



RESOLUTION NO. 2012-145

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, DETERMINING THAT PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF A PORTION OF APN 477-021-23, OWNED BY LA JOLLA LOANS, A CALIFORNIA CORPORATION, FOR THE CONSTRUCTION OF A PONDING BASIN FOR THE ADJACENT VETERANS HOME AND THE WIDENING OF MARKS AVENUE SOUTH OF CALIFORNIA AVENUE AND AUTHORIZING EMINENT DOMAIN PROCEEDINGS FOR PUBLIC USE AND PURPOSE

WHEREAS, the City proposes to construct street improvements (curb, gutter, traffic signals and sidewalk) by widening the east side of south Marks Avenue south of California Avenue, and installing a ponding basin along the east side of south Marks Avenue for the newly constructed Veterans home at the southeast corner of Marks Avenue and California Avenue within the City of Fresno. Said improvements shall additionally include relocation of utility poles, landscaping, street lights, 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, the City has an obligation to the State of California to provide utilities for the Veteran's Home site arising out of City Council Resolution No. 2003-246, adopted July 29, 2003; and

WHEREAS, Construction of the Veteran's Home is complete. APN 477-021-23 is the property adjacent to the Veteran's Home and is presently the subject of a bankruptcy proceeding in the United States Bankruptcy Court Southern District of California. The ponding basin that staff has proposed to construct lies within a portion of APN 477-021-23. Staff has petitioned and received from the Bankruptcy Court a Relief from Stay dated June 14, 2012; and

Adopted 8/16/12  
Approved 8/27/12  
Effective 8/27/12

2012-145



WHEREAS, it appears necessary and desirable that the City acquire a fee simple portion of APN 477-021-23, 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 construction of the ponding basin and the street improvements on Marks Avenue south of California Avenue in a manner that will be the most compatible with the greatest public good and the least private injury; and

WHEREAS, it is necessary to acquire a fee simple portion of the property for the ponding basin and street improvements 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 this fee simple portion of the parcel; and

WHEREAS, the general location of the Subject Property is the east side of south Marks Avenue and south of California Avenue and the current ownership of the Subject Property is as follows:

Assessor's Parcel Number 477-021-23, (no address), currently owned by La Jolla Loans, Inc, a California Corporation

WHEREAS, the fee simple portion of the property to be acquired, and its general location and extent are described in attached Exhibit "A" and illustrated in Exhibit "B"; and

WHEREAS, the Project is determined to be Categorical Exempt under Section 15301/Class 1 of the State of California CEQA Guidelines (minor alternation of existing public structures and facilities) because the Project involves negligible expansion of the current use; and



WHEREAS, the fee simple acquisition from the Subject Property is necessary to construct the ponding basin and improve south Marks Avenue south of California Avenue to meet the obligation to the Veteran's Home Facility; and

WHEREAS, the City of Fresno has the power and authority to exercise eminent domain and acquire fee simple property 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 Highways 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 owners of record of the real property to be acquired; 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 name 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 fee simple acquisition 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 fee simple acquisition 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 mailed to the owners of record.
5. The permanent fee simple acquisition, 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. 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 fee simple property in the name of the City for public purposes.
7. Project ID PW00605, Fund 22050, Org 189901, has been established to disburse the necessary funds for the acquisition of the fee simple property also 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 fee simple property and right of way.

\* \* \* \* \*

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

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 16th day of August, 2012.

AYES : Baines, Borgeas, Brand, Quintero, Westerlund, Xiong
NOES : Olivier
ABSENT : None
ABSTAIN : None

Mayor Approval: August 27, 2012
Mayor Approval/No Return: N/A, 2012
Mayor Veto: N/A, 2012
Council Override Vote: N/A, 2012

YVONNE SPENCE, CMC
City Clerk

BY: Yvonne Spence
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: Katie Bradley Doerr, Sr. Deputy City Attorney

August 17, 2012



Council Adoption: 8/16/2012  
Mayor Approval:  
Mayor Veto:  
Override Request:

TO: MAYOR ASHLEY SWEARENGIN

FROM: YVONNE SPENCE, CMC  
City Clerk

RECEIVED  
2012 AUG 27 AM 10:21  
CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 8/16/12, Council adopted the attached Resolution No. 2012-145 entitled **the public interest and necessity require and authorize eminent domain for acquisition of a portion of APN 477-021-23, Item No. 1:00 P.M. a**, by the following vote:

Ayes : Baines, Borgeas, Brand, Quintero, Westerlund, Xiong  
Noes : Olivier  
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 August 27, 2012. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10<sup>th</sup> 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.

