

RESOLUTION NO. 2014-141

A RESOLUTION OF THE LODI CITY COUNCIL
DECLARING THE PUBLIC NECESSITY FOR AND AUTHORIZING THE INITIATION OF
EMINENT DOMAIN PROCEEDINGS TO SECURE REAL PROPERTY INTERESTS
NECESSARY TO CONSTRUCT
THE HARNEY LANE GRADE SEPARATION PROJECT
[CODE CIV. PROC. §§ 1245.220, 1245.230]

Property Owners: Gary and Joyce Tsutsumi 2011 Trust and Diane Y. Tsutsumi

A Portion of APN: 058-130-24

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WHEREAS, the City of Lodi ("City") is a public agency of the State of California and is authorized to exercise the power of eminent domain; and

WHEREAS, the California Constitution and Code of Civil Procedure §§ 1230.010 *et seq.* authorize the City to acquire property interests for public purposes by eminent domain procedures; and

WHEREAS, the City intends to construct the Harney Lane Grade Separation Project to improve, realign, widen, and grade separate Harney Lane over the existing UPRR tracks between South Stockton Street and South Hutchins Street in Lodi (the "Project"); and

WHEREAS, the main objectives of the Project include: (i) eliminating the current level of service deficiencies at the Harney Lane/UPRR at-grade crossing; (ii) improving response times for emergency vehicles; (iii) correcting existing and anticipated future traffic operational deficiencies; (iv) reducing in vehicle emissions associated with vehicles idling at the grade crossing; (v) accommodating increased traffic demand generated by approved and planned growth in the City and the surrounding areas, consistent with the City's General Plan; and (vi) increasing vehicular and pedestrian safety at the Harney Lane/UPRR at-grade crossing; and

WHEREAS, in order to complete the Project, it will be necessary for the City to acquire certain interests in real property, including permanent right-of-way easements and temporary construction easements in real property identified as a portion of Assessor's Parcel No. 058-130-24; and

WHEREAS, the permanent right-of-way easement is described in Exhibit "A" and depicted on Exhibit "B" attached hereto and incorporated herein by reference and the temporary construction easements are described in Exhibit "C" and depicted on Exhibit "D" attached hereto and incorporated herein by reference (collectively "Property"); and

WHEREAS, the Property is located entirely within the boundaries of the City; and

WHEREAS, to the extent that the Property is already appropriated to a public use, the use of the Property for Project purposes constitutes a more necessary public use pursuant to Code of Civil Procedure § 1240.610, *et seq.*

WHEREAS, the City has investigated and examined the alternatives to the Project and the acquisition of the Property, and concluded that both the Project and the acquisition of the Property for the Project are necessary; and

WHEREAS, the City has complied with the requirements of the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.*, in regards to the acquisition of the Property; and

WHEREAS, the City has complied with requirements of the Government Code Section 7267.2, in regards to acquisition of the Property by making an offer to purchase to the known owners of record; and

WHEREAS, the City finds and determines that Notice of its Intention to Adopt this Resolution of Necessity was duly given as required by Code of Civil Procedure § 1245.235 on or about July 14, 2014; and

WHEREAS, the Notice of Hearing advised the owners of record of their right to be heard on the matters referred to therein on August 6, 2014, at the Lodi City Council meeting; and

WHEREAS, a written request to appear was received from Gary Tsutsumi on behalf of the property owners; and

WHEREAS, the hearing set out in the Notice of Intent to Adopt Resolution of Necessity was held on August 6, 2014, as required by the Code of Civil Procedure § 1245.235, at the time and place stated therein, all interested parties were given an opportunity to be heard, and the City did hear and consider all of the evidence presented.

NOW, THEREFORE, based on the evidence presented,

BE IT FOUND, DETERMINED, AND RESOLVED by at least a two-thirds vote of all of the members of the Lodi City Council under Code of Civil Procedure §§ 1240.030 and 1245.230, that the City finds and determines each of the following:

1. The recitals contained herein are true and correct;
2. Upon the examination of the alternatives, the permanent and temporary easement interests in the Property, as described and depicted in Exhibits A, B, C and D, are required to be taken by the City for and in conjunction with the Project;
3. The City is authorized to acquire the Property pursuant to the provisions of Government Code §§ 37350.5, 37353, 40401 and 40404, and the provisions of Eminent Domain Law comprising Title 7, Part 3 of the Code of Civil Procedure (commencing with § 1230.010), including § 1240.410, *et seq.*;
4. Acquisition of the Property for and in conjunction with the Project promotes public safety and the general welfare, is authorized by Government Code §§ 37350.5, 37353, 40401 and 40404, and is therefore a public use;
5. Based upon the evidence presented, the Lodi City Council hereby finds, determines, declares and resolves each of the following:
 - A. The public interest and necessity require the proposed Project;
 - B. 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; and

- C. The Property interests sought to be acquired as described and depicted in Exhibits A, B, C and D are necessary for the proposed Project.
- D. The offer required by Government Code § 7267.2, together with the accompanying statement and summary of the basis for the amount established as just compensation, was made to all known and determined owner(s) of record.
- E. All conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property have been complied with by the City.

