State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

M e m o r a n d u m

To: CHAIR AND COMMISSIONERS

CTC Meeting: November 2-3, 2005

Reference No.: 2.4a.(1)
Action Item

From: CINDY McKIM
Chief Financial Officer

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

Ref: **APPEARANCE**

RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-19168, which is the subject of this Appearance. The summary below identifies the location of and designates the nature of the property rights covered by the Resolution of Necessity. In accordance with statutory requirements, the owners have been advised that the Department is requesting a resolution at this time. Adoption of Resolution of Necessity C-19168 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-19168 - Mary L. Lewis, et al.
06-Fre-180-PM 54.87 - Parcel 85349-1; 85349-01-01 - EA: 342339-3000C - Certification Date: 03/01/06 – RTL Date: 07/01/06 - (Freeway - new alignment). Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, land in fee which is a remnant and would have little market value, all of those certain improvements which straddle the right of way line with an easement to enter the remaining ownership to remove such improvements. Located in the city of Fresno at 2540 West Whitesbridge Avenue. APN 458-080-24.

Attachments

SUMMARY OF ISSUES

Mary L. Lewis is the owner of the parcel located at 2540 West Whitesbridge Road. The parcel required for the project is the northerly 1.94 acres of the 4.91 acre parcel. Neither Ms. Lewis, nor her legal counsel Mr. Herman Fitzgerald, attended the combined First and Second Level Hearing. The combined First and Second Level Hearing was held on August 4, 2005 in Fresno at the Department's District office. Mr. Fitzgerald was notified by certified mail of the hearing date. Mr. Fitzgerald declined attending the meeting and did not want to reschedule the hearings. The following objections appeared in a letter dated June 8, 2005 to the Commission from Mr. Fitzgerald with the Department's response.

The following is a description of the concerns, which Ms. Lewis's legal counsel has expressed and the Department's response.

Owner:

"That adoption of the amendment to the resolution would be in violation of law because the Commission has failed to comply with applicable statutory procedures which are prerequisites to such a resolution, including the requirements of the California Environmental Quality Act."

Department Response:

The Department has followed all environmental guidelines of both California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA). An Environment Assessment to construct a freeway/expressway facility on Route 180 between Brawley Avenue and Route 99 was approved by the Federal Highway Administration (FHA) on May 20, 1996. A Finding of No Significant Impact was approved on August 29, 1996. An Environmental Reevaluation was approved on March 7, 2000. Due to funding constraints the project was split into two segments. Construction of Segment 1, from the Hughes-West Diagonal to Route 99, was completed in May 2004. A subsequent Environmental Reevaluation for Segment 2, from 0.3 km west of Brawley Avenue to 0.2 km east of West Avenue, was approved by FWHA on November 8, 2004. The Reevaluation states that the Finding of No Significant Impact remains valid. For CEQA, an Initial Study was completed May 20, 1996, and a Negative Declaration was signed August 15, 1996. An addendum for the project was completed March 7, 2000, and another addendum for Segment 2 was completed October 25, 2004. Changes in the project were not expected to result in significant adverse impacts, provided mitigation was implemented.

Owner:

"The failure to furnish a proper Appraisal Summary Statement."

Department Response:

A written offer for the full amount of the Department's approved appraisal and a copy of the Appraisal Summary Statement was mailed by Certified Mail to Mr. Fitzgerald, the property owner's attorney, on January 31, 2005, in full compliance with Government Code 7267.2 and Code of Civil Procedure Section (CCP) 1258.260.

Owner:
"The failure to conform to procedural requirements."

Department:
The Department followed all legally required procedures, as well as Department policies and standard procedures, in their attempt to acquire the parcel.

Owner:
"The failure to make a proper Government Code 7267.2 offer."

Department:
A written offer for the full amount of the Department's approved appraisal was mailed to Mr. Fitzgerald, the owner's attorney, on January 31, 2005, in full compliance with Government Code 7267.2

Owner:
The failure to provide a forum of the proposed resolution which effectively precludes any comment, objection, etc., by the owners, exacerbated by the inability to attend a meeting without sufficient notice.

