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C O U N C I L      C O M M U N I C A T I O N

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TO:        THE CITY COUNCIL  
FROM:     THE CITY MANAGER'S OFFICE

COUNCIL MEETING DATE:  
APRIL 6, 1988

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SUBJECT:   Public Hearing to Consider Adoption of Resolution of Necessity for  
              the Acquisition of Four Parcels of Land on the West Side of  
              Hutchins Street, Between Tamarack Drive and Vine Street, **by**  
              Eminent Domain Procedures

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PREPARED BY:                      City Attorney

RECOMMENDED ACTION:   That the City take the initial step in eminent domain proceedings by adoption of a resolution of necessity for the acquisition of four parcels of land on the West side of Hutchins Street, between Tamarack Drive and Vine Street. The resolution of necessity must be adopted by a vote of two-thirds of all of the City of todì Councilmembers.

BACKGROUND INFORMATION:   At the March 2, 1988 City Council meeting, Council set a hearing for April 6, 1988 to consider adoption of a resolution of necessity for the acquisition of the rights of way necessary for the widening of South Hutchins Street, Rimby to Vine, by eminent domain proceedings, pursuant to Code of Civil Procedure Section 1245.220. Notice of said hearing was mailed to the property owners on March 10, 1988. The City's land acquisition agent, Jerry Heminger, has been in contact and working with the property owners, and we have agreement with all excepting the owners of four parcels, 2, 3, 11 and 12 as indicated on the attached sketch.

The power of eminent domain may be exercised to acquire property for a proposed project only if **all** of the following are established:

1. The public interest and necessity require the project.
2. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The property sought to be acquired is necessary for the project.

State law provides that a public entity may exercise the power of eminent domain only **if** it has adopted a resolution of necessity by a vote of two-thirds of all of the members of the governing body.

Page 1 of 2 pages

City Council  
April 6, 1988  
Page 2

It is important to be aware that once the resolution of necessity has been adopted, the City must commence an eminent domain proceeding to acquire the property within six months after the date of adoption or, if the City has filed such proceeding, the City must serve the complaint and the summons relating to the proceeding. If it does not, the property owner may file an action for inverse condemnation to:

1. Require the City to take the property and pay compensation therefor, and/or
2. Recover damages from the City for the interference with the possession and use of the property resulting from adoption of the resolution.