BE IT FURTHER RESOLVED that the City Treasurer is hereby authorized and directed to disburse all funds and make any and all deposits to obtain possession of and title to the Property, including but not limited to the deposit of the probable amount of compensation based on an appraisal pursuant to Code of Civil Procedure §§ 1255.010, *et seq.*, with the California State Treasurer's Office; and

BE IT FURTHER RESOLVED that the City Attorney and the law firm of Kronick, Moskovitz, Tiedemann & Girard, a Professional Corporation ("KMTG"), are hereby authorized and directed to prepare, commence, and prosecute proceedings in eminent domain in the appropriate court to acquire the Property described in Exhibits A and C and depicted on Exhibits B and D. The City Attorney and KMTG are hereby further authorized and directed to obtain orders for immediate possession of the Property as may be required for the proposed Project.

Dated: August 6, 2014

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I hereby certify that Resolution No. 2014-141 was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 6, 2014, by the following vote:

- AYES: COUNCIL MEMBERS – Hansen, Johnson, Nakanishi, and Mayor Katzakian
- NOES: COUNCIL MEMBERS – Mounce
- ABSENT: COUNCIL MEMBERS – None
- ABSTAIN: COUNCIL MEMBERS – None

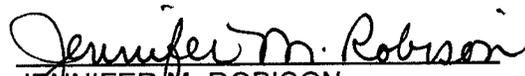

 JENNIFER M. ROBISON
 City Clerk

Exhibit "A"
Legal Description



BAUMBACH & PIAZZA, INC.
CIVIL ENGINEERS • LAND SURVEYORS
www.bpengineers.net

323 W. Elm Street
Lodi, CA 95240-2003
Phone (209) 368-6618
Fax (209) 368-6610

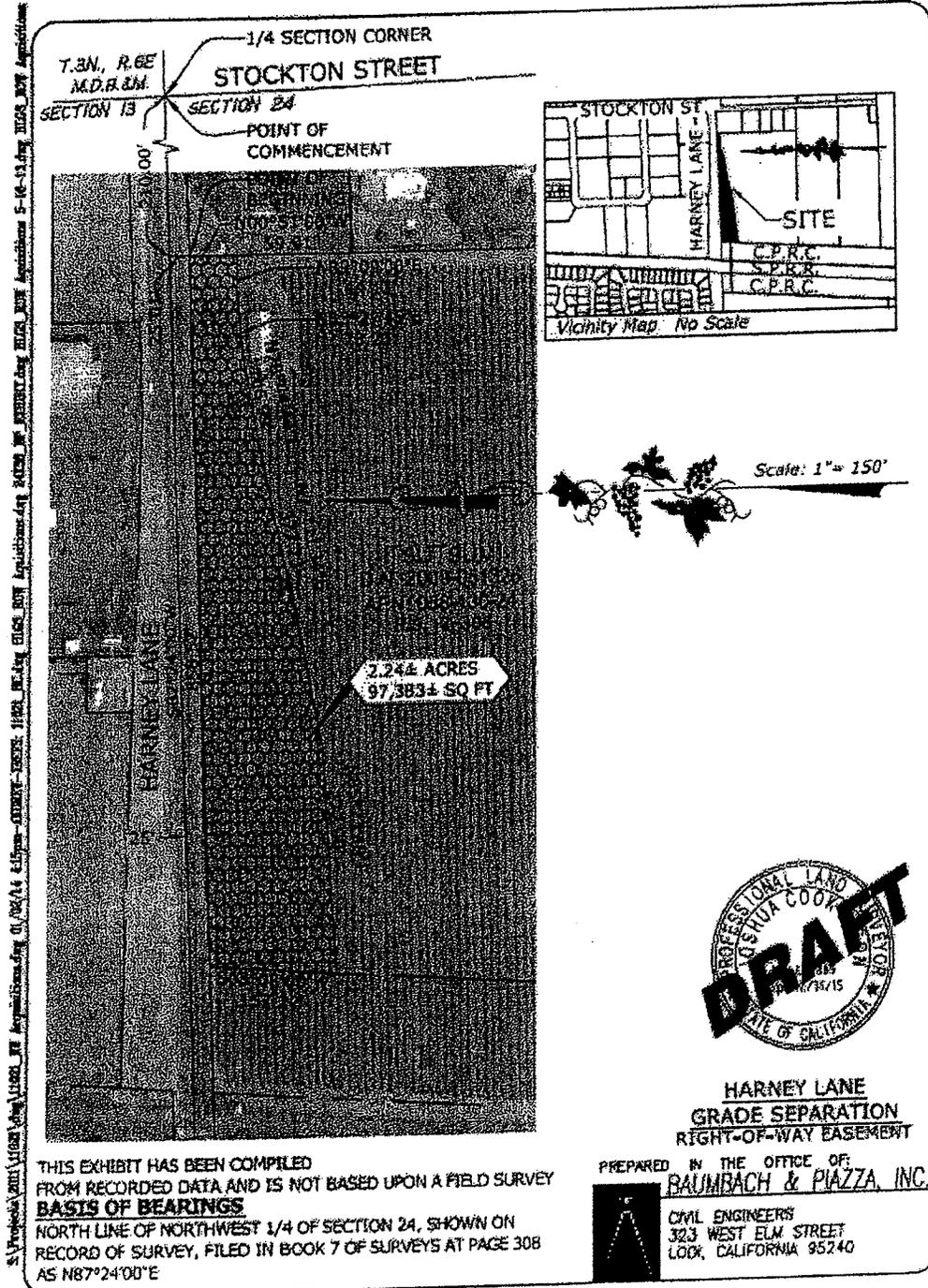
Exhibit "A"