Department:
The owners and their legal counsel were given the opportunity to participate in a First and Second Level review process, as a forum to effectively communicate issues and concerns, and to discuss and resolve project and acquisition issues. The combined First and Second Level Review was held on August 4, 2005. Ms. Lewis and her legal counsel declined to participate in the meeting, despite written notifications to Mr. Fitzgerald.

Owner:
"The Notice fails to satisfy the time requirements of CCP Sections 1245.235 and CCP 1013."

Department:
CCP 1245.235 addresses the adoption of a resolution of necessity by a governing body of a public entity. It requires that each person whose name appears on the last equalized county assessment roll, and whose property is to be acquired by eminent domain, receive a notice by first class mail at least fifteen days prior to said meeting of the intent of the governing body to adopt the resolution, and the right of each person to appear and be heard. CCP 1013 addresses the procedure of service by mail, Express Mail or facsimile. CCP 1245.235 and CCP 1013 mailing requirements were met.

The Notice of Intent for the July 13-14, 2005 Commission meeting was mailed May 27, 2005 to Mary Lewis, and her attorney, 47 days prior to the July 13-14, 2005 Commission meeting. A subsequent notice was mailed on September 19, 2005, 44 days prior to the upcoming November 2-3, 2005 Commission meeting. In both cases, the Department clearly exceeded the notice requirements stated in the statutes.

Owner:

"The failure to conduct a hearing at convenient situs more readily available than Sacramento to the owners."

Department:

The Commission has jurisdiction for the entire State of California and therefore Commission meetings are held at various locations throughout the state. The initial noticed Commission meeting on July 13-14, 2005 was held in San Diego. The November 2-3, 2005 Commission meeting will be held in Sacramento.

Owner:

"The proposed project is not planned or located in a manner that will be the most compatible with the greatest public good and least private injury. The Commission has not properly or adequately evaluated or considered the private injury that will occur to the owners from the project, and has not weighed or balanced other alternatives, which would lessen the private injury while permitting the proposed project.

Department:

Several alternatives were considered early in the project development process. This proposal meets the project need, is the most cost effective and has the least impact on the environment. The alignment, adopted several years ago, is consistent with local planning.

Attachments

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA:	06-Fre-180-PM R53.4/R55.8 (KP R86.0/R89.8)
Location:	State Route 180 in and near the city of Fresno, in Fresno County
Limits:	From 0.3 km west of Brawley Avenue to 0.2 km east of West Avenue
Cost:	Right of Way cost estimate $8,900,000 Construction cost estimate $36,550,000
Funding Source:	Locally Funded State Highway Projects 400.000 (Tax Measure)
Number of Lanes:	Existing: two lanes conventional highway (Whitesbridge Road) Proposed: four to six lanes on new freeway alignment
Proposed Major Features	Interchanges: Marks Avenue Grade Separation: Hughes-West Diagonal. Other: A frontage road, north of the freeway, between Marks Avenue and Hughes-West Diagonal
Traffic:	Construction Year (2008) Average Daily Traffic (ADT) (year 2008): 20,400 Proposed ADT (year 2028): 69,000

PARCEL DATA:

Property Owner:	Mary L. Lewis; the heirs and devisees of Arthur R. Atwater Jr., William A. Atwater, and Gladys Thomas.
Parcel Location:	Assessor's Parcel Number (APN) 458-080-24 is located 300 meters east of Marks Avenue on the north side of State Route 180 at 2540 West Whitebridge Road, Fresno.
Present Use:	Vacant
Area of Property:	4.91 Acres (19,878 square meters)
Area Required:	Parcel 85349-1 = 1.57 Acres (6,364.6 square meters) in fee Parcel 85349-01-01 = 0.37 Acres (1,497.7 square meters) excess Total Area = 1.94 Acres (7,861.3 square meters)

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Resolution of Necessity Review Panel (Panel) met August 4, 2005 in Fresno. The Panel members consisted of Donald Grebe, Department Headquarters (HQ's) Right of Way; Richard B. Williams, Department HQ's Legal Division; Linda Fong, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Right of Way, was Secretary to the Panel. Neither Ms. Lewis nor her legal counsel, Mr. Fitzgerald, was present at the meeting.