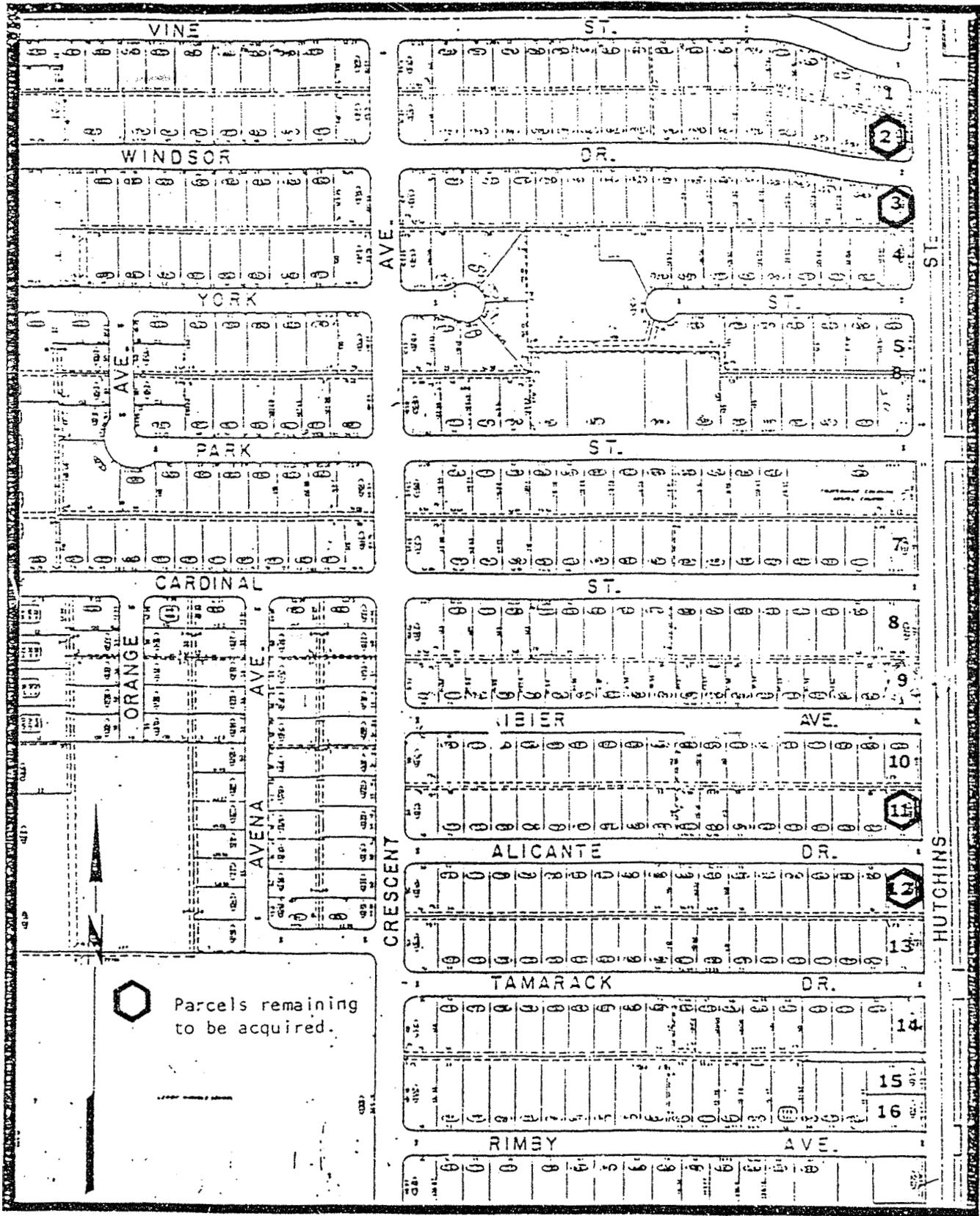
However, the City Council is permitted to rescind the resolution of necessity as a matter of right at any time before the property owner commences an action.



Ring A. Morstein

RMS/vc

Attachments



SOUTH HUTCHINS STREET EMINENT DOMAIN PROCEDURES

NOTICE OF PUBLIC HEARING

Notice is hereby given that on April 6, 1988 the City Council of the City of Lodi, at its regular meeting to be held on that date at 7:30 p.m. in the Council Chambers located at 221 West Pine Street, Lodi, California, intends to adopt a Resolution of Necessity regarding Eminent Domain, pursuant to Code of Civil Procedure (CCP) Section 1245.220 for the following properties:

1. 921 South Hutchins Street described as follows:

A portion of tot 37 of Vinewood Tract, Tract No. 329, as filed in Volume 13 of Maps and Plats at Page 154, San Joaquin County Records, and being more particularly described as follows:

Beginning at the southeast corner of Lot 37, thence North  $0^{\circ} 11' 30''$  East, 66.12 feet, along the east line of said Lot, to the beginning of a tangential curve, concave to the southwest, with a radius of 20 feet, through an arc of  $88^{\circ} 27' 20''$ , for a distance of 30.88 feet, to the end of curve, thence South  $44^{\circ} 3' 44''$  East, 20.73 feet, thence South  $0^{\circ} 11' 30''$  West, 71.20 feet to the south line of said lot, thence South  $89^{\circ} 2'$  East, 5.0 feet, along the south line of said lot to the point of beginning.

