercial

PROBABILITY OF A ZONING CHANGE The property is unlikely to be re-zoned to another zoning classification.

PRESENT USE: Multi-tenant shopping center with "out parcels".

HIGHEST AND BEST USE: The existing use represents the highest and best use of the property.

DATE OF VALUATION: May 22, 2013

DATE OF INSPECTION: July 11, 2013

DATE OF REPORT December 5, 2013

SCOPE of ASSIGNMENT

The scope of this assignment was to estimate total compensation for two acquisitions needed from the Subject property for the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project.

EXHIBIT B

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

CLIENT, INTENDED USER(S) and INTENDED USE

The client and intended user for this report is the City of Concord's legal department and special counsel.

The intended use is in connection with the potential acquisition of property rights for a public improvement project.

REPORT TYPE

This Valuation Summary Statement is a restricted report that conforms to the Uniform Standards of Professional Appraisal Practice Section 2-2(c). It is intended to be used by the client only; the opinions and conclusions herein may not be understood without additional information. All data pertinent to the preparation of this report is retained in our work file.

MARKET VALUE DEFINED (EMINENT DOMAIN)

Per the Code of Civil Procedure, Section 1263.320(a), Market Value is defined as:

The fair market value of the property taken is the highest price on the date of the valuation that would be agreed to by a seller, being willing to sell, but under no particular or urgent necessity of so doing nor obliged to sell, and a buyer, being ready, willing and able to buy, but under no particular necessity for so doing, each dealing with each other with full knowledge of the uses and purposes for which the property is reasonably adaptable and available.

DESCRIPTION of PROPERTY

The Subject property is located at 4300 Clayton Road and 4420 through 4498 Treat Boulevard, in Concord. It is further identified as Assessor's Parcel Nos. 133-150-009, 108, 121, 122, 123, and 124 in Contra Costa County. The entire ownership includes a mostly level, rectangular-shaped parcel with 8.21 acres; the street frontage is improved with curb, gutter and sidewalk. The site is improved with a 96,450 square foot multi-tenant shopping center that was built in 1964. The center is known as the Bel Air Shopping Center and contains two "out pad" buildings and a small kiosk.

THE PROJECT

The project is located around the intersection of Clayton Road, Treat Boulevard and Denkinger Road in the easterly portion of Concord. The Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project will improve roadways to minimize, reduce and relieve traffic congestion around the Clayton Road/Treat Boulevard/Denkinger Road intersection.

The project was not considered in the before condition analysis and valuation of this assignment. The project was fully considered to determine severance damage and/or benefits in the after condition.

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

RIGHT-OF-WAY and UTILITY EASEMENT ACQUISITION PARCEL

The right-of-way and utility easement acquisition parcel contains 7,978 square feet according to the plat and legal description provided. Improvements associated with the acquisition parcel include paving, lighting, landscaping and several mature trees.

TEMPORARY CONSTRUCTION EASEMENT

One temporary construction easement (TCE) will be required for construction of the Project. The size of the TCE is 9,786 square feet and the term is 12 months. The TCE is approximately 23 feet wide and located along the westerly side of the right-of-way and utility easement acquisition parcel. The area being temporarily acquired is improved with mostly asphalt paving, although includes some minor amounts of landscaping. We have also been instructed to provide an estimate of compensation for a 3-month extension of the TCE.

EFFECT of ACQUISITION UPON REMAINDER

The right-of-way and utility easement acquisition will have no effective adverse impact on the remainder.

HIGHEST AND BEST USE - AFTER CONDITION

The highest and best use in the after condition will be the same as in the before condition.

OPINION of MARKET VALUE/TOTAL COMPENSATION

The Sales Comparison Approach was used to determine land value for the parcel to be acquired as a right-of-way and utility easement. The land sales used to determine land value are found as Exhibit B. A "zones of value" concept was utilized considering the existing configuration of the property. The value of the land as if vacant was estimated at \$12,676,075, or \$35.44 per square foot. The depreciated cost of the site improvements in the acquisition parcel was estimated at \$18,953 based upon depreciated replacement cost and contributory value concepts.

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

Land and site improvements total \$320,963 (\$18,953 + \$302,010).

<u>Acquisition Parcel Value Calculations</u>						
<u>Valued in Before Condition as part of the Whole</u>						
Subject Property Component	Area (SF)	Fee Unit Value	x	% Property Rights Acquired	=	Value
Shopping Center	5,700	\$35.00 per SF	x	100.0%	=	\$199,500
Corner Pad Site	2,278	\$45.00 per SF	x	100.0%	=	\$102,510
Total	7,978					\$302,010

VALUATION of TEMPORARY CONSTRUCTION EASEMENT

The value of the temporary construction easement for the term of the easement is equivalent to land rent which in this case is based on 8% of the land's fee value per year in the before condition. Value attributed to landscaping and site improvements will also be included. The term of the easement is 12 months and will be paid in advance. The 12-month TCE value is estimated at \$32,149. In addition, we have included an estimate of compensation for a 3-month extension of the TCE at an additional \$8,037.

SEVERANCE DAMAGE and BENEFITS

The remainder value in the after condition is equivalent to the remainder value in the before condition, therefore severance damage is not indicated. As there are no severance damages we have not quantified benefits.

INDICATED FAIR MARKET VALUE of the PROPERTY

<u>Acquisition Parcel Value Summary</u>	
R\W Easement Acquisition w/ site imps.	\$320,963
Severance Damages	\$0
Total:	\$320,963
Rounded to:	\$321,000
TCE - Basic 12 month term	\$32,112
TCE - Additional 3 month extension option	\$8,037
Total Compensation - 12-month TCE:	\$353,112
Total Compensation - with 3-month TCE extension option:	\$361,149

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

ACKNOWLEDGMENT

We have prepared and read this Statement of Valuation data. It correctly states our opinion and conclusion as to the matters herein stated. If called, we will testify to the matters and opinions herein stated.

DEAN CHAPMAN & ASSOCIATES, INC.



Dean Chapman, MAI, SR/WA
Certified General Real Estate Appraiser #AG006074



Andrew C. Plaine, MAI, SRA
Certified General Real Estate Appraiser # AG005298

Date: December 5, 2013

Attachments:

- Exhibit A - Assessor's Map
- Exhibit B - Comparable Land Sales Data
- Exhibit C - Legal Descriptions of Acquisitions
- Exhibit D - General Assumptions and Limiting Conditions & Property-Specific Assumptions
- Exhibit E - Hypothetical Condition
- Exhibit F - Qualifications of Appraisers
- Exhibit G - Certification of Appraisers

**VALUATION SUMMARY STATEMENT AND SUMMARY OF THE
BASIS FOR JUST COMPENSATION**

APN: 133-150-009, 108, 121, 122, 123, and 124

EXHIBIT A

Assessor's Map

**VALUATION SUMMARY STATEMENT AND SUMMARY OF THE
BASIS FOR JUST COMPENSATION**

APN: 133-150-009, 108, 121, 122, 123, and 124

EXHIBIT B

Comparable Land Sales Data

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

COMMERCIAL LAND SALES - Shopping Center Site							
Sale No.	Location APN	Grantor Grantee	Date of Sale Doc. No. Contract Date	Size - Acres Size - SF	Zoning	Sales Price	Price/SF
1)	SWC Hesperian & Marina Hayward 456-0097-007/008/011 thru 015	<u>Eden Shores Assoc. II, LLC</u> Costco Wholesale Corporation	6/30/2009 206114 Jan-08	16.32 710,899	Industrial	\$15,661,576	\$22.03
2)	NWQ Fallon Road & I-580 Dublin 985-0079-003	<u>Stanford Holding Co. LLC</u> Target Corp.	8/3/2010 213362 Feb-10	10.00 435,600	PD Retail	\$10,563,500	\$24.25
3)	1600 Valley Avenue Pleasanton 947-0008-017 (part)	<u>Pleasanton Gateway LLC</u> Property Devel. Centers LLC	12/23/2010 385359 mid-2010	12.50 544,500	PUD Commercial	\$11,697,500	\$21.48
4)	1075-1089 Oak Grove Road Concord 147-010-041/053	<u>Hydrox Properties VIII LLC</u> 1990 Monument Blvd. LLC	3/4/2011 47581 Unk.	1.51 65,601	PD Comml	\$2,975,000	\$45.35
5)	44302 Christy Street Fremont 525-1670-026	<u>Catellus Mixed Land LLC</u> Target Corp.	5/13/2011 145498 Jun-10	9.99 435,164	PD Retail	\$10,672,000 Assessments Total	\$24.52 \$4.85 \$29.37
6)	1461 Concord Avenue Concord 112-211-044/045	<u>HD Development of Maryland Inc.</u> SRE California LLC	12/15/2011 273474 Sep-11	7.26 316,159	WCMU West Concord Mixed Use	\$11,000,000	\$34.79
7)	SWQ Dublin Blvd & Hacienda Dublin 986-0033-007-00	<u>Alameda County Surplus</u> Regency Partners	Jun-13 N/A Jul-12	14.32 623,779	PD Campus Office	\$14,200,000	\$22.76
8)	2860 N. Main Street Walnut Creek 171-070-018/020/034	<u>Charles A. Lee Trust</u> Progressive Casualty Ins. Co.	3/27/2013 76936 Sep-12	1.955 85,160	SC Service Comm.	\$4,200,000	\$49.32
SUBJECT - Shopping Center Portion 4420 through 4498 Treat Boulevard Concord		<u>Bel Air Development Company</u> N/A		7.85 342,011	NC Neigh. Comml.		

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

COMMERCIAL LAND SALES - Corner Pad Site							
Sale No.	Location APN	Grantor Grantee	Date of Sale	Size - Acres	Zoning	Sales Price	Price/SF
			Doc. No. Contract Date	Size - SF			
9)	5195 Clayton Road Concord 117-108-075	<u>Van Fleet</u> Kelly-Moore	11/12/2008	0.74	NC Neigh Comm.	\$500,000	\$15.47
			246907 Jan-08	32,320 26,320 usable			
10)	800 Oak Grove Road Concord 129-280-011	<u>Equilon Enterprises</u> Gursharjeet Cheema et al	12/21/2010 289399 Nov-10	0.48 20,909	PUD Commercial	\$400,000	\$19.13
11)	2602 Monument Court Concord 126-201-014	<u>Larry Armstrong</u> Jalal Sadjadi	3/27/2013 75867 Feb-13	0.29 12,632	CS Service Comm.	\$375,000	\$29.69
12)	2051 Monument Boulevard Concord 128-0310-048	<u>2006 Aviel Trust</u> Autozone	Current Escrow N/A Aug-12	0.51 22,215	CS Service Comm.	\$1,100,000	\$49.52
13)	4290 Clayton Road Concord 132-160-004	<u>Janet Davies Trust</u> N/A	Current Escrow N/A Dec-12	0.29 12,676	CMX Commercial Mixed-Use	\$490,000	\$38.66
SUBJECT - Corner Pad Portion							
	4300 Clayton Road Concord	<u>Bel Air Development Company</u> N/A		0.36 15,682	NC Neigh. Comm.		

**VALUATION SUMMARY STATEMENT AND SUMMARY OF THE
BASIS FOR JUST COMPENSATION**

APN: 133-150-009, 108, 121, 122, 123, and 124

EXHIBIT C

Legal Descriptions of Acquisitions

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94598

January 08, 2013
JN: 130987
Page 1 of 2

EXHIBIT "A" LEGAL DESCRIPTION RIGHT OF WAY AND UTILITY EASEMENT

A portion of the Johnson Tract, recorded on January 25, 1986, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 76 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532642 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 52 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1963 in Book 4395 Official Records at Page 234 at said Office of said County Recorder and to the **TRUE POINT OF BEGINNING**;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet;

Thence, southeasterly and leaving said easterly boundary line South 64°49'156" East 16.50 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 68°26'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line the following two (2) courses:

- 1) North 64°26'48" West 11.18 feet to a point of a tangent curve, concave southeasterly and having a radius of 20.00 feet, and
- 2) along said curve 31.47 feet and through a central angle of 90°08'28" to the **TRUE POINT OF BEGINNING**.

CONTAINING 7,337 Square Feet, more or less.