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

NEED FOR THE PROJECT

The existing State Route (SR) 180 is an east-west two-way conventional highway with straight tangent alignment, level grade and good sight distance. The roadway has two 3.6-meter wide lanes and 0.0 to 0.6-meter wide shoulders constructed of asphalt concrete (AC). The route provides the primary passage between the cities of Kerman and Fresno with a high volume of local traffic generated by commuters between the two cities.

The project proposes to:

1. **Relieve traffic congestion:** Level of Service (LOS) on the existing SR 180 between Brawley Avenue and Hughes-West Diagonal is expected to be F in 2010. The proposed project would provide a LOS D or better in 2028, for 20-year design period, conforming to the target LOS D or better.

2. **Improve safety:** Freeways in general provide safer driving than conventional highways. Freeways would avoid or minimize potential head-on collisions and provide safe passing opportunities. This proposed SR 180 West Freeway project would also improve traffic safety on local streets in the vicinity.

3. **Provide route continuity:** This project completes the planned SR 180 West Freeway between Brawley Avenue and SR 99. Segment 1 of the SR 180 West Freeway, from SR 99 to Hughes-West Diagonal, was completed in May 2004. This project, also known as SR 180 West Segment 2, will complete the freeway alignment from Brawley Avenue to Hughes-West Diagonal.

4. **Consistent with local planning and development:** The Council of Fresno County Governments (COFCG) is the designated Metropolitan Planning Organization for Fresno County and is the responsible agency for developing and maintaining a travel demand model, which meets the current requirements of the Clean Air Act. The Department used the COFCG's 2025 travel demand model as a basis to develop the traffic forecast volumes for this project. The traffic projection model used accounts for the current regional growth patterns, and local growth trends that have led to increased traffic demand. The land use

within the area of the project was provided by COFCG and is consistent with the current City and County land use plans.

The project is funded by local sales tax, Measure "C", which is administered by the Fresno County Transportation Authority (FCTA). This project has been identified in their Expenditure Plan as early as 1991. Since that time, there has been widespread support from the general public, the city of Fresno, the county of Fresno, and rural communities to the west.

PROJECT PLANNING AND LOCATION

The project is located in the incorporated area of the city of Fresno, outside the city but within the county limits in Fresno County. The proposed facility begins as a four-lane freeway from Brawley Avenue to Marks Avenue. It becomes a six-lane freeway between Marks Avenue and 0.2 kilometers east of West Avenue, where the facility connects with the existing six-lane freeway segment, Segment 1, completed May 2004. There will be a partial cloverleaf interchange at Marks Avenue and a grade separation at Hughes-West Diagonal.

The project is to be locally funded (Fresno County Sales Tax Initiative - Measure C). The 2004 construction cost estimates is $37 million and the right of way cost estimate is $9 million. The project is scheduled for advertisement in May 2006.

On August 11, 1994, a Project Report was approved for a two-lane expressway between Brawley Avenue and Hughes-West Diagonal and a four-lane freeway from Hughes-West Diagonal to SR 99.

Segment 2 of the project from Brawley Avenue to Hughes-West Diagonal, previously planned to be an expressway facility, is no longer able to meet the projected 20-year traffic demand due to changes in the general plan and local zoning, regional growth patterns and local growth trends. A freeway facility alternative was investigated in the 1996 Environmental Assessment, but traffic demand did not warrant selection of the freeway alternative. An Environmental Reevaluation approved on November 8, 2004, and CEQA Addendum approved on October 25, 2004, addressed design changes related to constructing the freeway facility instead of the expressway facility, incorporating construction of the interchange at Marks Avenue and conversion of the interchange at the Hughes-West Diagonal to a Grade Separation, along with cul-de-sacs at Whitesbride Road, Valentine Avenue and Hughes Avenue.

A supplemental Project Report incorporating these changes was approved on December 15, 2004.

NEED FOR SUBJECT PROPERTY

A portion of the subject parcel is within the proposed fill sections of SR 180 West Freeway. The original freeway alignment adopted on December 18, 1963, would have taken a larger portion of the property. A minor adjustment to the alignment in 2003 was necessary in the vicinity of Marks Avenue to provide adequate distance between the Marks Avenue on/off ramps and Whitesbridge Road intersection with Marks Avenue. This modification has resulted in a 0.4 Acre reduction of area required from the subject parcel.