2. 911 South Hutchins Street described as follows:

A portion of Lot 35 of Vinewood Tract, Tract No. 329, as filed in Volume 13 of Maps and Plats at Page 154, San Joaquin County Records, and being more particularly described as follows:

Beginning at the northeast corner of Lot 36, thence South  $0^{\circ} 11' 30''$  West, 70.25 feet, along the east line of said lot, to the beginning of a tangential curve, concave to the northwest, with a radius of 20 feet, through an arc of  $91^{\circ} 43' 50''$ , for a distance of 32.02 feet to the end of curve, thence North  $47^{\circ} 57' 25''$  East, 21.07 feet, thence North  $0^{\circ} 11' 30''$  East, 77.08 feet to the north line of said lot, thence South  $78^{\circ} 29'$  East, 5.1 feet along the north line of said lot to the point of beginning.

3. 1223 South Hutchins Street described as follows:

A portion of Lot 24 of Knoll Subdivision, Tract No. 180, as filed in Volume 13 of Maps and Plats at Page 8, San Joaquin County Records, and being more particularly described as follows:

Beginning at the northeast corner of Lot 24, thence South  $0^{\circ} 15'$  East, 110 feet, along the east line of said lot to the southeast corner of said lot, thence North  $89^{\circ} 38'$  West, 19.04 feet, along the south line of said lot, thence North  $43^{\circ} 50' 49''$  East, 20.18 feet, thence North  $0^{\circ} 16'$  West, 95.36 feet, to the north line of said lot, thence South  $83^{\circ} 38'$  East, 5 feet to the point of beginning.

4. 1231 South Hutchins Street described as follows:

A portion of Lot 25 of Knoll Subdivision, Tract No. 180, as filed in Volume 13 of Maps and Plats at Page S, San Joaquin County Records, and being more particularly described as follows:

Beginning at the southeast corner of Lot 25, thence North  $89^{\circ} 38'$  West, along the south line of said lot 5 feet, thence North  $0^{\circ} 15'$  West, 95.51 feet, thence North  $43^{\circ} 48' 16''$  West, 20.20 feet to the north line of said lot, thence South  $89^{\circ} 38''$  East, 18.92 feet along the north line of said lot, thence South  $0^{\circ} 15'$  East along the east line of said lot, 110 feet to the point of beginning.

The property owners have been notified that they have the right to be heard on the matters referred to in CCP Section 1240.030 as it relates to this property. Specifically, CCP Section 1240.030 permits the City of Lodi to exercise the power of eminent domain to acquire the property for a proposed project only if all of the following are established:

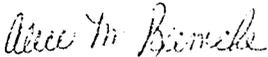
- a. The public interest and necessity require the project.
- b. The project is planned or located in the manner that will be most compatible with the greatest public need and the least private injury.
- c. The property sought to be acquired is necessary for the project.

Pursuant to CCP Section 1245.234, the property owners must file a WRITTEN REQUEST to be heard within 15 days after the notice was mailed. The governing body need not give an opportunity to appear and be heard to any person who fails to file a written request. If the property owners intend to be heard on the matter they need to bring in or mail their request to Alice M. Reimche, City Clerk, 221 West Pine Street, Call Box 3006, Lodi, CA 95241-1910, phone 333-6702. THEIR FAILURE 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.

If the property owners challenge the subject matter in court, they may be limited to raising only those issues raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk at, or prior to, the public hearing.

Dated: March 2, 1988

By Order of the Lodi City Council

  
Alice M. Reimche  
City Clerk

Approved as to form

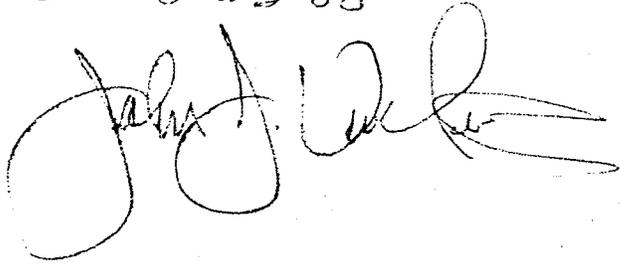
  
Ronald M. Stein  
City Attorney

RECEIVED

MAR 23 1988

I <sup>CITY CLERK</sup> John Van Nest request  
to Appear and be heard  
April 6, 1988, By the City  
Council regarding Eminent  
Domain Proceedings, for  
Property at 1723 So. Hutchins  
St., Lodi, Ca.