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Page 1 of 2

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

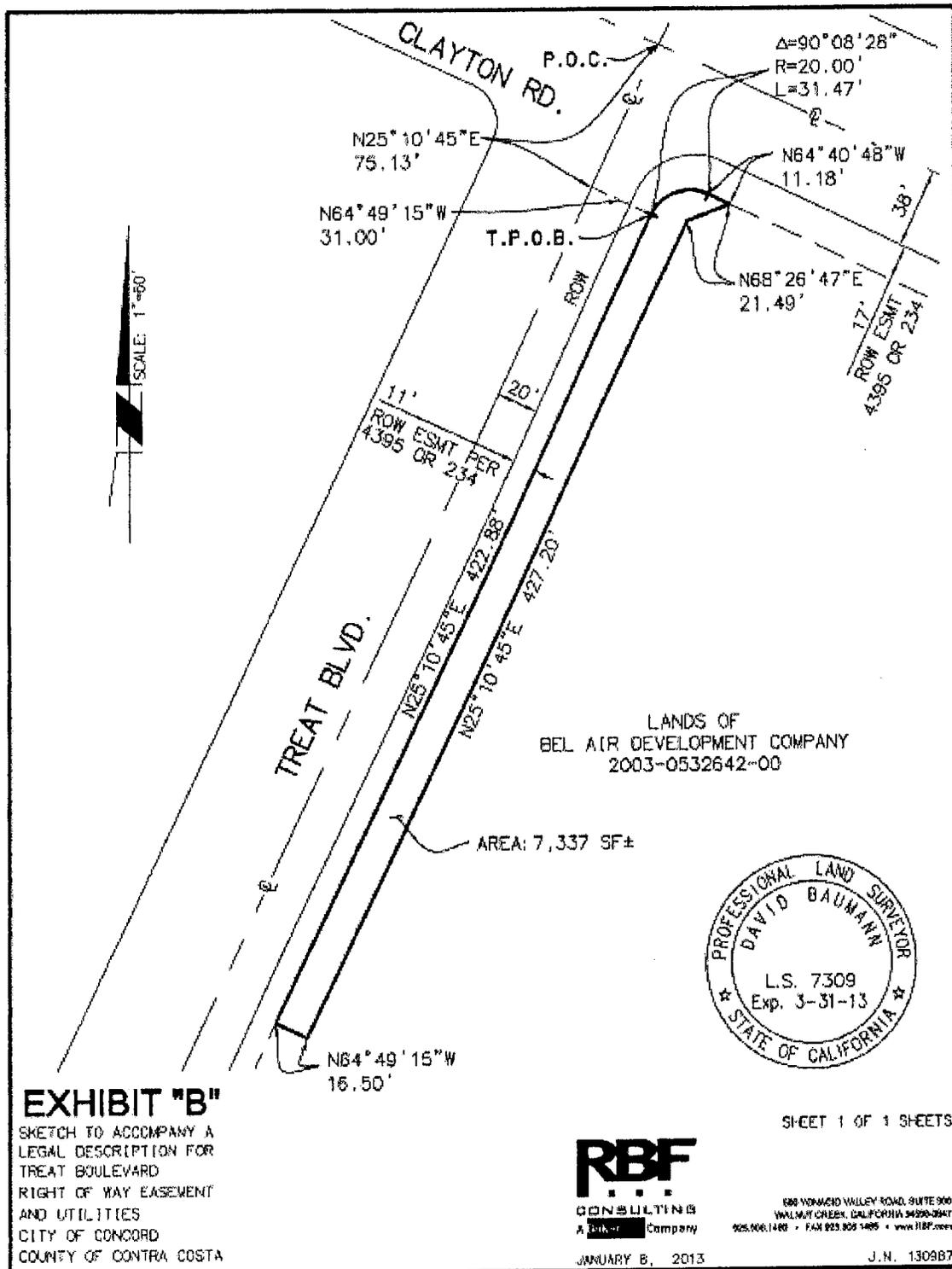
SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7308
License Expires March 31, 2013

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124



VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

March 4, 2013
JN: 130987
Page 1 of 2

EXHIBIT "A" LEGAL DESCRIPTION TEMPORARY CONSTRUCTION EASEMENT

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 76 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532642 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 52 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 84°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1963 in Book 4395 Official Records at Page 234 at said Office of said County Recorder;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet to the **TRUE POINT OF BEGINNING**;

Thence, southeasterly and leaving said easterly boundary line South 64°49'16" East 16.50 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 68°26'47" East 21.48 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line South 64°40'48" East 35.63 feet;

Thence, leaving said southeasterly right of way line, South 25°19'12" West 8.00 feet;

Thence, North 64°40'48" West 27.34 feet;

Thence, South 25°10'45" West 390.78 feet;

Thence, North 64°49'15" West 14.50 feet;

Thence, South 25°10'45" West 49.05 feet;

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Page 1 of 2

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

Thence, North 64°49'15" West 25.00 feet to said easterly boundary line (4395 O.R. 234);

Thence, along said easterly boundary line North 25°10'45" East 5.00 feet to the **TRUE POINT OF BEGINNING**.

CONTAINING 9,775 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

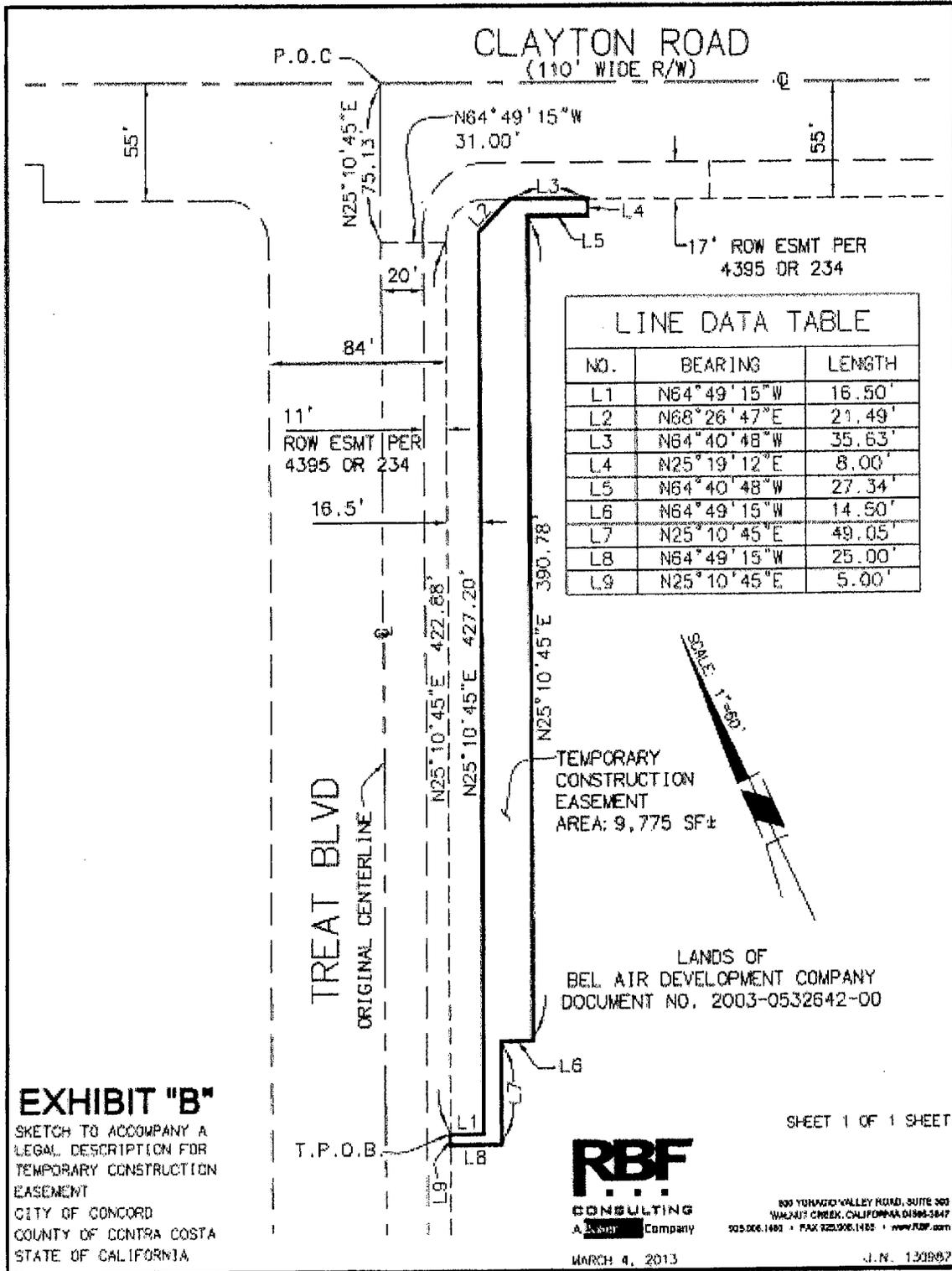
SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124



**VALUATION SUMMARY STATEMENT AND SUMMARY OF THE
BASIS FOR JUST COMPENSATION**

APN: 133-150-009, 108, 121, 122, 123, and 124

EXHIBIT D

General Assumptions and Limiting Conditions
&
Property-Specific Assumptions and Limiting Conditions

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

General Assumptions and Limiting Conditions

The following Assumptions and Limiting Conditions have been relied upon and used in making this appraisal and estimating the respective values required by the purpose of the appraisal and its intended use.

- 1) No responsibility is assumed for legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated in this report.
- 2) The property is appraised free and clear of any or all liens and encumbrances unless otherwise stated in this report.
- 3) Responsible ownership and competent property management are assumed unless otherwise stated in this report.
- 4) The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
- 5) Sketches, plats, or photographs contained in this report are included to assist the reader in visualizing properties and no survey has been made of the property in the report.
- 6) The Appraiser assumes no responsibility for discovery of hidden or non-apparent conditions of the property, subsoil, or the structures that render it more or less valuable. Encroachment of real property improvements is assumed to not exist. No responsibility is assumed for arranging for engineering studies or a survey, which may be required to discover these conditions.
- 7) It is assumed that there is full compliance with all applicable Federal, State, and local environmental regulations and laws unless otherwise stated in this report.
- 8) It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless nonconformity has been stated, defined, and considered in this appraisal report.
- 9) It is assumed that all required licenses, certificates of occupancy, or other legislative or administrative authority from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value conclusions contained in this report are based.
- 10) The Appraiser is not a soil expert. The existing soil and substructure has been assumed adequate for existing or proposed uses unless contrary information is provided and contained in this report. It is advisable to have a soil analysis and report completed by a qualified soil engineer or other qualified expert so that any interested party will become knowledgeable as to the important soil information including seismic data, soil contaminants, type of fill if any, or other relevant matters.

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

General Assumptions and Limiting Conditions *(continued)*

- 11) Unless otherwise stated in this report, the subject property is appraised without a specific compliance survey having been conducted to determine if the property is or is not in conformance with the requirements of the Americans with Disabilities Act.
- 12) The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and improvements must not be used in conjunction with any other appraisal and are invalid if so used.
- 13) Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written prior consent of the Appraiser, and in any event, only with proper written qualifications and only in its entirety.
- 14) Neither all nor any part of the contents of this report *(especially any conclusions as to value, the identity of the Appraiser, or the firm with which the Appraiser is connected)* shall be disseminated to the public through advertising, public relations, news sales, or other media.

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

Property-Specific Assumptions and Limiting Conditions

- 1) It is assumed that there are no hazardous or toxic substances on or near the Subject property or the soils comprising the Subject land.
- 2) This is a Summary Appraisal Report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. The information contained in this report is specific to the needs of the client and for the intended use stated in this report. The Appraiser is not responsible for unauthorized use of this report.
- 3) No easement language has been provided for the proposed right-of-way, utility and temporary construction easements. As a result, this appraisal assumes that the entire surface, air rights, and a portion of subsurface rights are being acquired for public use as part of the public right-of-way. This appraisal also assumes that the property owner will be indemnified against any claims made by the general public as a result of injury within the easement area.
- 4) This appraisal assumes that any existing monitoring wells on the property will either be abandoned or relocated as part of the CCW.
- 5) The City of Concord will offer to replace landscaping and trees along the Treat Boulevard frontage within a 5-foot wide frontage strip on the Subject property with similar species in boxes up to 24". In addition, concrete curbing will be installed as necessary, and the existing light standards and other lighting along the Treat Boulevard frontage within the corner pad parcel will be relocated. Thus, the replacement of landscaping and concrete curbing is included in construction contract work. This appraisal also assumes that any signage, utilities and irrigation systems in both the acquisition parcel and TCE will be repaired, relocated and reinstalled to a suitable location, or modified as appropriate. The appraisal assumes that the city's offer will be accepted by the owner.

**VALUATION SUMMARY STATEMENT AND SUMMARY OF THE
BASIS FOR JUST COMPENSATION**

APN: 133-150-009, 108, 121, 122, 123, and 124

EXHIBIT E

Hypothetical Condition

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

Hypothetical Condition

- 1) The before condition analysis of the Subject is made under the hypothetical condition that the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project and steps leading up to the project does not exist.

**VALUATION SUMMARY STATEMENT AND SUMMARY OF THE
BASIS FOR JUST COMPENSATION**

APN: 133-150-009, 108, 121, 122, 123, and 124

EXHIBIT F

Qualifications of Appraisers

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

DEAN CHAPMAN & ASSOCIATES, INC.

Qualifications

Dean Chapman
Real Estate Appraiser
President, Dean Chapman & Associates

Experience:

1979 - Present Real Estate Appraiser: Dean Chapman & Associates,
Danville, California.

1977 - 1979 Staff Appraiser: United California Bank,
Los Angeles, California.

Memberships: The Appraisal Institute
International Right-of-Way Association Chapter 2

Appraisal Designations: MAI (Member of Appraisal Institute) Certificate No. 6838
SRA (Senior Residential Appraiser of Appraisal Institute)
Certificate No. 1838

Right-of-Way Designation: SR/WA (Senior Right-of-Way Agent)

State Certification: Certified General Real Estate Appraiser
State of California (AG006074)

Expert Witness: Los Angeles County Superior Court
Alameda County Superior Court
Contra Costa County Superior Court
San Francisco County Superior Court
San Mateo County Superior Court
Santa Clara County Superior Court
Federal Bankruptcy Court
Public Utilities Commission
Alameda County Tax Appeal Board

Awards: Mark Green Excellence in Journalism Award for article published in
the International Right of Way Magazine entitled Transmission
Lines and Industrial Property Value

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

Examples of Assignments:

Tax Assessment Appeal for Coca-Cola
Tax Assessment Appeal for DeSilva Gates
Tax Assessment Appeal for Berkeley Farms
Tax Assessment Appeal for Black Mountain Spring Water
Pleasant Hill Downtown Redevelopment (43 properties)
Half Moon Bay/Highway 92 Widening (29 properties)
Brentwood/Highway 4 Bypass Project (28 properties)
PG&E Transmission Line Acquisitions
Estate (16 properties from Ukiah to Las Vegas)
Property Defect cases (contamination, mold, etc.)
Underground Gas Pipeline Easement Acquisition
Hayward/Mission Boulevard widening (21 properties)
Oakley Main Street relocation (20+ properties)
California Department of Justice (eminent domain)
California Department of Water Resources (eminent domain)
Brooktrails: Partial acquisitions for reservoir
Brentwood: school site acquisition
Brentwood: road extensions
City of Willits waste water plant expansion
City of Emeryville parking lot acquisition

Examples of Properties Appraised:

Apartments
Farms
Shopping Centers
Single-Family Homes
Light and Heavy Industrial properties
Office Buildings
Vacant Land
Stores, Strip Centers
Places of Worship
Labor Union Facilities
Open Space
Railroad Right-of-Ways
Transitional Properties
Subdivisions
Mixed-Use Properties
Waste Management Facilities
Hotels/Motels
Corporation Yards
Ranchettes
Cemeteries
Bowling Centers

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

Counties in which

Appraisals have been done:

Alameda
Butte
Clark (Las Vegas, Nevada)
Contra Costa
Los Angeles
Mendocino
Monterey
Napa
Orange
Placer
Sacramento
San Bernardino
San Joaquin
San Mateo
Santa Clara
Santa Cruz
Stanislaus
Solano
Sonoma
Sutter
Yolo

Contact:

108 Club Terrace
Danville, Ca 94526
Email:

Phone 925.831.1311

dean@chapmanappraisals.com

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

QUALIFICATIONS - ANDREW C. PLAINE, MAI, SRA

Andrew C. Plaine is an independent real estate appraiser providing appraisal and consulting services for all types of real estate in the San Francisco Bay Area and Northern California since 1980. He was formerly a partner in the appraisal firm of Edwards, Plaine and Company (1993 until 2004), and is now the principal of Andrew C. Plaine and Associates, Walnut Creek, California.