The fill slope in this area has been designed to be 1:2 in lieu of the advisory standard of 1:4 to minimize impacts to this and several other businesses in the area. Additionally, this partial acquisition is consistent with that of the partial acquisition of the adjacent two parcels to the east.

The following is a description of the concerns, which Ms. Lewis's legal counsel has expressed and the Department's response.

Owner:

"That adoption of the amendment to the resolution would be in violation of law because the Commission has failed to comply with applicable statutory procedures which are prerequisites to such a resolution, including the requirements of the California Environmental Quality Act (CEQA)."

Department Response:

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Owner:

"The Notice fails to satisfy the time requirements of CCP Sections 1245.235 and 1013."

Department:

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Department:

Several alternatives were considered early in the project development process. This proposal meets the project need, is the most cost effective and has the least impact on the environment. The alignment, adopted several years ago, is consistent with local planning.

PARCEL DESCRIPTION

The subject parcel (Parcel 85349) is located on the northerly 84.506 square feet (1.94 acres) of Assessor's parcel number (APN) 458-080-24 in the city of Fresno in Fresno County. The total area of the property is approximately 4.91 acres or 213,880 square feet. It is the third property east of Marks Avenue/Whitesbridge Road intersection, fronting the north side of Whitesbridge Road. The subject parcel is a fairly flat, unpaved area that is vacant except for the periodic storage of materials from the adjacent automobile dismantler.

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record.

PANEL RECOMMENDATION

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

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

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

_____.
DONALD GREBE
Office Project Delivery
Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

_____.
RICHARD D. LAND
Chief Engineer

PERSONS ATTENDING SECOND LEVEL REVIEW PANEL HEARING ON AUGUST 4, 2005

Donald Grebe, Headquarters Right of Way, Panel Chair
Richard B. Williams, Headquarters Attorney, Panel Member
Linda Fong, Headquarters Design, Panel Member
Deborah Gebers, Headquarters Right of Way, Panel Secretary

Mike Leonardo, Central Region District Director
Kim Anderson, District 6, Chief Project Development
Spiros Karimbakas, Acting Chief, Central Region Right of Way
Jamie Lupo, Central Region, Supervisor Right of Way
Garth Fernandez, Central Region, Design
Bob Hull, Central Region, Project Management
Thanh Nguyen, Central Region, Design
Ken Cozad, Headquarters Design