Dated: 3-23-88



RESOLUTION NO. 88-45

RESOLUTION OF NECESSITY REGARDING EMINENT DOMAIN  
PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1245.220 ET SEQ.

BE IT RESOLVED by the Council of the City of Lodi as follows:

The Council of the City of Lodi finds, determines, and hereby declares:

1. That the public interest, necessity, and convenience require the acquisition, construction, and completion of a public improvement, to wit: the acquisition of four additional parcels of land for the widening of Hutchins Street between Rimby Avenue and Vine Street within San Joaquin County, described as portions of the south one-half of the east forty feet of Section 11, Township 3 North, Range 7 East, Mount Diablo Base and Meridian.

2. That the real property hereinafter described is suitable, adaptable, necessary, and required for the public use of said City of Lodi, as hereinabove set forth.

3. The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury.

4. That the City of Lodi acquire the hereinabove described real property for street widening by donation, purchase, or by condemnation in accordance with the provisions of the Code of Civil Procedure of the State of California relating to eminent domain. That the City Attorney is hereby authorized to prosecute in the name of the City of Lodi, any and all actions or proceedings required to acquire the necessary property and/or to fix the compensation to be paid for property damage resulting from the construction and maintenance of said improvements; and in the absence of a satisfactory price agreement with the owner of the land, the City Attorney is hereby directed to immediately commence proceedings under Title Seven, Chapter Three of the Code of Civil Procedure of the State of California, to condemn the property hereinafter described for the purpose of taking said land for the public use of said City as hereinabove set forth.

5. To make application to a Court of competent-jurisdiction for an order fixing the amount of such security in the way of money deposits as said Court may direct, and for an order permitting said City of Lodi to take immediate possession and use of said property, or interest in real property, or existing improvements for the public use as hereinabove set forth; to make deposit of such security or monies in such amount so fixed and determined and in such manner as said Court in which said condemnation proceedings are pending may direct.

6. The real property or interest in real property which the City of Lodi is by this Resolution authorized to acquire for said public improvements is situated in the County of San Joaquin, State of California, and is more particularly described in Exhibit "A", "B", "C", and "D", attached hereto and incorporated herein by reference,

7. Pursuant to Government Code Section 7207.2, a written offer was made to the owners of record in the amount of \$25,575 for the four parcels.

DATED: April 6, 1988

I hereby certify that Resolution No. 88-45 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 6, 1988 by the following vote:

**Ryes :** Council Members - Hinchman, Pinkerton, Reid, Snider  
and Olson (Mayor)

**Noes :** Council Members - None

**Absent:** Council Members - None

*Alice M. Reimche*  
Alice M. Reimche  
City Clerk

CITY COUNCIL

EVELYN M. OLSON, Mayor  
JOHN R. (Randy) SNIDER  
Mayor Pro Tempore  
DAVID M. HINCHMAN  
JAMES W. PINKERTON, Jr.  
FRED M. REID

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
CALL BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-5634

TELECOPIER (209) 333-6795

March 10, 1988

THOMAS A. PETERSON  
City Manager

RECEIVED  
ALICE M. REIMCHE  
City Clerk

1988 MAR 11 AM 9:27  
RONALD M. STEIN  
City Attorney

ALICE M. REIMCHE  
CITY CLERK  
CITY OF LODI

Estate of Nettie Wells  
c/o Mildred M. Braquet  
7519 Kentwood Court  
Gilroy, CA 95020

**SUBJECT:** Notice Regarding Res lution of Necessity  
Code of Civil Procedure Section 1245.235

Notice is hereby given that on April 6, 1988, the City Council of the City of Lodi intends to adopt a Resolution of Necessity regarding Eminent Domain, pursuant to Code of Civil Procedure (CCP) Section 1245.220, for the property located at 911 S. Hutchins Street, Lodi, described as follows:

A portion of Lot 36 of Vinewood Tract, Tract No. 329, as filed in Volume 13 of Maps and Plats at Page 154, San Joaquin County Records, and being more particularly described as follows:

Beginning at the northeast corner of Lot 36, thence South 0°11'30" West, 70.25 feet, along the east line of said lot, to the beginning of a tangential curve, concave to the northwest, with a radius of 20 feet, through an arc of 91°43'50", for a distance of 32.02 feet to the end of curve, thence North 47°57'25" East, 21.07 feet, thence North 0°11'30" East, 77.08 feet to the north line of said lot, thence South 78°29' East, 5.1 feet along the north line of said lot to the point of beginning.