During his 30 year appraisal career he has performed appraisals of all types of real estate throughout Northern California with an emphasis on urban properties. The properties appraised include vacant land, retail buildings and shopping centers, office complexes, industrial and warehouse properties, residential properties including apartments, condominiums and single family residential homes. He has also appraised rural and agricultural properties, and most notably undertaken several conservation easement appraisal assignments. He specializes in appraising auto-oriented commercial real estate, which includes service stations, fast-food restaurants, convenience stores, quick-lubes, etc.

He has performed appraisals for a variety of purposes including loan, sale/purchase, eminent domain, litigation, expert witness, and taxation. In addition he has qualified as an expert witness in several jurisdictions, and testified in cases involving property value, contamination, and easement rights. The jurisdictions he has qualified as an expert witness include the Contra Costa County Superior Court, San Mateo County Superior Court, and in the California Northern District Court.

Municipal clients served include the Cities of Walnut Creek, Pleasant Hill, Danville, Hayward, Vacaville, Fairfield, Petaluma and Elk Grove, and Contra Costa and Sonoma Counties. His clients include numerous major corporations, financial institutions, attorneys, accountants, public agencies, open space and park districts, and private individuals. Major clients served in the auto-oriented commercial real estate sector include Chevron, Shell, Texaco, Atlantic Richfield, BP West Coast Products, Union Oil, McDonalds, Burger King, Taco Bell, East Bay Equities (Wendy's), 7-Eleven and Calube (Jiffy Lube).

In the late 1970's, Mr. Plaine was employed by the Prudential Assurance Company of London, England in their real estate department. Prior to attending college, Mr. Plaine was an assistant surveyor/appraiser with the firm of Burrows and Company, in England.

Mr. Plaine has been awarded two major designations from the professional organizations in the real estate industry. The Appraisal Institute awarded Mr. Plaine the MAI designation (Member Appraisal Institute) in 1991, and the SRA (Senior Residential Appraiser) designation in 1988. He has been a certified general appraiser under the California State licensing program (CA # AG005298) since 1993.

Mr. Plaine graduated in 1979 from Nottingham University, England, where he earned a Bachelor of Science Degree with Honors in Urban Estate Surveying (real estate). Subsequent education comprises numerous courses, seminars, and workshops given by leading appraisal organizations, such as the Appraisal Institute, and real estate boards.

Mr. Plaine has been active in various volunteer duties connected with the Appraisal Institute; he is a former director of the Appraisal Institution's East Bay Branch, served as a general experience review chair (SRPA), and chair of the candidate's guidance committee (MAI), as well as being a panelist and speaker at various appraisal seminars.

**VALUATION SUMMARY STATEMENT AND SUMMARY OF THE
BASIS FOR JUST COMPENSATION**

APN: 133-150-009, 108, 121, 122, 123, and 124

EXHIBIT G

Certification of Appraisers

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

Certification of Appraisers

We certify that, to the best of our knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- we have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- we have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- we made a personal inspection of the property that is the subject of this report.
- no one provided significant real property appraisal assistance to the person signing this certification.
- the reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- as of the date of this report, we, Dean Chapman and Andrew Plaine have completed the continuing education program of the Appraisal Institute.
- we have performed no other services, as an appraiser or in any other capacity, regarding the property that is the Subject of the work under review within the three-year period immediately preceding acceptance of this assignment.

VALUATION SUMMARY STATEMENT AND SUMMARY OF THE BASIS FOR JUST COMPENSATION

APN: 133-150-009, 108, 121, 122, 123, and 124

- we hereby certify that our opinion of the Market Value of the property appraised as described in this report as of May 22, 2013 was \$353,112 including the basic 12-month TCE, and \$361,149 including an additional 3-month TCE Extension option, and that this opinion and conclusion were made subject to the General Assumptions and Limiting Conditions in this report and without collusion, coercion or direction from anyone as to value.

DEAN CHAPMAN & ASSOCIATES, INC.



December 5, 2013
Date

Dean Chapman, MAI, SR/WA
State Certified General Real Estate Appraiser #AG006074

December 5, 2013
Date



Andrew C. Plaine, MAI, SRA
Certified General Real Estate Appraiser #AG005298

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Attachment 2 - Exhibit C

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EMINENT DOMAIN INFORMATIONAL PAMPHLET

Introduction

California Government Code Section 7267.2 requires that a public entity provide property owners with an informational pamphlet describing the eminent domain process and the property owners' rights under the Eminent Domain Law at the time the public entity offers to purchase the owners' property or portions of their property. This informational pamphlet provides a general overview of the eminent domain process and answers questions commonly asked by property owners regarding their rights. This is an informational pamphlet only and is not intended to give a complete statement of all state or federal laws and regulations regarding eminent domain or to provide property owners with any form of legal advice.

Overview of The Eminent Domain Process

What is eminent domain?

Eminent domain is the acquisition of private property by a public entity for a public use. Public entities, such as the state and the federal government, counties, cities, redevelopment agencies, and school districts, may acquire real property for a public use if they meet all legal requirements, including the payment of just compensation to the property owners or into the court for the benefit of the owners. (CALIFORNIA CONSTITUTION, art. I, sec. 19). Public uses include, but are not limited to roads, sewer lines, parks, public facilities, police stations, fire stations, libraries, and schools. The acquisition of real property to remedy blight consistent with the Redevelopment Law is also a public use (Health and Safety Code Section 33000 *et seq.*).

A public entity may acquire any interest in real property such as a fee interest, permanent easement, slope easement, or temporary construction easement. A public entity may acquire only the real property interests that are needed for the public use. If a public entity acquires a portion of a parcel and this results in damage to the remainder parcel, the owner is entitled to be compensated for the loss of value, if any, to the remainder parcel. This is called severance damages. If the appraiser determines that the remainder parcel will be left in a size, shape or condition to be of little or no value to the owner, the public entity will offer to purchase the entire parcel. The property owners can decide whether they want the public entity to acquire such uneconomic remnants.

The law requires a public entity to make every reasonable effort to acquire property expeditiously by negotiated purchase. As discussed more fully below, there are several steps that a public entity must take prior to acquiring property by eminent domain. These legal prerequisites are meant to protect property owners and to ensure that they have an opportunity to participate in the acquisition process. These preacquisition steps include the appraisal process, offers and negotiations.

Appraisal Process

The public entity is required to obtain a fair market value appraisal of the real property before it can acquire it by eminent domain.

Notice Informing Owners of Public Entity's Decision to Appraise Their Property

When a public entity identifies a real property or real property interest ("subject property") that it may need for a proposed project, it sends to the property owners a notice informing the owners that it intends to appraise the subject property. This notice informs the owners that the public entity has decided to appraise the subject property and notifies them that an appraiser will be contacting them. An appraiser licensed by the Office of Real Estate Appraisers will contact the owners and request permission to inspect the subject property. The appraiser will also invite the property owners to accompany the appraiser on the inspection of the subject property and to provide to the appraiser any information that the owners consider relevant to the value of the property. Permitting the inspection and accompanying the appraiser on the site inspection will allow the appraiser to fully assess the value of the subject property. If the owners do not allow the appraiser to inspect the subject property, the appraiser will inspect it from the public right of way.

Appraisal

After the appraiser inspects the property, the appraiser prepares an appraisal of the fair market value of the property.

What is fair market value?

The Eminent Domain Law defines fair market value as the highest price on the date of value that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for selling the property, and a buyer, ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. (Code of Civil Procedure Section 1263.320). The appraisal will take into consideration the highest and best use of the property. It can take several weeks or months for an appraisal to be completed, depending on the appraiser's workload.

After the appraisal is completed, staff will review the appraisal to see if it complies with the requirements of the Eminent Domain Law. Staff will then recommend that the governing body of the public entity approve the appraisal and set just compensation. Just compensation must be at least the fair market value of the property as set forth in the appraisal.

Offer

When will the property owners receive an offer to purchase the property?

The public entity will provide the owner with a written offer to purchase the property after it sets just compensation. The public entity generally sends the written offer within thirty (30) days from the date on which the public entity sets just compensation. The public entity cannot offer to purchase the property for less than the fair market value of the property as determined by the appraisal. (Government Code Section 7267.2).

What must the public entity include in the written offer to purchase the property?

Government Code Section 7267.2 requires that the offer include a written statement of, and summary of the basis for, the amount the public entity established as just compensation. The offer must also include the following:

- The date of value, highest and best use, and applicable zoning of property;
- The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value; and
- Where appropriate, a separate statement of the just compensation for the real property acquired and for damages to the remainder, including the calculations and narrative explanation supporting the compensation and any offsetting benefits.

If the property is owner-occupied residential property and contains no more than four residential units, the owners are entitled to review a copy of the appraisal.

Negotiations

The public entity will negotiate with the property owners for the sale of the property after it sends the offer letter

Do the property owners have the right to obtain their own appraisal of the property?

Yes. Property owners have always had the right to obtain their own appraisal of their real property. As of January 1, 2007, however, the public entity must offer to pay the property owners' reasonable costs, up to \$5,000.00, for an independent appraisal of their property. The law requires that an appraiser licensed by the Office of Real Estate Appraisers prepare the independent appraisal. The public entity will inform the owners

of their rights to be reimbursed for these appraisal costs at the time it sends the offer letter.

Are the property owners required to accept the public entity's offer to purchase the property?

No. The property owners are encouraged to contact the public entity to negotiate the sale of the property. The owners can negotiate the amount they believe to be the fair market value of the property and the terms and conditions of the offer.

Are there any advantages to selling the property to a public entity?

Yes. The property owner will receive at least the fair market value of the property and will not be responsible for real estate commissions, title fees, title insurance, escrow fees, closing costs, and other fees and costs. Some acquisitions by public entities in lieu of condemnation may result in tax benefits to the property owners. The Internal Revenue Service will look at specific criteria to determine whether the acquisition by the public entity qualifies for tax benefits. Accordingly, property owners are encouraged to discuss any such tax benefits with their tax advisors.

Negotiated Acquisition

If a negotiated agreement for the sale of the property is reached, the public entity will prepare a purchase and sale agreement. In such cases, the conveyance of the property is handled through an escrow.

Resolution of Necessity

If the public entity and the property owners do not reach an agreement for the sale of the property, the public entity can hold a hearing to determine whether it will acquire the real property by eminent domain.

Notice of Hearing on Resolution of Necessity

If the public entity has determined that it is necessary to consider the acquisition of the real property by eminent domain, it will send a written notice to the property owners informing them of the date, time and location of the public entity's hearing at which it will consider the adoption of a resolution of necessity. (Code of Civil Procedure Section 1245.235). The notice informs the property owners of their right to be heard at this hearing and of their right to present evidence and to preserve their objections to the public entity's right to take the property.

The Eminent Domain Law requires that a public entity make all of the following findings pursuant to Code of Civil Procedure Section 1245.230 to adopt a resolution of necessity authorizing the public entity to acquire the property by eminent domain:

- That the public interest and necessity require the project;
- That the project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
- That the subject property is necessary for the project; and
- That either the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

A public entity may adopt a resolution of necessity only after the governing body has given each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized assessment roll notice and a reasonable opportunity to appear and be heard on the above matters.

The governing body of the public entity will consider all written and oral evidence before it at the hearing, including any objections to the adoption of the resolution of necessity. The public entity can adopt a resolution of necessity authorizing the acquisition of property by eminent domain if at least two-thirds of the all of the members of the governing body vote to adopt the resolution. If the governing body consists of five members, the adoption of a resolution of necessity requires at least four out of five affirmative votes.

Eminent Domain Proceeding

The resolution of necessity is the document that authorizes the public entity's attorneys to commence an eminent domain proceeding. Accordingly, if the governing body of the public entity adopts a resolution of necessity, its attorneys will prepare a complaint in eminent domain and related pleadings to acquire the property by eminent domain. Generally, the complaint in eminent domain will name as defendants any parties that have a recorded interest in the parcel, including the record owners, tenants, easement holders whose interests may be impacted by the acquisition of the property or beneficiaries under deeds of trust. The public entity will serve the property owners and other named defendants with a copy of the summons, complaint and related documents filed with the court. The defendants served with the summons and complaint have thirty (30) days from the date that they are served with the summons and complaint to file an answer or responsive pleading with the court. (Code of Civil Procedure Section 412.20). Property owners should consider retaining an attorney with experience in eminent domain proceedings to represent them in such proceedings. The parties can continue to negotiate after the eminent domain proceeding is filed.

