



RESOLUTION NO. 2010- 265

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, DETERMINING THAT PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF EASEMENT AND RIGHTS OF WAY FOR PUBLIC STREET PURPOSES OVER, UNDER, THROUGH AND ACROSS A PORTION OF APN: 511-250-02, OWNED BY TRUDY I. MOXLEY, FOR THE CONSTRUCTION OF IMPROVEMENTS AND WIDENING AND RELATED PURPOSES OF BLYTHE AVENUE BETWEEN ASHLAN AND DAKOTA AVENUES AND AUTHORIZING EMINENT DOMAIN PROCEEDINGS FOR PUBLIC USE AND PURPOSE

WHEREAS, the City of Fresno proposes to widen and improve Blythe Avenue between Ashlan and Dakota Avenues within the City of Fresno, a public use, by the installation and improvement of Blythe Avenue, including dedication and construction of two (2) 17' center section travel lanes and a raised concrete median island within the limits of this subdivision Tract 5710 separated by a 16' median from the northerly limits of this Tract 5710 north to Tract 5062, construction of a raised concrete median with 250' left turn pockets at all major intersections. Dedication shall be sufficient to accommodate arterial standard and any other grading or transitions as necessary based on a **55** MPH design speed. Said improvements shall additionally include providing a striped cross walk across Blythe at the intersection of Dakota and Blythe Avenues, and any other necessary improvements to effectively carry out the principal purpose pursuant to Code of Civil Procedure Section 1240.120(a), hereinafter called the "Project"; and

WHEREAS, it appears necessary and desirable that the City of Fresno acquire a permanent street easement and right of way for public street and other purposes over, under, through and across real property, hereinafter called the "Subject Property," for construction of the Project and related purposes; and

WHEREAS, the Design Services Division of the City's Department of Public Works has designed the street widening on Blythe Avenue between Ashlan and Dakota Avenues in a manner that will be most compatible with the greatest public good and the least private injury; and

Adopted 11-18-10
Approved 11-29-10
Effective 1-18-11



WHEREAS, it is necessary to acquire a permanent easement and right of way over, under, through and across the Subject Property in order to widen the road, improve the flow of traffic, reduce delays in the area, and provide for an increase in visibility to avoid safety hazards; and

WHEREAS, the design of the Project has been reviewed and it has been determined that the Project cannot be constructed without acquiring the permanent easement and right of way being sought; and

WHEREAS, the general location of the Subject Property is within the Blythe Avenue corridor between the Ashlan Avenue and Dakota Avenue segment of the Project and the current ownership of the Subject Property is as follows:

Assessor's Parcel Number 511-250-02, address of 3572 North Blythe Avenue and currently owned by Trudy I. Moxley; and

WHEREAS, the permanent easement and right of way to be acquired over, under, through, and across the Subject Property, and its general location and extent are described in attached Exhibit "A" and illustrated in Exhibit "B"; and

WHEREAS, an environmental assessment was completed and a Mitigated Negative Declaration prepared for the Blythe Avenue widening project between Ashlan and Dakota Avenues. The Mitigated Negative Declaration No. A-06-01/R-06-20/T-5710/C-06-67 ("MND") was adopted by the City Council on December 5, 2006, and a Notice of Determination was subsequently filed with the Fresno County Clerk's Office on December 8, 2006. The acquisition of public street easements, including the easements for this item, was included in the MND Project Description and was environmentally assessed in the initial study resulting in the finding of an MND. Therefore, all necessary environmental review required by CEQA have been completed for the acquisition of this public street easement; and

WHEREAS, the easement and right of way acquisition from the Subject Property is necessary to widen and improve Blythe Avenue between Ashlan Avenue and Dakota Avenue Intersections to a uniform width; and



WHEREAS, dedications and acquisitions have already been made from properties near the Subject Property to accommodate the Project; and

WHEREAS, the City of Fresno has the power and authority to exercise eminent domain and acquire easements and rights of way for the public use set forth herein in accordance with the Constitution of the State of California, California Eminent Domain Law, Code of Civil Procedure section 1230.010 et seq., and pursuant to Government Code sections 37350.5 and 40404, Streets and Highway Code section 10102, and section 200 of the Charter of the City of Fresno; and,