You are notified that you have the right to be heard on the matters referred to in CCP Section 1240.030 as it relates to this property. Specifically, CCP Section 1240.030 permits the City of Lodi to exercise the power of eminent domain to acquire the property for a proposed project only if all of the following are established:

- a. The public interest and necessity require the project.
- b. The project is planned or located in the manner that will be most compatible with the greatest, public need and the least private injury.
- c. The property sought to be acquired is necessary for the project.

Estate of Nettie Wells  
March 10, 1988  
Page 2

NOTICE

Pursuant to CCP Section 1245.235, you must file a WRITTEN REQUEST to be heard within 15 days after the notice was mailed. The governing body need not give an opportunity to appear and be heard to any person who fails to file a written request. If you intend to be heard on the matter, please bring in or mail your request to Alice Reimche, City Clerk, 221 W. Pine Street, Call Box 3006, Lodi, 95241, phone 333-6700. YOUR FAILURE 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.



G.E. Robison  
Assistant City Engineer

GER/SB/ma

cc: City Clerk  
City Attorney  
Theodore I. Wittmayer, Attorney at Law

CITY COUNCIL

EVELYN M. OLSON, Mayor  
JOHN R. (Randy) SNIDER  
Mayor Pro Tempore  
DAVID M. HINCHMAN  
JAMES W. PINKERTON, Jr.  
FRED M. REID

# CITY OF LODI

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(209) 334-5634  
TELECOPIER: (209) 333-6795

4/6/88 5/11  
THOMAS A. PETERSON  
City Manager  
ALICE M. REIMCHE  
City Clerk  
RONALD M. STEIN  
City Attorney

April 6, 1988

Theodore E. Hittmayer  
Attorney at Law  
1024 West Robinhood Drive  
Stockton, CA

Re: Agreement For Right of Entry - 911 South Hutchins Street, Lodi  
Estate of Nettie H. Wells

Dear Ted:

Enclosed herewith please find an original and one copy of the above-captioned Agreement for right of entry for the widening of Hutchins Street in Lodi. Please obtain the signatures of the Co-Administrators of the Nettie H. Wells estate: Mildred Braquet and Charlet Long, and return an original signed copy to this office. Upon execution by the City, a signed copy will be forwarded to you.

Thank you for your assistance in this matter.

Sincerely yours,



RONALD M. STEIN  
CITY ATTORNEY

RMS:vc

enclosures

cc: city Clerk  
Administrative Assistant, P. W.

R/ENT2/TXTA.01V

AGREEMENT

911 SOUTH HUTCHINS STREET

RIGHT OF ENTRY

PORTION OF APN 031-140-34

THIS AGREEMENT, made and entered into this — day of \_\_\_\_\_, 19—, by and between The Estate of Nettie H. Wells, Deceased, Mildred Braquet, Co-Administrator and Charlet Long, Co-Administrator, hereinafter \*called Owner, and the CITY OF LODI, a municipal corporation of the State of California, hereinafter called City.

WITNESSETH:

WHEREAS, Owner is entitled to possession of the real property situate in the City of Lodi, County of San Joaquin, State of California, and more particularly described as follows:

"Lots thirty-five (35) and thirty-six (36) as shown upon Map entitled, VINEWOOD TRACT, filed for record May 27, 1953 in Vol. 13 of Maps and Plats, page 154, San Joaquin County Records.

"EXCEPT from said Lot thirty-five (35), the West 42 feet thereof."