Orders for Prejudgment Possession and Deposit of Probable Compensation

Can the public entity take possession of the property before trial?

A public entity may request an order from the court for early possession of the property. This is called an order for prejudgment possession.

Deposit of Probable Compensation

To obtain an order for prejudgment possession, the public entity must show that it is entitled to acquire the property by eminent domain and that it has deposited with the court for deposit into the county treasury or directly with the State Treasury the amount of probable compensation for the real property. The public entity must submit a summary of the basis for the appraisal when it applies to deposit the amount of probable compensation with the court. The date on which the public entity deposits the probable amount of compensation is generally the date of value in the proceeding. This means that the appraisers for the public entity and property owners will determine the fair market value of the real property in the eminent domain proceeding as of the date of value.

Objection to Motion for an Order for Possession

Property owners have the right to oppose a public entity's motion for an order for prejudgment possession. The public entity's motion for an order for prejudgment possession notifies property owners that they have the right to oppose the motion and that they must serve the public entity and file with the court the opposition to the motion within thirty (30) days from the date on which the property owner was served with the motion. If the property owners' opposition asserts a hardship, it has to be supported by a declaration signed under penalty of perjury stating facts supporting the hardship. The public entity can file a reply to the opposition not less than fifteen (15) days before the hearing. At the hearing, if the motion is opposed, the court may enter an order for possession of the property after considering the relevant facts and any opposition if it finds each of the following:

- The public entity is entitled to take the property by eminent domain;
- The public entity has deposited the amount of probable compensation pursuant to Code of Civil Procedure Section 1255.010 *et seq.*;
- There is an overriding need for the public entity to possess the property prior to the issuance of final judgment in the case and the public entity will suffer a substantial hardship if the application for possession is denied or limited; and
- The hardship that the public entity will suffer if possession is denied or limited outweighs any hardship on the defendant or occupant that would be caused by the granting of the order for possession. (Code of Civil Procedure Section 1255.410).

Withdrawal of Deposit of Probable Compensation

Property owners can apply to withdraw the funds on deposit with the court. Property owners must serve a copy of their application to withdraw the funds on the public entity. The court cannot order the disbursement of the funds on deposit until twenty (20) days after the date on which the application for withdrawal was served on the public entity. The public entity may file an objection to the withdrawal if, for example, other parties to the proceeding are known or believed to have an interest in the just compensation. Property owners waive any challenges to the public entity's right to take if they withdraw the funds on deposit with the court. Property owners do not, however, waive their claims for greater compensation for the property if they withdraw the funds on deposit.

Exchange of Valuation Data

The parties can agree to exchange statements of valuation data containing the information required by Code of Civil Procedure Section 1258.260 or appraisal reports containing that information on a mutually-agreed to date. If the parties do not mutually agree to exchange valuation data on a specific date, the date of exchange is ninety (90) days before the commencement of trial on the issue of just compensation. This gives the parties the opportunity to analyze the fair market value opinions of the other party's expert and sales data or appraisal methodology relied on by the other party's expert. The parties will generally take the depositions of the other party's appraiser. After the parties exchange valuation data, the parties often negotiate a settlement at a mediation, during informal settlement negotiations, or during a mandatory settlement conference.

Trial

In eminent domain proceedings, the judge decides legal issues, such as the right to take, the issue of what constitutes a larger parcel, and the issue of entitlement to certain damages. Property owners are entitled to have the jury determine the amount of just compensation. The parties resolve the majority of eminent domain proceedings prior to trial.

Vacating the Property

When will property owners and tenants be required to move from the property?

If the public entity and property owners reach a negotiated settlement, the public entity will attempt to determine a mutually agreeable date for owners to move. If the property is condemned, the public entity cannot require the owners to move without a court order. If the subject property is lawfully occupied, the public entity must serve the property owners with a motion for an order for prejudgment possession ninety (90) days before the court hearing. Orders for prejudgment possession are discussed more fully

above. If the order for prejudgment possession is granted, the public entity must serve the property owners with the order thirty (30) days before it intends to take possession of the subject property. If the subject property is unoccupied, the public entity must serve the property owners with a motion for an order for possession sixty (60) days before the court hearing. If the order for prejudgment possession is granted, the public entity must serve the property owners with the order for prejudgment possession ten days before it intends to take possession of the subject property.

Relocation Assistance

Property owners and occupants of property (tenants) that are displaced as the result of a public project, may be entitled to relocation assistance and benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 *et seq.*) and the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations). Benefits may include moving expenses, re-establishment costs, rent differential payments, or interest differential payments. A relocation consultant, hired by the public entity, will meet with the property owners and or tenants to determine their eligibility and potential benefits.

Loss of Business Goodwill

Goodwill is the benefit that accrues to a business as a result of its location, reputation, skill and other factors that contribute to a business maintaining and acquiring patrons. Public entities are required to compensate owners of a business conducted on the property, or on the remainder parcel, if the business owners prove all of the following:

- The loss is caused by the taking of the property or the injury to the remainder;
- The loss cannot reasonably be prevented by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill;
- Compensation for the loss will not be included in payments under Section 7262 of the Government Code.
- Compensation for the loss will not duplicated in the compensation otherwise awarded to the owner.

Business owners must raise their claim for loss of business goodwill in their answer to the public entity's complaint. The public entity will engage a business valuation expert to determine the value of the goodwill of the business in the eminent

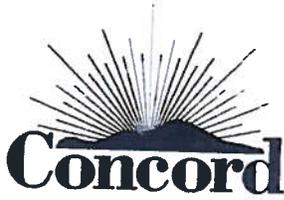
domain proceeding. Business owners also generally engage a business valuation expert in the eminent domain proceeding.

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Attachment 3 to Staff Report
Notice of Intention to Consider
Adoption of Resolution of
Necessity

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*mailed
3-14-14*



City of Concord
1950 Parkside Drive, MS/03
Concord, CA 94519-2578
FAX: (925) 671-3375
Telephone: (925) 671-3430

LETTER OF TRANSMITTAL

Bel Air Development Company
c/o Zimmerman Management
1330 Broadway, Suite 1060
Oakland, CA 94612

Certified Article Number
7196 9008 9111 6181 7164
SENDERS RECORD

DATE: March 14, 2014
RE: Notice of Intention to Adopt a Resolution of Necessity –
Clayton Road/Treat/Denkinger Rd. Capacity Improvement Project.

The attached document is transmitted for your records.

Enclosed please find the original copy of the "Notice of Intention to Adopt A Resolution of Necessity to Acquire Property by Eminent Domain" within the City of Concord for the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project. Please note that a **Public Hearing** on this matter will be held on **Tuesday, April 8, 2014 at 6:30 p.m.**, or as soon thereafter as the matter may be heard, **in the City Council Chamber** located at **1950 Parkside Drive in Concord.**

Sincerely,

Mary Rae Lehman
City Clerk

Enclosure

cc: Scott Jenny, Attorney at Law – 738 Ferry Street, Martinez, CA 94553
Megan A. Burke, Burke, Williams & Sorensen – 1901 Harrison St., 9th Fl. Oakland, CA 94612

COPY

Bel Air Development Company
c/o Zimmerman Management
1330 Broadway, Suite 1060
Oakland, CA 94612

RE: APNs: 133-150-009, 108, 121, 122, 123, 124

**NOTICE OF INTENTION
TO ADOPT A RESOLUTION OF NECESSITY
TO ACQUIRE PROPERTY BY EMINENT DOMAIN**

**CITY OF CONCORD
Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement
Project**

Re: Notice of Hearing Regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain [California Code of Civil Procedure section 1245.235].

1. Notice of Hearing Regarding Intent of the City Council of the City of Concord to Consider the Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain. The City Council of the City of Concord intends to hold a hearing to consider whether a Resolution of Necessity should be adopted which, if adopted, will authorize the City of Concord ("City") to acquire the real property described herein by eminent domain for the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project ("Project"). Attached hereto as Exhibit "A" are legal descriptions and plat maps depicting the right of way and utility easement and temporary construction easement which are required for the Project ("Property"). If the Resolution of Necessity is adopted after the hearing, it will authorize the City to acquire the Property by eminent domain for construction of public improvements for the Project. You are being sent this notice as your name appears on the last equalized Contra Costa County assessment roll.

DATE OF HEARING: April 8, 2014

TIME OF HEARING: 6:30 p.m., or as soon thereafter as the matter may be heard.

PLACE OF HEARING: The regular meeting place of the City Council of the City of Concord, City Council Chamber, Concord Civic Center, 1950 Parkside Drive, Concord, CA.

2. Notice of Your Right to Appear and Be Heard. You have a right to appear and be heard before the City Council at the above scheduled hearing on the following matters and issues, and to have the City Council give consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity:

- a. Whether the public interest and necessity require the proposed Project;

- b. Whether the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. Whether the Property described in the Resolution of Necessity is necessary for the Project;
- d. Whether the offer required by Government Code section 7267.2, together with the accompanying statement and summary of the basis for the amount established as just compensation, was actually made to the owner of record and whether said offer and statement and summary were in a form and contained all of the factual information required by Government Code section 7267.2;
- e. Whether the City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the "right to take") to acquire the Property described herein, as well as any other matter regarding the right to take the Property by eminent domain;
- f. Whether the City has statutory authority to acquire the Property by eminent domain; and
- g. Whether the necessary notification of the Notice of Hearing, as required by the California Code of Civil Procedure section 1245.235 was given in regard to the Property.

The statutes which authorize the City to acquire the Property by eminent domain for the Project include, but are not limited to, Article 1, Section 19 of the Constitution of the State of California, Sections 37350.5 of the Government Code, Section 10102 of the Streets and Highway Code, and Section 1230.010 et seq. of the Code of Civil Procedure.

3. Failure to File a Written Request to Be Heard within Fifteen (15) Days After the Notice Was Mailed Will Result in Waiver of the Right to Appear and Be Heard. If you desire to be heard, please be advised that you must file a written request with the City Clerk within fifteen (15) days after this notice was mailed. You must file your request to be heard with the City Clerk, 1950 Parkside Drive, Concord, CA 94519. Should you elect to mail your request to the City Clerk, it must be actually received by the clerk for filing within fifteen (15) days after this notice was mailed. The date of mailing appears at the end of this notice.

If you file a written request to appear, it should include a statement of the condition(s) that you feel are pertinent to your Property. The seven conditions that may affect your Property are set forth above, designated as (a), (b), (c), (d), (e), (f), and (g). By designating which condition(s) forms the basis of your concerns, and why, you will enable the City Council to have a full and expeditious review made of the Project's effect on your Property.

California Code of Civil Procedure section 1245.235(b)(3) provides that "[f]ailure to file a written request to appear and be heard within 15 days after the notice was mailed will result in

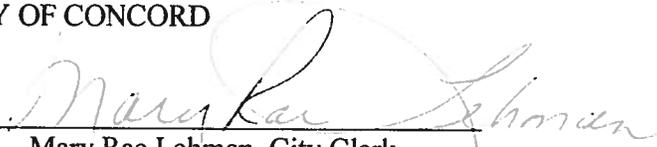
waiver of the right to appear and be heard” on the above matters and issues which are the subject of the hearing.

4. You Will Not Waive the Right to Claim Greater Compensation if You Do Not Appear at The Hearing. The amount of the compensation to be paid for the interest, if any, that you may have in the property related to the City’s proposed property acquisition is not a matter or issue being heard by the City Council at this time. Your nonappearance at this noticed hearing will not prevent you from claiming greater compensation, as determined by a court of law in accordance with the laws of the State of California. This notice is not intended to foreclose future negotiations between you and the representatives of the City on the amount of compensation to be paid for your property.

However, if you elect not to appear and be heard, you will be foreclosed from raising in a court of law the issues which are the subject of this noticed hearing and which are concerned with the right to take the Property by eminent domain.

If the City Council elects to adopt the Resolution of Necessity, then within six months of the adoption of the Resolution of Necessity, the City of Concord will commence eminent domain proceedings in Superior Court. In that proceeding, the Court will determine the amount of compensation to which you are entitled.

CITY OF CONCORD

By: 
Mary Rae Lehman, City Clerk

Dated and mailed on: 3/14/14

cc: Scott Jenny

EXHIBIT A

R&F CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

January 08, 2013
JN: 130987
Page 1 of 2

**EXHIBIT "A"
LEGAL DESCRIPTION
RIGHT OF WAY AND UTILITY
EASEMENT**

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 78 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0332842 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 82 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South $25^{\circ}10'45''$ West 76.13 feet;

Thence, southeasterly and leaving said centerline South $64^{\circ}49'15''$ East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1963 in Book 4395 Official Records at Page 234 at said Office of said County Recorder and to the **TRUE POINT OF BEGINNING**;

Thence, southerly along said easterly boundary line South $25^{\circ}10'45''$ West 422.88 feet;

Thence, southeasterly and leaving said easterly boundary line South $64^{\circ}49'15''$ East 16.50 feet;

Thence, North $25^{\circ}10'45''$ East 427.20 feet;

Thence, North $68^{\circ}28'47''$ East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line the following two (2) courses:

- 1) North $64^{\circ}28'48''$ West 11.16 feet to a point of a tangent curve, concave southeasterly and having a radius of 20.00 feet, and
- 2) along said curve 31.47 feet and through a central angle of $90^{\circ}08'28''$ to the **TRUE POINT OF BEGINNING**.