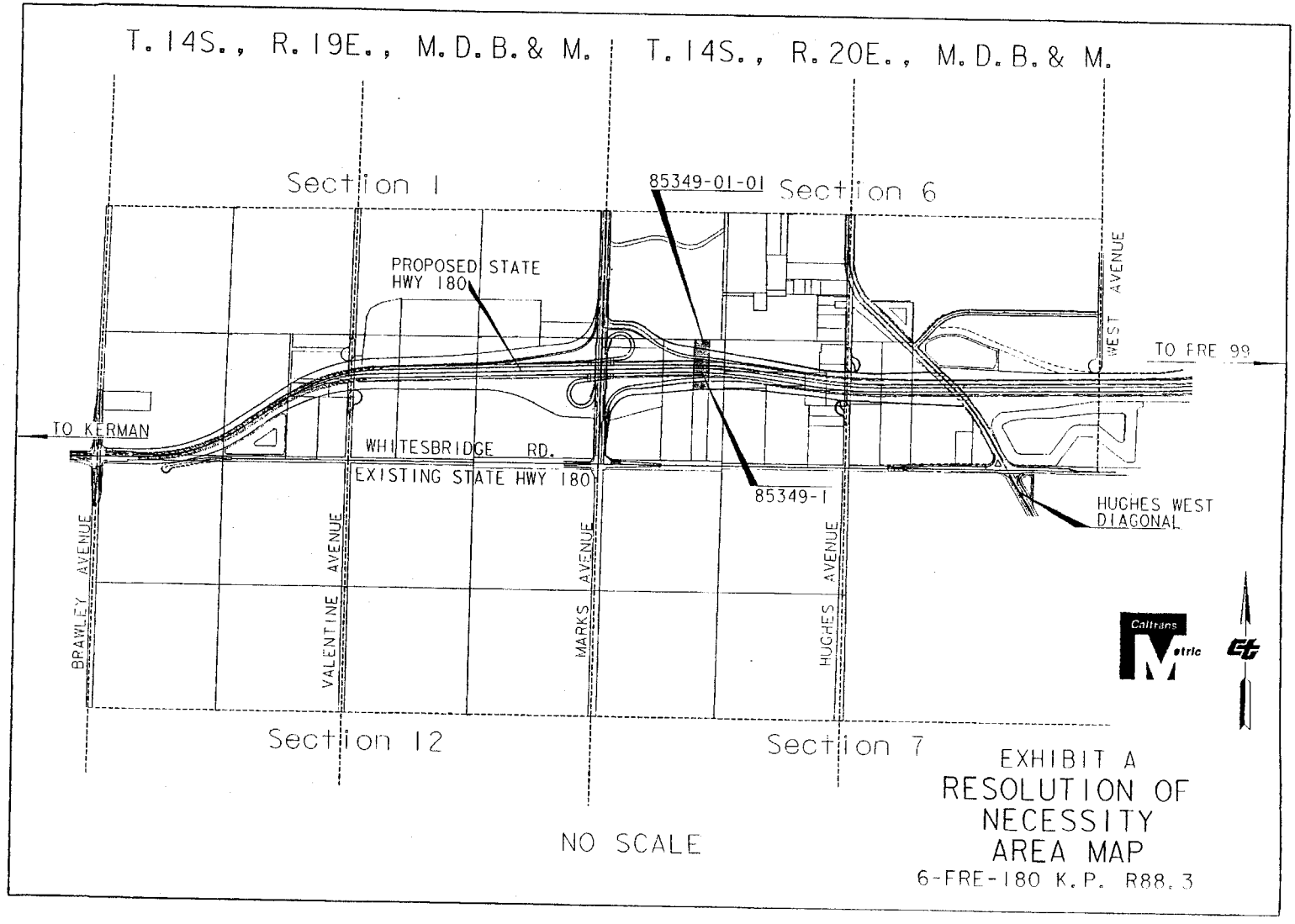