WHEREAS, in accordance with Section 7267.2 of the Government Code, an offer to purchase has been made to the owner of record of the real property to be acquired within the Project area; and

WHEREAS, in accordance with Section 1245.235 of the Code of Civil Procedure, notice and reasonable opportunity to appear and be heard on this matter has been given to the persons whose property is to be acquired by eminent domain and whose names and addresses appear on the last equalized county assessment roll; and

WHEREAS, at such time and place, or as soon thereafter as the matter could be heard, the Council received, heard and considered information pertinent to the matters required by Section 1245.230 of the Code of Civil Procedure to be determined herein; and

WHEREAS, the permanent easement and right of way will be appropriated to a public use and in accordance with Code of Civil Procedure section 1240.510, the proposed use will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future.

NOW, THEREFORE, BE IT RESOLVED the Council of the City of Fresno finds, declares, determines, and orders as follows:

1. The public interest and necessity require the proposed 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 permanent easement and right of way that is sought is necessary for the proposed Project.
4. The offer to purchase required by Section 7267.2 of the Government Code has been made to the owner of record.
5. The permanent easement and right of way which is sought is situated in the City of Fresno, County of Fresno, State of California, and is more particularly described in Exhibit "A" and illustrated in Exhibit "B".
6. On January 18, 2011, or at any time thereafter, the City Attorney of the City of Fresno is authorized and directed to institute and conduct to conclusion, in the name of the City of Fresno, a proceeding in eminent domain, including arbitration of compensation, in accordance with the provisions of the Constitution of the State of California and the California Eminent Domain Law, to acquire the subject permanent street easement and right of way in the name of the City for public purposes.
7. Project ID PW00519, Fund 31646, Org 186010, Cornerstone SQ002 has been established to disburse the necessary funds for the acquisition of the permanent easement and right of way and to pay for litigation expenses, including staff time. There will be no General Fund dollars required to construct the project.
8. The Controller of the City of Fresno is authorized to disburse out of the above trust account, as approved by the City Attorney, such amounts as may be required including costs, witness fees and attorneys' fees, to acquire possession of or title to the permanent easement and right of way.



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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the forgoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 18th day of November, 2010.

AYES : Borgeas, Brand, Dages, Perea, Xiong, Westerlund
NOES : Sterling
ABSENT : None
ABSTAIN : None

Mayor Approval: _____ N/A _____, 2010
Mayor Approval/No Return: _____ November 29 _____, 2010
Mayor Veto: _____ None _____, 2010
Council Override Vote: _____ None _____, 2010

REBECCA E. KLISCH
City Clerk

By: Rebecca E. Klisch

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By: Stacie L. Melikian 11/29/10
Stacie L. Melikian, Deputy



APN: 511-250-02 (portion)
Street Easement

EXHIBIT "A"

The West 33.00 feet of the South Half of the North Half of the North Half of the Southwest Quarter of the Northeast Quarter of Section 23, Township 13 South, Range 19 East, Mount Diablo Base and Meridian.

Contains an area of 5,458 square feet, more or less.