A portion of the Northwest Quarter of Section 24, Township 3 North, Range 6 East, Mount Diablo Base and Meridian, being more particularly described as follows:

Commencing at the northeast corner of the northwest quarter of Section 24, Township 3 North, Range 6 East, Mount Diablo Base and Meridian as shown on Record of Survey, filed in Book 7 of Surveys at Page 308, San Joaquin County Records; thence along the north line of said Section 24, South 87°24'00" West, 210.00 feet; thence South 00°51'00" East, 25.01 feet to the South line of Harney Lane, and the True Point of Beginning; thence continue along said South line, South 87°24'00" West, 858.52 feet to the Easterly line of the Union Pacific Railroad (400 foot wide per Congressional Grant); thence along said Easterly line, South 03°08'00" West, 157.27 feet; thence North 85°23'48" East, 272.90 feet; thence North 77°11'34" East, 377.73 feet; thence North 78°44'44" East, 106.99 feet; thence North 83°27'45" East, 78.23 feet; thence North 89°09'00" East, 44.13 feet to the east line of that property described in San Joaquin County Recorder's Document No. 2009-051326; thence North 00°51'00" West along said east line, 55.91 feet to the True Point of Beginning.



Exhibit "B"
Plat Map



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THIS EXHIBIT HAS BEEN COMPILED FROM RECORDED DATA AND IS NOT BASED UPON A FIELD SURVEY
BASIS OF BEARINGS
 NORTH LINE OF NORTHWEST 1/4 OF SECTION 24, SHOWN ON RECORD OF SURVEY, FILED IN BOOK 7 OF SURVEYS AT PAGE 308 AS N87°24'00"E

HARNEY LANE
 GRADE SEPARATION
 RIGHT-OF-WAY EASEMENT
 PREPARED IN THE OFFICE OF:
BAUMBACH & PIAZZA, INC.
 CIVIL ENGINEERS
 323 WEST ELM STREET
 LOS ANGELES, CALIFORNIA 90012



EXHIBIT C

Legal Description



BAUMBACH & PIAZZA, INC.
CIVIL ENGINEERS • LAND SURVEYORS
www.bpengineers.net

323 W. Elm Street
Lodi, CA 95240-2003
Phone (209) 368-6618
Fax (209) 368-6610



Exhibit "A"

Temporary Construction Easement #1

A portion of the Northwest Quarter of Section 24, Township 3 North, Range 6 East, Mount Diablo Base and Meridian, being more particularly described as follows:

Commencing at the northeast corner of the northwest quarter of Section 24, Township 3 North, Range 6 East, Mount Diablo Base and Meridian as shown on Record of Survey, filed in Book 7 of Surveys at Page 308, San Joaquin County Records; thence along the north line of said Section 24, South 87°24'00" West, 210.00 feet; thence South 00°51'00" East, 84.92 feet to the True Point of Beginning; thence South 89°09'00" West, 5.00 feet; thence South 00°51'00" East, 142.34 feet; thence North 87°24'00" East, 5.00 feet; thence North 00°51'00" West, 142.19 feet to the True Point of Beginning.

Temporary Construction Easement #2

A portion of the Northwest Quarter of Section 24, Township 3 North, Range 6 East, Mount Diablo Base and Meridian, being more particularly described as follows:

Commencing at the northeast corner of the northwest quarter of Section 24, Township 3 North, Range 6 East, Mount Diablo Base and Meridian as shown on Record of Survey, filed in Book 7 of Surveys at Page 308, San Joaquin County Records; thence along the north line of said Section 24, South 87°24'00" West, 210.00 feet; thence South 00°51'00" East, 84.92 feet; thence South 89°09'00" West, 44.13 feet; thence South 83°27'45" West, 78.23 feet; thence South 78°44'44" West, 2.60 feet to the True Point of Beginning; thence South 78°44'44" West, 104.39 feet; thence South 77°11'34" West, 377.73 feet; thence South 85°23'48" West, 272.90 feet; thence South 03°08'00" West, 20.18 feet; thence North 85°23'48" East, 277.05 feet; thence North 77°11'34" East, 378.89 feet; thence North 78°44'44" East, 101.12 feet; thence North 02°43'50" West, 20.22 feet to the True Point of Beginning.