CONTAINING 7.337 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013

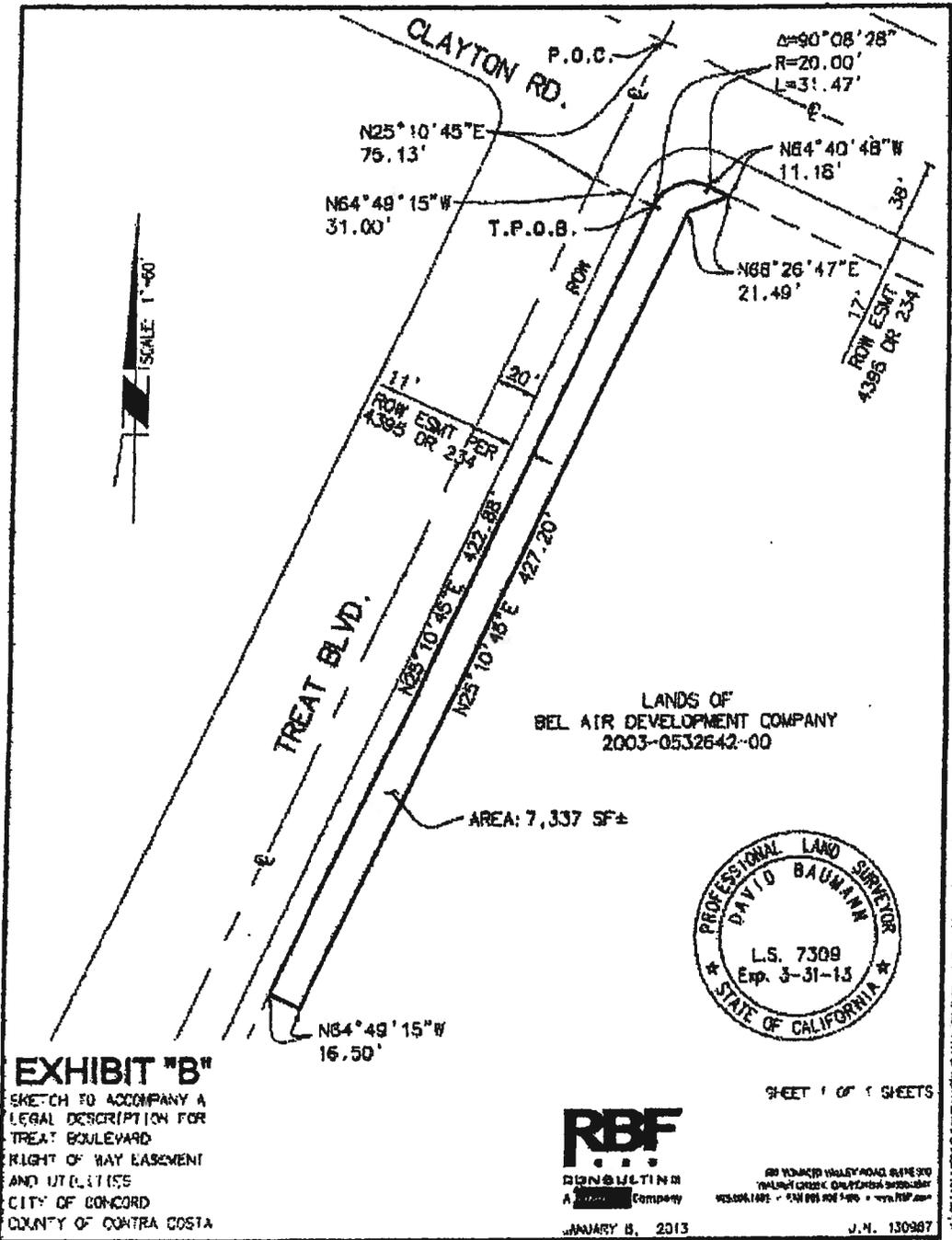


EXHIBIT "B"
SKETCH TO ACCOMPANY A
LEGAL DESCRIPTION FOR
TREAT BOULEVARD
RIGHT OF WAY EASEMENT
AND UTILITIES
CITY OF CONCORD
COUNTY OF CONTRA COSTA

80 YONKER VALLEY ROAD, SUITE 310, TAYLOR CREEK, CALIFORNIA 94598
 925.961.1800 • FAX 925.961.1800 • www.RBF.com

RBF CONSULTING
800 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

March 4, 2013
JN: 130887
Page 1 of 2

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION
EASEMENT

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California filed in map book D at page 78 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532542 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 52 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1983 in Book 4395 Official Records at Page 234 at said Office of said County Recorder;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet to the **TRUE POINT OF BEGINNING**;

Thence, southeasterly and leaving said easterly boundary line South 64°49'15" East 15.90 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 66°26'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line South 64°40'48" East 35.63 feet;

Thence, leaving said southeasterly right of way line, South 25°19'12" West 8.00 feet;

Thence, North 64°40'48" West 27.34 feet;

Thence, South 25°10'45" West 390.78 feet;

Thence, North 64°49'15" West 14.60 feet;

Thence, South 25°10'45" West 49.06 feet;

Thence, North $64^{\circ}49'16''$ West 25.00 feet to said easterly boundary line (4395 O.R. 234);

Thence, along said easterly boundary line North $25^{\circ}10'45''$ East 5.00 feet to the **TRUE POINT OF BEGINNING**.

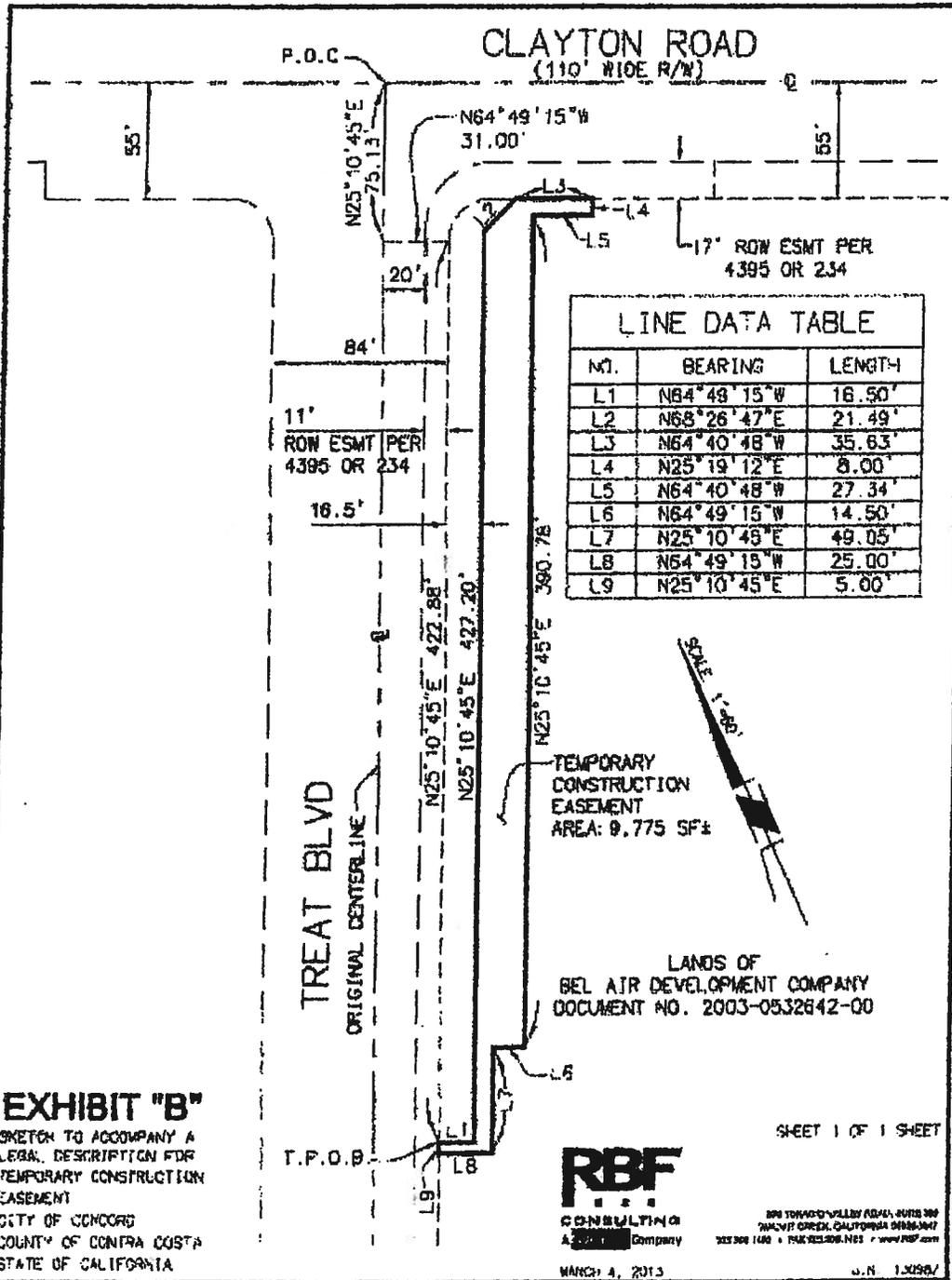
CONTAINING 9,775 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013



LINE DATA TABLE

NO.	BEARING	LENGTH
L1	N64°49'15"W	16.50'
L2	N68°26'47"E	21.49'
L3	N64°40'48"W	35.63'
L4	N25°19'12"E	8.00'
L5	N64°40'48"W	27.34'
L6	N64°49'15"W	14.50'
L7	N25°10'45"E	49.05'
L8	N64°49'15"W	25.00'
L9	N25°10'45"E	5.00'

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Attachment 4 to Staff Report

March 19, 2014 Letter from

Scott E. Jenny

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JENNY & JENNY, LLP

Attorneys at Law

Scott E. Jenny, Esq.
Richard K. Jenny, Esq.

736 Ferry Street
Martinez, California 94553
Telephone: (925) 228-1265
Facsimile: (925) 228-2841
JennyandJenny.com

Eminent Domain
Inverse Condemnation
Real Estate Law

March 19, 2014

City of Concord City Council
1950 Parkside Drive, MS/03
Concord, Calif. 94519

**Re: Bel Air Development Company
Clayton Road/Treat/Denkinger Rd. Capacity Improvement Project
*Notice of Hearing Regarding Adoption of a Resolution of Necessity
to Acquire Property by Eminent Domain*
Hearing Date April 8, 2014**

Dear City Council of the City of Concord:

I represent the Bel Air Development Company which owns the Bel Air Shopping Center located at the intersection of Treat Boulevard and Clayton Road in the City of Concord (Assessor Parcel Numbers 133-150-009, 133-150-108, 133-150-121, 133-150-122, 133-150-123 and 133-150-124), hereinafter referred to as the Subject Property. The City of Concord seeks to use its power of eminent domain to acquire a portion of the Subject Property according to a NOTICE OF INTENTION TO ADOPT A RESOLUTION OF NECESSITY TO ACQUIRE PROPERTY BY EMINENT DOMAIN dated March 14, 2014. This letter is in response to the hearing scheduled for April 8, 2014. The following are our objections to the adoption of this Resolution of Necessity being considered at the upcoming hearing.

I. THE CITY HAS REFUSED TO PRODUCE THE APPRAISAL.

The City had an appraisal performed on the property rights being taken from my client. On January 14, 2014 I requested that we be provided with a copy of that appraisal so that my client could consider the offer being made to purchase the property rights without the need of an eminent domain case. The City refused our request and refused to provide the full appraisal for us to consider. It is fundamentally unfair for the City to have an appraisal of the Subject Property, refuse to provide that full appraisal to the private property owner, and then to allege (as the City does in its Notice) that the City has made a fair offer to purchase the property prior to the adoption of a Resolution of Necessity. We cannot tell if the appraisal is fair unless we review the entire appraisal.

While the City may not be required by law to provide the full appraisal, we fail to understand why the City refuses to do so in good faith. We request that the City provide my client with a full copy of the appraisal and continue this hearing until my client has had the opportunity to review that appraisal.

II. THE NOTICE IS FATALLY VAGUE.

The Notice of the Resolution of Necessity is devoid of any substance and therefore the Notice and Resolution are fatally defective as vague. California Code of Civil Procedure section 1245.230 states that the Notice of the Resolution of Necessity must contain "a description of the general location and extent of the property to be taken, with sufficient detail for reasonable identification."

A. The Right of Way and Utility Easement.

The Notice attaches a description of the property rights to be taken. Exhibit A states that the City intends to take a Right of Way and Utility Easement. While Exhibit A defines the area to be taken, the description fails to identify exactly what property rights will be taken by the City and what rights, if any, will be reserved to my client. Absent a formal reservation of rights in favor of my client, the easement is exclusive and no rights are reserved in favor of my client. The Notice and Resolution should clearly set forth these rights.

The Notice advises my client that it has the right to provide testimony regarding whether the public interest and necessity requires the Project. We cannot address this critical issue without a more specific understanding of what rights will be taken. Nor can we provide testimony as to whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, or whether the interests in the property sought to be acquired by eminent domain are necessary for the Project. The City has provided us with notice that we are entitled to provide testimony as to all of these issues involving the Project, yet the City has failed to even identify the specific property rights being taken.

Furthermore, Exhibit A to the Notice (which forms the basis of the eminent domain complaint) fails to identify what trees and improvements will be removed from the property for the Project. The Notice fails to identify if any of the four driveways in the take area will be closed either temporarily or permanently, or if the driveways will be removed as a part of the Project.

The City has provided us with notice that we are entitled to provide testimony as to these issues, yet the City has failed to identify the improvements to be removed.

B. The Temporary Construction Easement.

There is no length of time set forth in the Notice for the Temporary Construction Easement (TCE). The Notice states that the property to be acquired is identified in Exhibit A. Exhibit A includes a legal description identified as "Temporary Construction Easement."