WHEREAS, City desires the right of entry to a portion of Lot 36 of Vinewood Tract, Tract No. 329, as filed in Volume 13 of Maps and Plats at Page 154, San Joaquin County Records, and being more particularly described as follows:

"Beginning at the northeast corner of Lot 36, thence South 0- 11' 30" West, 70.25 feet, along the east line of said lot, to the beginning of a tangential curve, concave to the northwest, with a radius of 20 feet, through an arc of 91- 43' 50", for a distance of 32.02 feet to the end of curve, thence North 47- 57' 25" East, 21.07 feet, thence North 0- 11' 30" East, 77.05 feet to the north line of said lot, thence South 78- 29' East, 5.1 feet along the north line of said lot to the point of beginning.

"Containing 479 square feet, more or less."

WOW, THEREFORE, Owner is willing to permit the City of Lodi to enter said premises for the purpose of installing new sidewalk, curb and gutter in a five foot strip as above-described for the purposes of widening Hutchins Street as shown on Exhibit A attached hereto and incorporated herein by reference.

City shall assume liability for any damage to said property occurring by reason of installing said sidewalk, curb and gutter.

IN WITNESS WHEREOF, the parties hereto have read and agree with the statements herein, and the parties hereto have set their hands on the date and year first hereinabove written.

CITY OF LODI, a municipal  
corporation

OWNER

THE ESTATE OF NETTIE H. WELLS,  
DECEASED

\_\_\_\_\_  
THOMAS A. PETERSCN  
City Manager

By MILDRED BRAQUET, Co-Administrator

By \_\_\_\_\_  
CHARLET LONG, Co-Administrator

ATTEST

\_\_\_\_\_  
ALICE M. REIMCHE  
City Clerk

Approved As To Form:

\_\_\_\_\_  
RONALD M. STEIN  
City Attorney

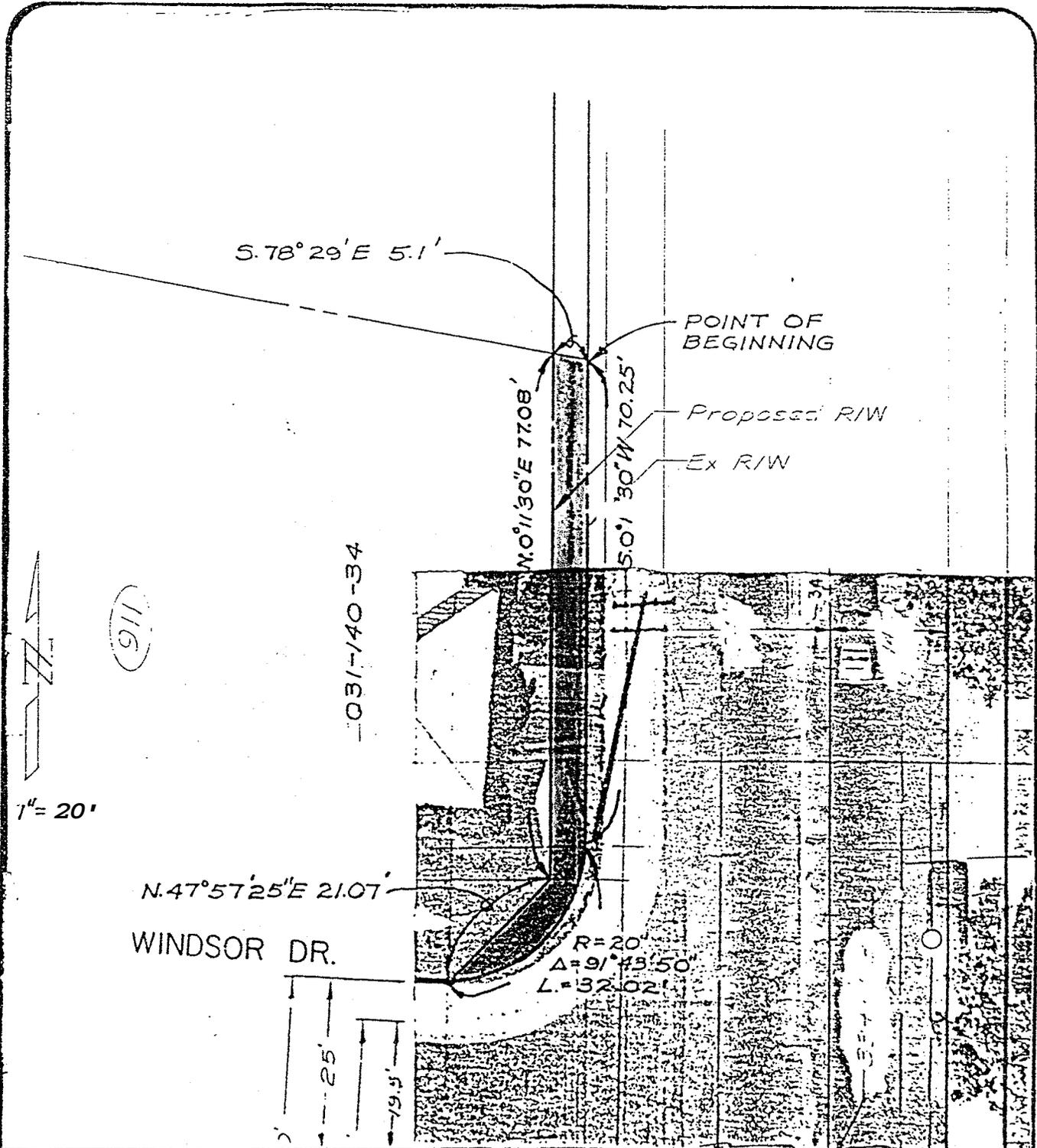
R/ENT/WE.LLS/TXTA.01V



CITY OF LODI

PUBLIC WORKS DEPARTMENT

HUTCHINS ST.  
R/W AQUISITION  
911 HUTCHINS ST.



Drawn	No	Revised	By	Approved By
Checked				
Date				Public Works Director RCE

**Exhibit A**

CITY COUNCIL

EVELYN M. OLSON, Mayor  
JOHN R. (Randy) SNIDER  
Mayor Pro Tempore  
DAVID M. HINCHMAN  
JAMES W. PINKERTON, Jr.  
FRED M. REID

# CITY OF LODI

CITY HALL: 221 WEST PINE STREET  
CALI BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 334-5634

TELECOPIER (209) 333-6795  
March 10, 1988

THOMAS A. PETERSON  
City Manager

ALICE M. REIMCHE  
City Clerk

RONALD M. STEIN  
City Attorney

Mr. and Mrs. Ted Wittnayer  
921 S. Hutchins Street  
Lodi, CA 95240

SUBJECT: Notice Regarding Resolution of Necessity  
Code of Civil Procedure Section 1245.235

Notice is hereby given that on April 6, 1988, the City Council of the City of Lodi intends to adopt a Resolution of Necessity regarding Eminent Domain, pursuant to Code of Civil Procedure (CCP) Section 1245.220, for the property located at 921 S. Hutchins Street, described as follows:

A portion of Lot 37 of Vinewood Tract, Tract No. 329, as filed in Volume 13 of Naps and Plats at Page 154, San Joaquin County Records, and being more particularly described as follows:

Beginning at the southeast corner of Lot 37, thence North 0°11'30" East, 66.12 feet, along the east line of said lot, to the beginning of a tangential curve, concave to the southwest, with a radius of 20 feet, through an arc of 88°27'20", for a distance of 30.88 feet, to the end of curve, thence South 44°3'44" East, 20.73 feet, thence South 0°11'30" West, 71.20 feet to the south line of said lot, thence South 89°2' East, 5.0 feet, along the south line of said lot to the point of beginning.

You are notified that you have the right to be heard on the matters referred to in CCP Section 1240.030 as it relates to this property. Specifically, CCP Section 1240.030 permits the City of Lodi to exercise the power of eminent domain to acquire the property for a proposed project only if all of the following are established:

- a. The public interest and necessity require the project.
- b. The project is planned or located in the manner that will be most compatible with the greatest public need and the least private injury.
- c. The property sought to be acquired is necessary for the project.