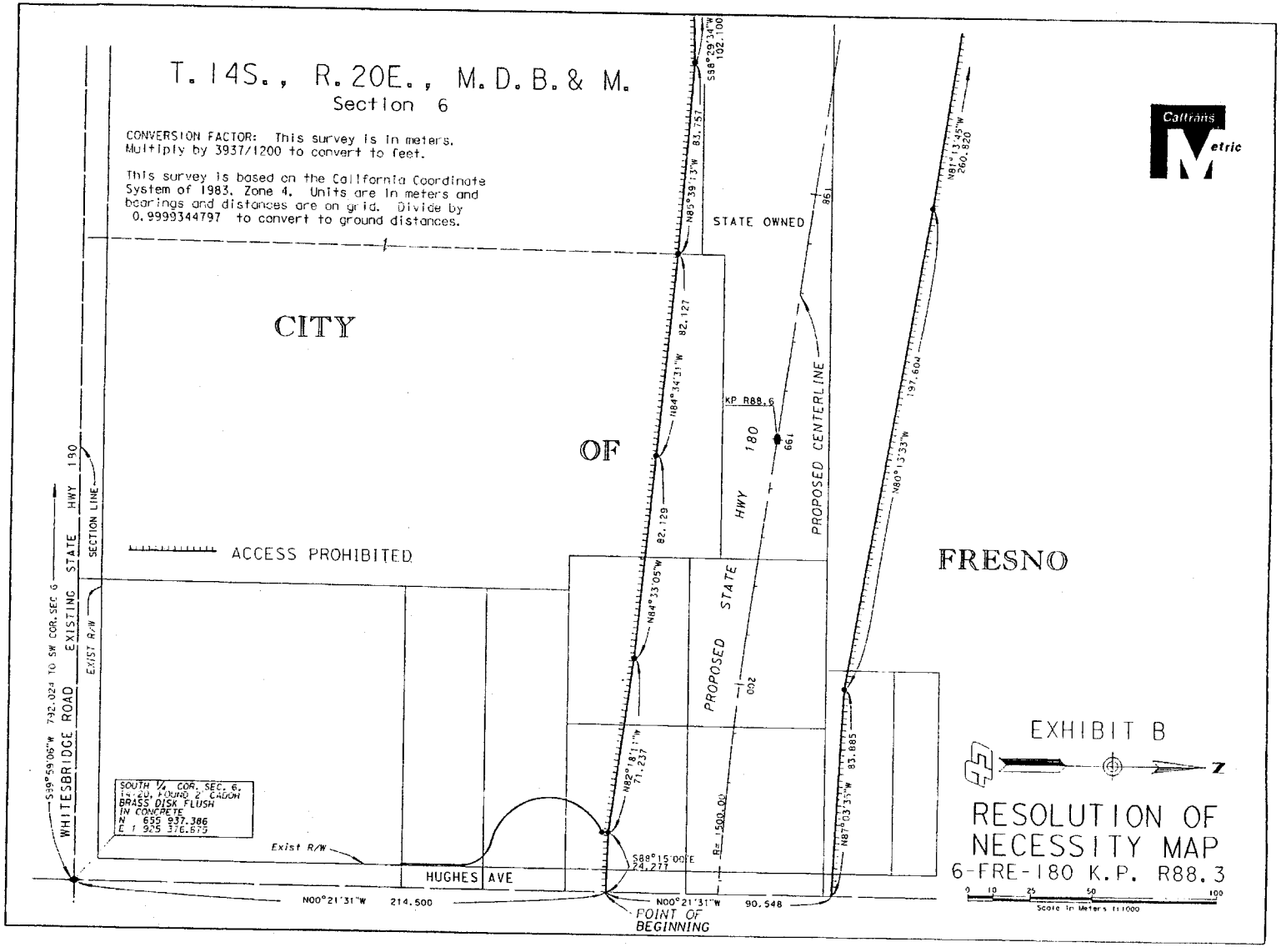