By reviewing the Notice (which forms the basis of the eminent domain complaint), there is no way to know how long the TCE will exist – one year, two years, three years or more. There is no way to know when the unidentified TCE term will begin or end. There is no statement that it will be used within 7 years of the date of the taking as required by law. Without such identification the adoption of the Resolution of Necessity is legally invalid, and will create a cloud on title until the TCE is fully expired, whenever that may be.

Additionally, there is no way for us to know how the TCE will be used. The Notice is fatally vague as to how the City will use the Subject Property for the TCE. We do not know if materials and equipment will be stored on the property, if the property will be excavated during the (undefined) term of construction, or whether or not any driveways in the TCE will be open during the time of the TCE. There is not sufficient detail provided for reasonable identification of the use and rights being taken. Furthermore, as with the prior easement, the City has not identified what trees and improvements will be removed from the property for the Project for the area in the TCE.

Therefore, the Notice of the Intent to Adopt the Resolution of Necessity is defective. We object to the adoption of this Resolution of Necessity on the grounds that proper notice has not been provided.

III. GOVERNMENT CODE SECTION 7267.2 HAS NOT BEEN SATISFIED.

As set forth in *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App3d 1005 at 1013, “[t]he provisions of Government Code Section 7267.2 are not merely discretionary guidelines, but mandatory requirements which must be observed by any public entity planning to initiate eminent domain proceedings through a resolution of necessity.” The precondemnation offer fails to meet those mandatory requirements. California Government Code section 7267.2 states:

(a) (1) Prior to adopting a resolution of necessity pursuant to Section 1245.230 of the Code of Civil Procedure and initiating negotiations for the acquisition of real property, the public entity shall establish an amount that it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence. The offer may be conditioned upon the legislative body’s ratification of the offer by execution of a contract of acquisition or adoption of a resolution of necessity or both. The amount shall not be less than the public entity’s approved appraisal of the fair market value of the property. A decrease or increase in the fair market value of real property to be acquired prior to the date of valuation caused by the public improvement for which the property is acquired, or by the likelihood that the property would be acquired for the improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant, shall be disregarded in determining the compensation for the property.

(2) At the time of making the offer described in paragraph (1), the public entity shall provide the property owner with an informational pamphlet detailing the process of eminent domain and the property owner's rights under the Eminent Domain Law.

(b) The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. The written statement and summary shall contain detail sufficient to indicate clearly the basis for the offer, including, but not limited to, all of the following information:

(1) The date of valuation, highest and best use, and applicable zoning of property.

(2) The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value.

(3) If appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.

(c) Where the property involved is owner-occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based. The public entity may, but is not required to, satisfy the written statement, summary, and review requirements of this section by providing the owner a copy of the appraisal on which the offer is based.

(d) Notwithstanding subdivision (a), a public entity may make an offer to the owner or owners of record to acquire real property for less than an amount that it believes to be just compensation therefor if (1) the real property is offered for sale by the owner at a specified price less than the amount the public entity believes to be just compensation therefor, (2) the public entity offers a price that is equal to the specified price for which the property is being offered by the landowner, and (3) no federal funds are involved in the acquisition, construction, or project development.

(e) As used in subdivision (d), "offered for sale" means any of the following:

(1) Directly offered by the landowner to the public entity for a specified price in advance of negotiations by the public entity.

(2) Offered for sale to the general public at an advertised or published specified price, set no more than six months prior to, and still available at, the time the public entity initiates contact with the landowner regarding the public entity's possible acquisition of the property.

Thus, prior to adopting this Resolution of Necessity, the City has an affirmative obligation to provide a written statement and summary "which shall contain detail sufficient to indicate clearly the basis for the offer." The City's offer has failed to meet this requirement because of the lack of information as stated above in Sections I and II.

Additionally, the Appraisal summarily concludes that there are no severance damages without performing the necessary "before" and "after" analysis. California Code of Civil Procedure section 1263.410 states:

(a) Where the property acquired is part of a larger parcel, in addition to the compensation awarded pursuant to Article 4 (commencing with Section 1263.310) for the part taken, compensation shall be awarded for the injury, if any, to the remainder.

Thus, my client is entitled to severance damages. Severance damages are compensation for injury to the remainder in a partial taking. It is calculated by comparing the value of the remainder (the property that the owner will continue to own after the taking) before the taking to the value of the remainder after the taking. The decrease in value of the remainder can be caused by the taking of the property and the construction of the project (whether or not that project is located on the part taken). Here, the Appraisal fails to perform the basic comparison between the value of the property in the "before" and "after" condition so that there is no basis for the summary conclusion of \$0.00 in severance damages.

Finally, the appraisal fails in that it is based upon a Zone of Value approach which is inadmissible in an eminent domain case. See *San Bernardino County Flood Control Dist. v. Sweet* (1967) 255 CA2d 889. Therefore this appraisal cannot form the basis of any appraisal to be used for the ultimate question of just compensation, nor as proper evidence to support the adoption of a Resolution of Necessity or a Motion for Immediate Possession.

My client requests that a proper appraisal including the necessary information requested above, including a proper "before" and "after" value, and one which follows proper eminent domain appraisal standards be provided to my client for consideration and that this hearing be postponed until after that occurs.

IV. THE TAKING FAILS TO SATISFY THE STATUTORY REQUIREMENT OF PROVIDING FOR THE GREATEST PUBLIC GOOD WITH THE LEAST PRIVATE INJURY.

California Code of Civil Procedure section 1240.030 states that the power of eminent domain may only be used if the following conditions are satisfied:

1. The public interest and necessity require the project;

2. The project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury; and
3. The property sought to be acquired is necessary for the project.

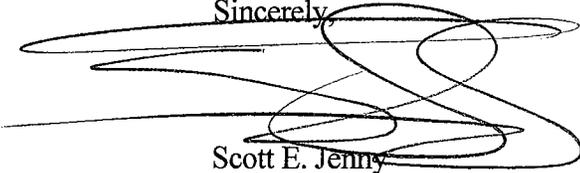
The proposed taking fails the second prong, that the project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury. The City is taking a Right of Way and Utility Easement. Any rights reserved in favor of my client have to be formally reserved in writing, and the Notice shows no such rights. Thus the "easement" is exclusive and deprives my client of all rights of ownership.

We object to the City taking a permanent roadway easement, leaving my client with the ownership of title but with exclusive use belonging to the City. My client will continue to shoulder insurance, tax, and liability issues for the permanent roadway easement, although it will be excluded from using same except as a member of the general public. This sort of exclusive easement is not required for the Project and is not planned in a manner that is the most compatible with the greatest public good and the least private injury. If the City is taking 100% of the rights to the property, it should formally condemn 100% of the rights.

V. CONCLUSION.

My client does not want to lose any property for this project. For the foregoing reasons, my client objects to the City of Concord adopting this Resolution of Necessity, and requests that the City of Concord correct the legal descriptions and the Appraisal if it intends to proceed with the proposed Project and eminent domain case. Please make this letter a part of the administrative record, and pursuant to the Notice of March 14, 2014, please be advised that I intend to appear at the hearing to address these issues. Thank you.

Sincerely,



Scott E. Jenny

cc: Client
J. Leah Castella, Esq.

Attachment 5 to Staff Report

Second Notice of Intention to Consider

Adoption of Resolution of Necessity

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*mailed
3-24-14*



City of Concord
1950 Parkside Drive, MS/03
Concord, CA 94519-2578
FAX: (925) 671-3375
Telephone: (925) 671-3430

LETTER OF TRANSMITTAL

Bel Air Development Company
c/o Zimmerman Management
1330 Broadway, Suite 1060
Oakland, CA 94612

Certified Article Number
7196 9008 9111 6181 7065
SENDERS RECORD

DATE: March 24, 2014

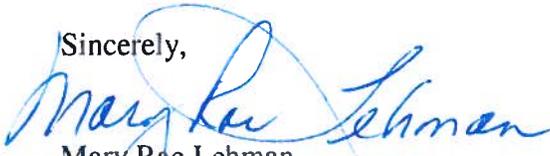
RE: Second Notice of Intention to Adopt a Resolution of Necessity to Acquire Property by Eminent Domain

The attached document is transmitted for your records.

On March 14, 2014 the City of Concord sent you a "Notice of Intention to Adopt a Resolution of Necessity to Acquire Property by Eminent Domain" within the City of Concord for the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project. That notice complied with all applicable legal requirements, including, but not limited to, Code of Civil Procedure section 1245.235. Scott Jenny, attorney for Bel Air Development Company, sent the City's attorneys correspondence on March 19, 2014, which raised certain objections to the March 14, 2014 notice. Those objections have no merit. However, in order to provide you with additional information, the City is sending you the enclosed "Second Notice of Hearing Regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain."

Please note that a **Public Hearing** on this matter will be held on **Tuesday, April 8, 2014 at 6:30 p.m.**, or as soon thereafter as the matter may be heard, in the **City Council Chamber** located at **1950 Parkside Drive in Concord.**

Sincerely,


Mary Rae Lehman
City Clerk

cc: Scott Jenny, Attorney at Law – 738 Ferry Street, Martinez, CA 94553
Meghan A Burke - Burke, Williams & Sorenson – 1901 Harrison St., 9th Fl. Oakland, CA 94612

Bel Air Development Company
c/o Zimmerman Management
1330 Broadway, Suite 1060
Oakland, CA 94612

RE: APNs: 133-150-009, 108, 121, 122, 123, 124

**SECOND NOTICE OF INTENTION
TO ADOPT A RESOLUTION OF NECESSITY
TO ACQUIRE PROPERTY BY EMINENT DOMAIN**

**CITY OF CONCORD
Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement
Project**

Re: Second Notice of Hearing Regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain [California Code of Civil Procedure section 1245.235].

1. Notice of Hearing Regarding Intent of the City Council of the City of Concord to Consider the Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain. The City Council of the City of Concord intends to hold a hearing to consider whether a Resolution of Necessity should be adopted which, if adopted, will authorize the City of Concord ("City") to acquire the real property described herein by eminent domain for the Clayton Road/Treat Boulevard/Denkinger Road Intersection Capacity Improvement Project ("Project"). Attached hereto as Exhibit "A" are legal descriptions and plat maps depicting the right of way and utility easement ("Easement") and temporary construction easement ("TCE") which are required for the Project ("Property"). The Easement is a permanent acquisition that includes all of the surface use and air rights, as well as partial sub-surface (utilities) rights. The TCE is non-exclusive and will be for a one year term, with a possibility of a three month extension. The TCE will begin on the date the City sends written notice to the owner of the Property reflecting the City's intent to start construction of the Project and make use of the TCE and will terminate one year, or one year and three months, thereafter. If the Resolution of Necessity is adopted after the hearing, it will authorize the City to acquire the Property by eminent domain for construction of public improvements for the Project. You are being sent this notice as your name appears on the last equalized Contra Costa County assessment roll.

DATE OF HEARING: April 8, 2014

TIME OF HEARING: 6:30 p.m., or as soon thereafter as the matter may be heard.

PLACE OF HEARING: The regular meeting place of the City Council of the City of Concord, City Council Chamber, Concord Civic Center, 1950 Parkside Drive, Concord, CA.

2. Notice of Your Right to Appear and Be Heard. You have a right to appear and be heard before the City Council at the above scheduled hearing on the following matters and

issues, and to have the City Council give consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity:

- a. Whether the public interest and necessity require the proposed Project;
- b. Whether the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. Whether the Property described in the Resolution of Necessity is necessary for the Project;
- d. Whether the offer required by Government Code section 7267.2, together with the accompanying statement and summary of the basis for the amount established as just compensation, was actually made to the owner of record and whether said offer and statement and summary were in a form and contained all of the factual information required by Government Code section 7267.2;
- e. Whether the City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the "right to take") to acquire the Property described herein, as well as any other matter regarding the right to take the Property by eminent domain;
- f. Whether the City has statutory authority to acquire the Property by eminent domain; and
- g. Whether the necessary notification of the Notice of Hearing, as required by the California Code of Civil Procedure section 1245.235 was given in regard to the Property.

The statutes which authorize the City to acquire the Property by eminent domain for the Project include, but are not limited to, Article 1, Section 19 of the Constitution of the State of California, Sections 37350.5 of the Government Code, Section 10102 of the Streets and Highway Code, and Section 1230.010 et seq. of the Code of Civil Procedure.

3. Failure to File a Written Request to Be Heard within Fifteen (15) Days After the Notice Was Mailed Will Result in Waiver of the Right to Appear and Be Heard. If you desire to be heard, please be advised that you must file a written request with the City Clerk within fifteen (15) days after this notice was mailed. You must file your request to be heard with the City Clerk, 1950 Parkside Drive, Concord, CA 94519. Should you elect to mail your request to the City Clerk, it must be actually received by the clerk for filing within fifteen (15) days after this notice was mailed. The date of mailing appears at the end of this notice.

If you file a written request to appear, it should include a statement of the condition(s) that you feel are pertinent to your Property. The seven conditions that may affect your Property are set forth above, designated as (a), (b), (c), (d), (e), (f), and (g). By designating which

condition(s) forms the basis of your concerns, and why, you will enable the City Council to have a full and expeditious review made of the Project's effect on your Property.

California Code of Civil Procedure section 1245.235(b)(3) provides that "[f]ailure to file a written request to appear and be heard within 15 days after the notice was mailed will result in waiver of the right to appear and be heard" on the above matters and issues which are the subject of the hearing.