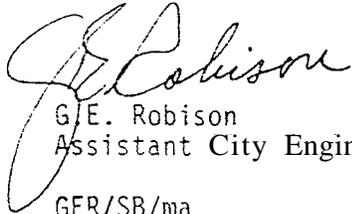
## NOTICE

Pursuant to CCP Section 1245.235, you must file a **WRITTEN REQUEST** to be heard within 15 days after the notice was mailed. The governing body

Mr. and Mrs. Ted Wittmayer  
March 10, 1988  
Page 2

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need not give an opportunity to appear and **be** heard to any person who fails to file a written request. If you intend to be heard on the matter, please bring in or mail your request to Alice Reimche, City Clerk, 221 W. Pine Street, Call Box 3006, Lodi, 95241, phone 333-6700. YOUR FAILURE 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.



G.E. Robison  
Assistant City Engineer

GER/SB/ma

cc: City Clerk  
City Attorney

CITY COUNCIL

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JOHN R. (Randy) SNIDER  
Mayor Pro Tempore  
DAVID M. HINCHMAN  
JAMES W. PINKERTON, Jr.  
FRED M. REID

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
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TELECOPIER (209) 333-6795  
March 10, 1988

THOMAS A. PETERSON  
City Manager  
ALICE M. REIMCHE  
City Clerk  
RONALD M. STEIN  
City Attorney

Mr. and Mrs. John Van Nest  
1223 S. Hutchins Street  
Lodi, CA 95240

**SUBJECT:** Notice Regarding Resolution of Necessity  
Code of Civil Procedure Section 1245.235

Notice is hereby given that on April 6, 1988, the City Council of the City of Lodi intends to adopt a Resolution of Necessity regarding Eminent Domain, pursuant to Code of Civil Procedure (CCP) Section 1245.220, for the property located at 1223 S. Hutchins Street, described as follows:

A portion of Lot 24 of Knoll Subdivision, Tract No. 180, as filed in Volume 13 of Maps and Plats at Page 8, San Joaquin County Records, and being more particularly described as follows:

Beginning at the northeast corner of Lot 24, thence South 0°15' East, 110 feet, along the east line of said lot to the southeast corner of said lot, thence North 89°38' West, 19.04 feet, along the south line of said lot, thence North 43°50'49" East, 20.18 feet, thence North 0°15' West, 95.36 feet, to the north line of said lot, thence South 89°38' East, 5 feet to the point of beginning.

You are notified that you have the right to be heard on the matters referred to in CCP Section 1240.630 as it relates to this property. Specifically, CCP Section 1240.030 permits the City of Lodi to exercise the power of eminent domain to acquire the property for a proposed project only if all of the following are established:

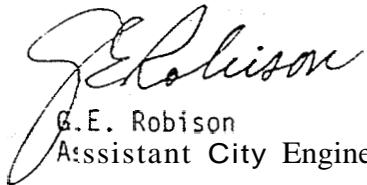
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Mr. and Mrs. John Van Nest  
March 10, 1988  
Page 2

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G.E. Robison  
Assistant City Engineer

GER/SB/ma

cc: City Clerk  
City Attorney

CITY COUNCIL

EVELYN M. OLSON, Mayor  
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FRED M. REID

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TELECOPIER (209) 333-6795  
March 10, 1985

THOMAS A. PETERSON  
City Manager

ALICE M. REIMCHE  
City Clerk

RONALD M. STEIN  
City Attorney

Emelia Mayer  
1231 S. Hutchins Street  
Lodi, CA 95240

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Emelia Mayer  
March 10, 1988  
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fails to file a written request. If you intend to be heard on the matter, please bring in or mail your request to Alice Reimche, City Clerk, 221 W. Pine Street, Call Box 3006, Lodi, 95241, phone 333-6700. YOUR FAILURE 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.



Assistant City Engineer

GER/SB/ma

cc: City Clerk  
City Attorney