EXHIBIT A
RESOLUTION OF NECESSITY AREA MAP
6-FRE-180 K.P. R88.3


T. 14S., R. 20E., M.D.B. & M.
Section 6
CONVERSION FACTOR: This survey is in meters. Multiply by 3937/1200 to convert to feet.
This survey is based on the California Coordinate System of 1983, Zone 4. Units are in meters and bearings and distances are on grid. Divide by 0.9999344797 to convert to ground distances.
CITY
OF
FRESNO
STATE OWNED
ACCESS PROHIBITED
WHITESBRIDGE ROAD
EXISTING STATE HWY 180
SECTION LINE
EXIST R/W
S39°59'06"W 792.024 TO SW COR. SEC 6
SOUTH 1/4 COR. SEC. 6, T14S, R20E, FOUND 2" CADOM BRASS DISK FLUSH IN CONCRETE
N 655 937.386
E 1 925 376.675
HUGHES AVE
Exist R/W
N00°21'31"W 214.500
N00°21'31"W 90.548
POINT OF BEGINNING
S88°15'00"E 24.277
N82°18'11"W 71.237
N84°33'05"W 82.129
N84°34'31"W 82.127
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PROPOSED STATE HWY 180
PROPOSED CENTERLINE
KP R88.6
R=1500.00
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N80°13'33"W 197.604
N81°13'45"W 260.020
Caltrans Metric
EXHIBIT B
RESOLUTION OF NECESSITY MAP
6-FRE-180 K.P. R88.3
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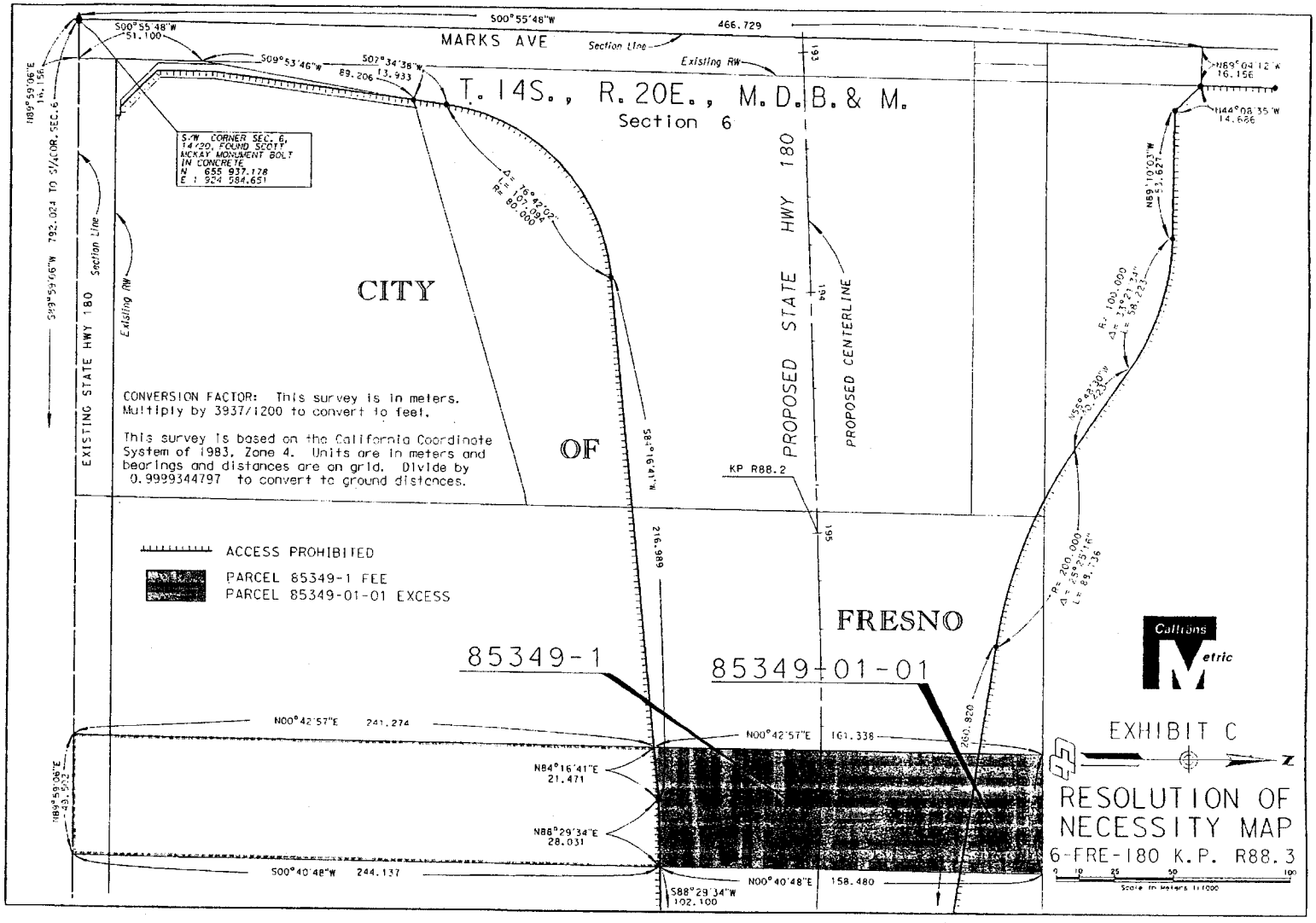
Scale in Meters 1:1000


MARKS AVE
Section Line
Existing RW
T. 14S., R. 20E., M.D.B.& M.
Section 6
CITY
OF
FRESNO
PROPOSED STATE HWY 180
PROPOSED CENTERLINE
EXISTING STATE HWY 180
S/W CORNER SEC. 6, 14/20, FOUND SCOTT MCKAY MONUMENT BOLT IN CONCRETE
N : 655 937.178
E : 924 584.651
CONVERSION FACTOR: This survey is in meters. Multiply by 3937/1200 to convert to feet.
This survey is based on the California Coordinate System of 1983, Zone 4. Units are in meters and bearings and distances are on grid. Divide by 0.9999344797 to convert to ground distances.
ACCESS PROHIBITED
PARCEL 85349-1 FEE
PARCEL 85349-01-01 EXCESS
85349-1
85349-01-01
KP R88.2
EXHIBIT C
RESOLUTION OF NECESSITY MAP
6-FRE-180 K.P. R88.3
Caltrans Metric