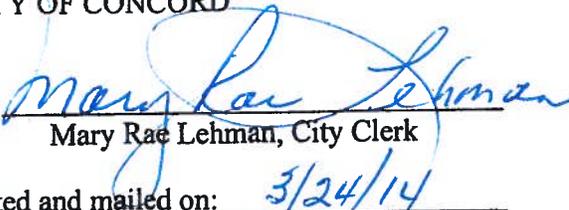
4. You Will Not Waive the Right to Claim Greater Compensation if You Do Not Appear at The Hearing. The amount of the compensation to be paid for the interest, if any, that you may have in the property related to the City's proposed property acquisition is not a matter or issue being heard by the City Council at this time. Your nonappearance at this noticed hearing will not prevent you from claiming greater compensation, as determined by a court of law in accordance with the laws of the State of California. This notice is not intended to foreclose future negotiations between you and the representatives of the City on the amount of compensation to be paid for your property.

However, if you elect not to appear and be heard, you will be foreclosed from raising in a court of law the issues which are the subject of this noticed hearing and which are concerned with the right to take the Property by eminent domain.

If the City Council elects to adopt the Resolution of Necessity, then within six months of the adoption of the Resolution of Necessity, the City of Concord will commence eminent domain proceedings in Superior Court. In that proceeding, the Court will determine the amount of compensation to which you are entitled.

CITY OF CONCORD

By:


Mary Rae Lehman, City Clerk

Dated and mailed on:

3/24/14

cc: Scott Jenny

EXHIBIT A

RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

January 08, 2013
JN: 130987
Page 1 of 2

**EXHIBIT "A"
LEGAL DESCRIPTION
RIGHT OF WAY AND UTILITY
EASEMENT**

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California, filed in map book D at page 78 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cullen, Trustee of the Cullen Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532842 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 82 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.99 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1993 in Book 4395 Official Records at Page 234 at said Office of said County Recorder and to the **TRUE POINT OF BEGINNING**;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet;

Thence, southeasterly and leaving said easterly boundary line South 64°49'15" East 16.50 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 64°28'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line the following two (2) courses:

- 1) North 64°28'48" West 11.18 feet to a point of a tangent curve, concave southeasterly and having a radius of 20.00 feet, and
- 2) along said curve 31.47 feet and through a central angle of 90°08'28" to the **TRUE POINT OF BEGINNING**.

CONTAINING 7.337 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7308
License Expires March 31, 2013

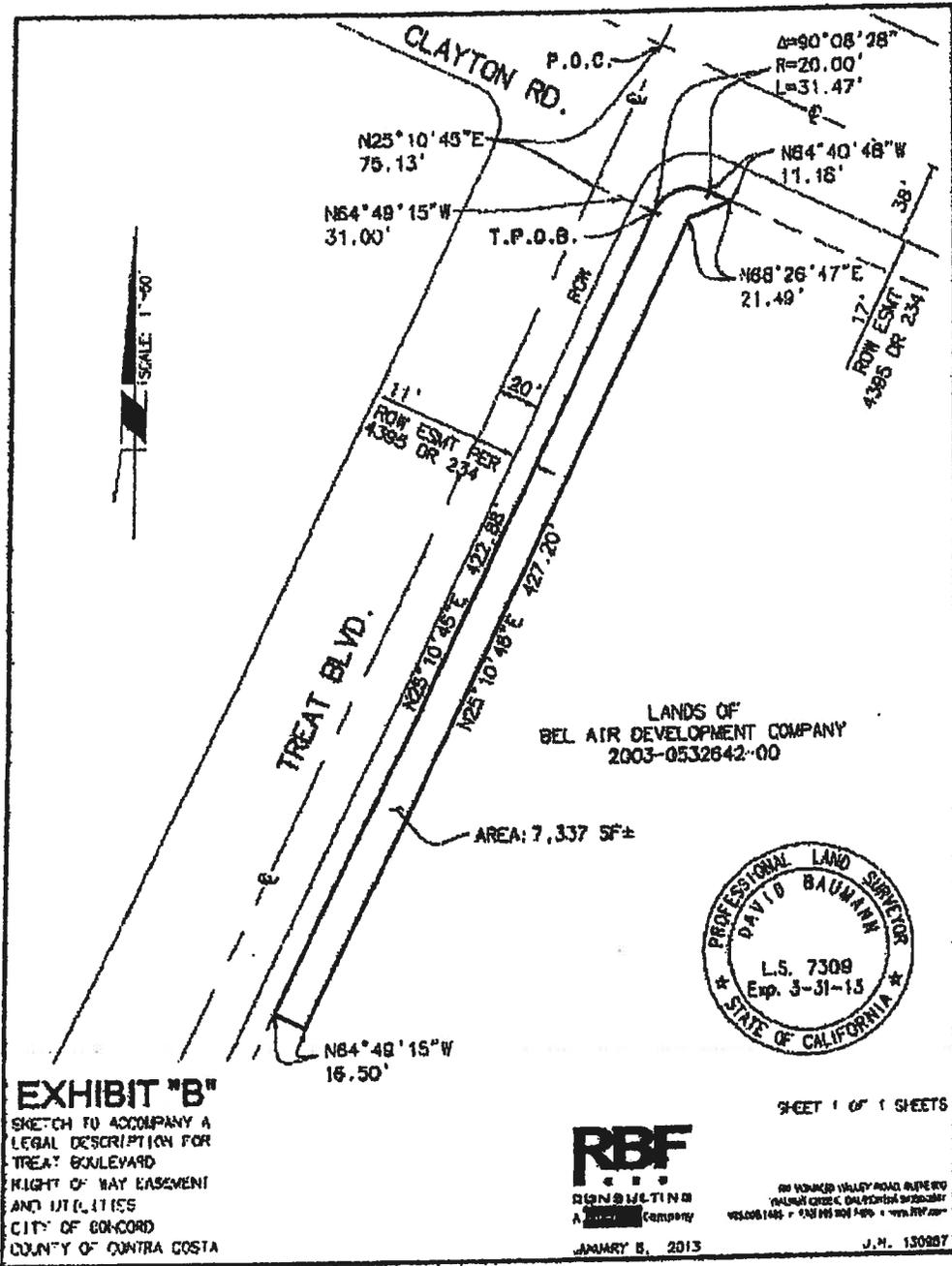


EXHIBIT "B"
 SKETCH TO ACCOMPANY A
 LEGAL DESCRIPTION FOR
 TREAT BOULEVARD
 RIGHT OF WAY EASEMENT
 AND UTILITIES
 CITY OF CONCORD
 COUNTY OF CONTRA COSTA

RBF
 ENGINEERING
 A [redacted] Company
 JANUARY 8, 2013

PROFESSIONAL LAND SURVEYOR
 DAVID BAUMAN
 L.S. 7308
 Exp. 3-31-13
 STATE OF CALIFORNIA

SHEET 1 OF 1 SHEETS

100 YOUNG VALLEY ROAD SUITE 100
 YALMUD CREEK, CALIFORNIA 94592
 925.938.1485 • FAX 925.938.1490 • WWW.RBF.COM

J.M. 130987

1. V:\2013\130987\130987.dwg 1/8/13 11:58 AM

RBF CONSULTING
800 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

March 4, 2013
JN: 130987
Page 1 of 2

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION
EASEMENT

A portion of the Johnson Tract, recorded on January 25, 1886, in the Office of the County Recorder, Contra Costa County, California filed in map book D at page 76 and being a portion of land as described in a Quitclaim Deed from Beverly D. Cutler, Trustee of the Cutler Family Revocable Trust Agreement dated October 12, 1990 to Bel Air Development Company, recorded on October 28, 2003 in Document Number 2003-0532642 in Contra Costa County Recorder's Office, more particularly described as follows:

COMMENCING at the intersection of the centerline of Clayton Road (110.00 feet wide) with the centerline of Treat Boulevard (84.00 feet wide) designated as Treat Lane on that certain Record of Survey entitled "Clayton Road Right of Way Map" filed in Book 62 of Maps at Pages 4-15 in said County Recorder's Office;

Thence, southwesterly along said centerline of said Treat Boulevard South 25°10'45" West 75.13 feet;

Thence, southeasterly and leaving said centerline South 64°49'15" East 31.00 feet to northerly terminus of that certain course with a designated distance of "1191.39 feet" on the easterly boundary line of the parcel of land described in the Grant Deed from Manuel S. Santos and Rita V. L. Santos to the City of Concord, recorded on June 26, 1963 in Book 4395 Official Records at Page 234 at said Office of said County Recorder;

Thence, southerly along said easterly boundary line South 25°10'45" West 422.88 feet to the **TRUE POINT OF BEGINNING**;

Thence, southeasterly and leaving said easterly boundary line South 64°49'15" East 16.90 feet;

Thence, North 25°10'45" East 427.20 feet;

Thence, North 66°28'47" East 21.49 feet to southeasterly right of way line of said Clayton Road as described in said Grant Deed (4395 OR 234);

Thence, along said southeasterly right of way line South 64°40'48" East 35.63 feet;

Thence, leaving said southeasterly right of way line, South 25°19'12" West 8.00 feet;

Thence, North 64°40'48" West 27.34 feet;

Thence, South 25°10'45" West 390.78 feet;

Thence, North 64°49'15" West 14.50 feet;

Thence, South 25°10'45" West 49.06 feet;

Thence, North $64^{\circ}48'15''$ West 25.00 feet to said easterly boundary line (4395 O.R. 234);

Thence, along said easterly boundary line North $25^{\circ}10'45''$ East 5.00 feet to the TRUE POINT OF BEGINNING.

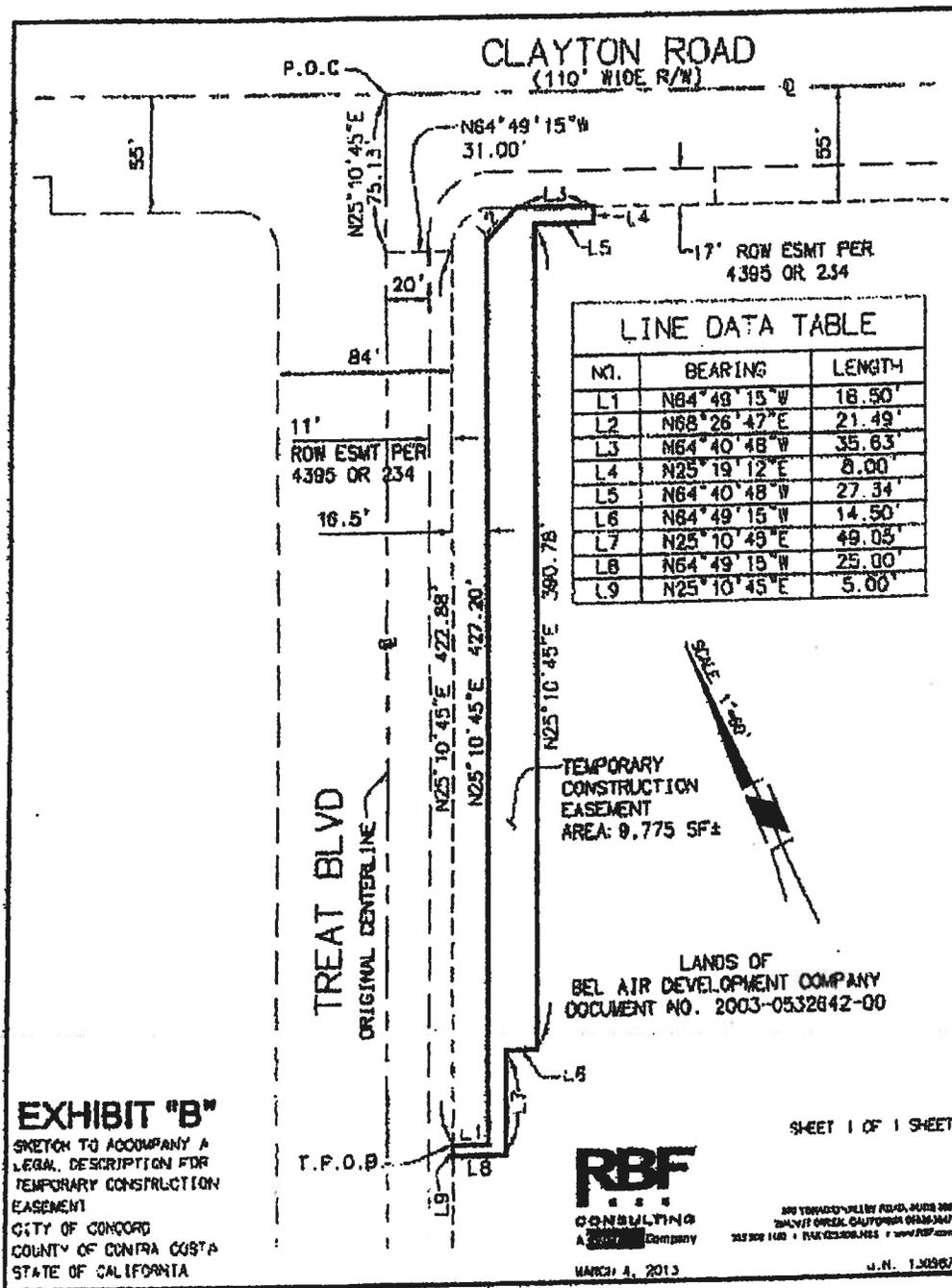
CONTAINING 9,775 Square Feet, more or less.

BASIS OF BEARINGS the bearings and distances in this legal description are in terms of CCS 83 (Epoch 2007.00) Zone 3.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.

David Baumann, P.L.S. 7309
License Expires March 31, 2013



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JENNY & JENNY, LLP Attachment 4 - 6/24/14
Attorneys at Law

Scott E. Jenny, Esq.
Richard K. Jenny, Esq.