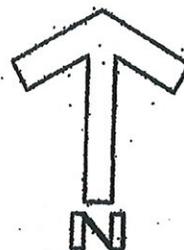


T-5710
2008-092B
15-A-8488B

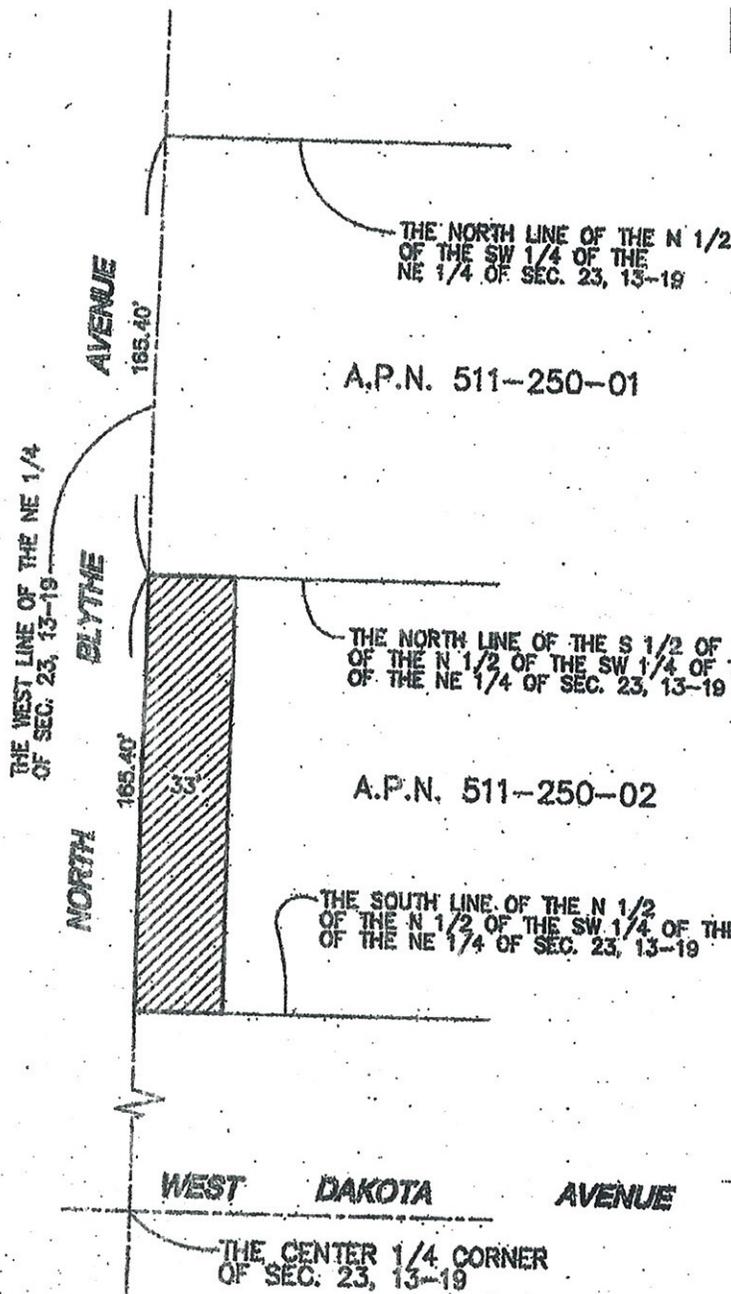


EXHIBIT "B"

 NOTE:
 CROSS HATCHED PORTION
 INDICATES AREA TO BE DEEDED
 TO THE CITY OF FRESNO FOR
 PUBLIC STREET EASEMENT
 AREA = 5,458 S.F.



SCALE: 1"=60'



PREPARED BY:
 GARY S. GIANNETTA
 1119 S. STREET
 FRESNO, CA 93721
 558.284.3690

RECORD OWNER
 TRUDI I. MOXLEY

REF. & REV.	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJECT NO. _____	SHEET NO. 1
TR 5710		FUND NO. _____	OF 1 SHEETS
PW FILE NO. 11319	A PORTION OF THE N 1/2 OF THE N 1/2, OF THE SW 1/4 OF THE NE 1/4 OF SEC. 23, T. 13 S., R. 19 E., M. D. E. & M. TO BE DEEDED TO THE CITY OF FRESNO FOR	DR. BY _____	DATE _____
PLAT NO. 1947		SCALE AS SHOWN	15-A-8488B
2008-092	STREET EASEMENT		

November 19, 2010

Council Adoption: 11/18/10
Mayor Approval:
Mayor Veto:
Override Request:



TO: MAYOR ASHLEY SWEARENGIN
FROM: REBECCA E. KLISCH, CMC
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 11/18/10, Council adopted the attached Resolution No. 2010-265 entitled **Acquisition of public street easement, Blythe bet Ashlan/Dakota, as amended to postpone action for 60 days**, Item No. 10:00 a.m. #1, by the following vote:

Ayes : Borgeas, Brand, Dages, Perea, Xiong, Westerlund
Noes : Sterling
Absent : None
Abstain : None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before November 29, 2010. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

Ashley Swearingin, Mayor

Date: _____

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes :
Noes :
Absent :
Abstain :