736 Ferry Street
Martinez, California 94553
Telephone: (925) 228-1265
Facsimile: (925) 228-2841
JennyandJenny.com

Eminent Domain
Inverse Condemnation
Real Estate Law

June 16, 2014

City of Concord City Council
1950 Parkside Drive, MS/03
Concord, Calif. 94519

**Re: Bel Air Development Company
Clayton Road/Treat/Denkinger Rd. Capacity Improvement Project
Notice of Hearing Regarding Adoption of a Resolution of Necessity
to Acquire Property by Eminent Domain
Hearing Date June 24, 2014**

Dear City Council of the City of Concord:

I represent the Bel Air Development Company which owns the Bel Air Shopping Center located at the intersection of Treat Boulevard and Clayton Road in the City of Concord (Assessor Parcel Numbers 133-150-009, 133-150-108, 133-150-121, 133-150-122, 133-150-123 and 133-150-124), hereinafter referred to as the Subject Property. The City of Concord seeks to use its power of eminent domain to acquire a portion of the Subject Property according to a NOTICE OF INTENTION TO ADOPT A RESOLUTION OF NECESSITY TO ACQUIRE PROPERTY BY EMINENT DOMAIN dated June 12, 2014. This letter is in response to the hearing scheduled for June 24, 2014. The following are our objections to the adoption of this Resolution of Necessity being considered at the upcoming hearing.

I. THE CITY HAS REFUSED TO PRODUCE THE APPRAISAL.

The City had an appraisal performed on the property rights being taken from my client. On January 14, 2014 I requested that we be provided with a copy of that appraisal so that my client could consider the offer being made to purchase the property rights without the need of an eminent domain case. The City refused our request and refused to provide the full appraisal for us to consider. It is fundamentally unfair for the City to have an appraisal of the Subject Property, refuse to provide that full appraisal to the private property owner, and then to allege (as the City does in its Notice) that the City has made a fair offer to purchase the property prior to the adoption of a Resolution of Necessity. We cannot tell if the appraisal is fair unless we review the entire appraisal.

While the City may not be required by law to provide the full appraisal, we fail to understand why the City refuses to do so in good faith. We request that the City provide my client with a full copy of the appraisal and continue this hearing until my client has had the opportunity to review that appraisal.

II. THE NOTICE IS FATALLY VAGUE.

The Notice of the Resolution of Necessity is devoid of any substance and therefore the Notice and Resolution are fatally defective as vague. California Code of Civil Procedure section 1245.230 states that the Notice of the Resolution of Necessity must contain “a description of the general location and extent of the property to be taken, with sufficient detail for reasonable identification.”

A. The Right of Way and Utility Easement.

The Notice attaches a description of the property rights to be taken. Exhibit A1 states that the City intends to take a Right of Way and Utility Easement. While Exhibit A1 defines the area to be taken, the description fails to identify exactly what property rights will be taken by the City and what rights, if any, will be reserved to my client. Absent a formal reservation of rights in favor of my client, the easement is exclusive and no rights are reserved in favor of my client. The Notice and Resolution should clearly set forth these rights.

The Notice advises my client that it has the right to provide testimony regarding whether the public interest and necessity requires the Project. We cannot address this critical issue without a more specific understanding of what rights will be taken. Nor can we provide testimony as to whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, or whether the interests in the property sought to be acquired by eminent domain are necessary for the Project. The City has provided us with notice that we are entitled to provide testimony as to all of these issues involving the Project, yet the City has failed to even identify the specific property rights being taken.

Furthermore, Exhibit A1 to the Notice (which forms the basis of the eminent domain complaint) fails to identify what trees and improvements will be removed from the property for the Project. The Notice fails to identify if any of the four driveways in the take area will be closed either temporarily or permanently, or if the driveways will be removed as a part of the Project.

The City has provided us with notice that we are entitled to provide testimony as to these issues, yet the City has failed to identify the improvements to be removed.

B. The Temporary Construction Easement.

There is no length of time set forth in the Notice for the Temporary Construction Easement (TCE). The Notice states that the property to be acquired is identified in Exhibit B1. Exhibit B1 includes a legal description identified as “Temporary Construction Easement.”

By reviewing the Notice (which forms the basis of the eminent domain complaint), there is no way to know how long the TCE will exist – one year, two years, three years or more. There is no way to know when the unidentified TCE term will begin or end. There is no statement that it will be used within 7 years of the date of the taking as required by law. Without such identification the adoption of the Resolution of Necessity is legally invalid, and will create a cloud on title until the TCE is fully expired, whenever that may be.

Additionally, there is no way for us to know how the TCE will be used. The Notice is fatally vague as to how the City will use the Subject Property for the TCE. We do not know if materials and equipment will be stored on the property, if the property will be excavated during the (undefined) term of construction, or whether or not any driveways in the TCE will be open during the time of the TCE. There is not sufficient detail provided for reasonable identification of the use and rights being taken. Furthermore, as with the prior easement, the City has not identified what trees and improvements will be removed from the property for the Project for the area in the TCE.

Therefore, the Notice of the Intent to Adopt the Resolution of Necessity is defective. We object to the adoption of this Resolution of Necessity on the grounds that proper notice has not been provided.

III. GOVERNMENT CODE SECTION 7267.2 HAS NOT BEEN SATISFIED.

As set forth in *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App3d 1005 at 1013, “[t]he provisions of Government Code Section 7267.2 are not merely discretionary guidelines, but mandatory requirements which must be observed by any public entity planning to initiate eminent domain proceedings through a resolution of necessity.” The precondemnation offer fails to meet those mandatory requirements. California Government Code section 7267.2 states:

(a) (1) Prior to adopting a resolution of necessity pursuant to Section 1245.230 of the Code of Civil Procedure and initiating negotiations for the acquisition of real property, the public entity shall establish an amount that it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence. The offer may be conditioned upon the legislative body’s ratification of the offer by execution of a contract of acquisition or adoption of a resolution of necessity or both. The amount shall not be less than the public entity’s approved appraisal of the fair market value of the property. A decrease or increase in the fair market value of real property to be acquired prior to the date of valuation caused by the public improvement for which the property is acquired, or by the likelihood that the property would be acquired for the improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant, shall be disregarded in determining the compensation for the property.

(2) At the time of making the offer described in paragraph (1), the public entity shall provide the property owner with an informational pamphlet detailing the process of eminent domain and the property owner's rights under the Eminent Domain Law.

(b) The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. The written statement and summary shall contain detail sufficient to indicate clearly the basis for the offer, including, but not limited to, all of the following information:

(1) The date of valuation, highest and best use, and applicable zoning of property.

(2) The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value.

(3) If appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.

(c) Where the property involved is owner-occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based. The public entity may, but is not required to, satisfy the written statement, summary, and review requirements of this section by providing the owner a copy of the appraisal on which the offer is based.

(d) Notwithstanding subdivision (a), a public entity may make an offer to the owner or owners of record to acquire real property for less than an amount that it believes to be just compensation therefor if (1) the real property is offered for sale by the owner at a specified price less than the amount the public entity believes to be just compensation therefor, (2) the public entity offers a price that is equal to the specified price for which the property is being offered by the landowner, and (3) no federal funds are involved in the acquisition, construction, or project development.

(e) As used in subdivision (d), "offered for sale" means any of the following:

(1) Directly offered by the landowner to the public entity for a specified price in advance of negotiations by the public entity.

(2) Offered for sale to the general public at an advertised or published specified price, set no more than six months prior to, and still available at, the time the public entity initiates contact with the landowner regarding the public entity's possible acquisition of the property.

Thus, prior to adopting this Resolution of Necessity, the City has an affirmative obligation to provide a written statement and summary “which shall contain detail sufficient to indicate clearly the basis for the offer.” The City’s offer has failed to meet this requirement because of the lack of information as stated above in Sections I and II.

Additionally, the Appraisal summarily concludes that there are no severance damages without performing the necessary “before” and “after” analysis. California Code of Civil Procedure section 1263.410 states:

(a) Where the property acquired is part of a larger parcel, in addition to the compensation awarded pursuant to Article 4 (commencing with Section 1263.310) for the part taken, compensation shall be awarded for the injury, if any, to the remainder.

Thus, my client is entitled to severance damages. Severance damages are compensation for injury to the remainder in a partial taking. It is calculated by comparing the value of the remainder (the property that the owner will continue to own after the taking) before the taking to the value of the remainder after the taking. The decrease in value of the remainder can be caused by the taking of the property and the construction of the project (whether or not that project is located on the part taken). Here, the Appraisal fails to perform the basic comparison between the value of the property in the “before” and “after” condition so that there is no basis for the summary conclusion of \$0.00 in severance damages.

Finally, the appraisal fails in that it is based upon a Zone of Value approach which is inadmissible in an eminent domain case. See *San Bernardino County Flood Control Dist. v. Sweet* (1967) 255 CA2d 889. Therefore this appraisal cannot form the basis of any appraisal to be used for the ultimate question of just compensation, nor as proper evidence to support the adoption of a Resolution of Necessity or a Motion for Immediate Possession.

My client requests that a proper appraisal including the necessary information requested above, including a proper “before” and “after” value, and one which follows proper eminent domain appraisal standards be provided to my client for consideration and that this hearing be postponed until after that occurs.

IV. THE TAKING FAILS TO SATISFY THE STATUTORY REQUIREMENT OF PROVIDING FOR THE GREATEST PUBLIC GOOD WITH THE LEAST PRIVATE INJURY.

California Code of Civil Procedure section 1240.030 states that the power of eminent domain may only be used if the following conditions are satisfied:

1. The public interest and necessity require the project;

2. The project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury; and
3. The property sought to be acquired is necessary for the project.

The proposed taking fails the second prong, that the project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury. The City is taking a Right of Way and Utility Easement. Any rights reserved in favor of my client have to be formally reserved in writing, and the Notice shows no such rights. Thus the "easement" is exclusive and deprives my client of all rights of ownership.

We object to the City taking a permanent roadway easement, leaving my client with the ownership of title but with exclusive use belonging to the City. My client will continue to shoulder insurance, tax, and liability issues for the permanent roadway easement, although it will be excluded from using same except as a member of the general public. This sort of exclusive easement is not required for the Project and is not planned in a manner that is the most compatible with the greatest public good and the least private injury. If the City is taking 100% of the rights to the property, it should formally condemn 100% of the rights.

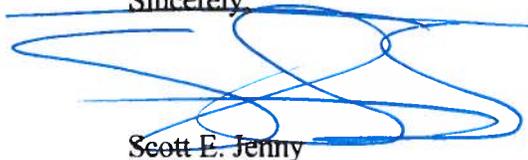
V. OBJECTION TO PIECEMEAL CITY COUNCIL APPROVALS.

We object to the manner in which the City is conducting itself in this process. The Resolution of Necessity notices and hearings continue to change. The current Notice is not complete and instead it relies upon prior notices and legal descriptions. This leads to a vague resolution of necessity, which is insufficient to form the basis of an eminent domain complaint. This is particularly troublesome because the prior notices and legal descriptions have changed as well.

VI. CONCLUSION.

My client does not want to lose any property for this project. For the foregoing reasons, my client objects to the City of Concord adopting this Resolution of Necessity, and requests that the City of Concord correct the legal descriptions and the Appraisal if it intends to proceed with the proposed Project and eminent domain case. Please make this letter a part of the administrative record, and pursuant to the Notice of June 12, 2014, please be advised that I intend to appear at the hearing to address these issues. Thank you.

Sincerely,



Scott E. Jenny

cc: Client
J. Leah Castella, Esq.

Direct No.: 510.273.8778
Our File No.: 05685-0016
lcastella@bwslaw.com

June 18, 2014

Scott E. Jenny, Esq.
Jenny & Jenny, LLP
736 Ferry Street
Martinez, CA 94553

Re: Notice of Intention to Adopt Resolution Clarifying Resolution of Necessity
No. 14-22 to Acquire Property by Eminent Domain

Dear Mr. Jenny:

This letter is in response to your June 16, 2014 letter on behalf of Bel Air Development Company. In your letter, you state that the City of Concord sent you a Notice of Intention to Adopt a Resolution of Necessity to Acquire Property By Eminent Domain dated June 12, 2014. You further state that the June 12, 2014 notice advised your client that it had the right to provide testimony regarding whether the public interest and necessity require the Project, whether the Project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury, and whether the interests in the property sought to be acquired by eminent domain are necessary for the Project. These statements are not correct.

Rather, the notice was in fact a "Notice of Intention to Adopt Resolution Clarifying Resolution of Necessity No. 14-22 to Acquire Property by Eminent Domain" ("Notice") and not a notice of intent to adopt a Resolution of Necessity. Furthermore, the Notice reminded you and your client that the City Council conducted a duly noticed public hearing, received and considered comments, including your comments on behalf of your client, and then adopted Resolution No. 14-22 to Acquire Property by Eminent Domain on April 8, 2014. However, due to a clerical error, Exhibits A and B of Resolution No. 14-22 were not the most current versions of the legal descriptions and plat maps showing the location of the Easement to be acquired. As such, the Notice informed you and your client that the City Council will consider whether to adopt a resolution clarifying Resolution No. 14-22 and correcting the clerical error by updating the legal descriptions and plat maps attached as Exhibits A and B to Resolution No. 14-22 with the legal descriptions and plat maps for the Easement and TCE set forth in Exhibits A1 and B1 attached to the Notice.

Scott E. Jenny, Esq.
June 18, 2014
Page 2

The City Council will consider whether to adopt the clarifying resolution on June 24, 2014 at 6:30 p.m., or as soon thereafter as the matter may be heard. While the adoption of the clarifying resolution is not the subject of a public hearing, as always, public comment will be permitted. If the City Council adopts the clarifying resolution and approves the corrected legal descriptions and plat maps attached as Exhibits A1 and B1 to the Notice, they will replace the legal descriptions and plat maps attached as Exhibits A and B, respectfully, to Resolution No. 14-22.

Very truly yours,



J. Leah Castella

JLC:ecc