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**APPROVED/NO RETURN:** \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

  
Ashley Swearengin, Mayor

Date: 8/24/12

**COUNCIL OVERRIDE ACTION:**

Date: \_\_\_\_\_

Ayes :  
Noes :  
Absent :  
Abstain :



## EXHIBIT "A"

APN 477-021-23

A portion of Lot 26 of Pleasant Dale, according to the map thereof recorded in Volume 2 of Plats at Page 38, Fresno County Records, situated in the northwest quarter of Section 18, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, in the City of Fresno, County of Fresno, State of California, more particularly described as follows:

COMMENCING at the northwest corner of said Section 18; thence S 0°00'00" W, along the west line of the northwest quarter of said Section 18, a distance of 1022.57 feet to the point of intersection with the westerly prolongation of the south line of that parcel described in that Grant Deed recorded November 14, 2003 as Document No. 2003-0276316, Official Records of Fresno County, and shown on that Record of Survey recorded January 3, 2006 in Book 49 of Record of Surveys at Page 55, Fresno County Records, said point being the TRUE POINT OF BEGINNING of this description; thence N 89°14'50" E, along said westerly prolongation and along said south line, a distance of 355.03 feet; thence S 0°00'00" W, parallel with and 355.00 feet east of said west line, a distance of 145.51 feet; thence S 89°14'50" W, parallel with and 145.50 feet south of said south line and said westerly prolongation, a distance of 355.03 feet to said west line; thence N 0°00'00" E, along said west line, a distance of 145.51 feet to the TRUE POINT OF BEGINNING.

Contains an area of 51,657 square feet, more or less.



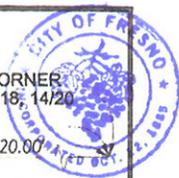
2011-061

15-A-8835

D:\DATA\Veterans Home\Basin Grant to City.doc

# EXHIBIT "B"

## WEST CALIFORNIA AVENUE



POINT OF COMMENCEMENT  
NORTHWEST CORNER  
OF SECTION 18, 14/20

NORTH 1/4 CORNER  
OF SECTION 18, 14/20

SOUTH MARKS AVENUE

SOUTH PLEASANT AVENUE (NOW VACATED)



PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES BY CITY OF FRESNO RESOLUTION NO. 2004-217 RECORDED 7/9/2004 AS DOCUMENT NO. 2004-0150598, O.R.F.C.

DOCUMENT NO. 2003-0276316, O.R.F.C.  
APN 477-021-22T

PLEASANT DALE  
VOL.. 2 OF PLATS AT PG. 38, F.C.R.  
RECORD OF SURVEY BK. 49, PG. 55, F.C.R.

PARCELS 21-23 OF DOCUMENT NO. 2009-0072250, O.R.F.C.  
APN 477-021-23

PREVIOUSLY DEDICATED FOR PUBLIC ROAD PURPOSES BY BY THOSE INSTRUMENTS RECORDED 5/8/1918 IN BOOK 596 OF DEEDS AT PAGE 302, O.R.F.C. AND BOOK 661 OF DEEDS AT PAGE 347, O.R.F.C.



NOTE:  
DATA IS AS SHOWN ON OR DERIVED FROM THAT RECORD OF SURVEY RECORDED 1/3/2006 IN BOOK 49 OF RECORD OF SURVEYS AT PAGE 55, F.C.R.

INDICATES AREA TO BE GRANTED  
51,657 S.F. ±

REF. & REV.

2011-061  
PLAT 2950

CITY OF FRESNO  
DEPARTMENT OF PUBLIC WORKS

PARCEL TO BE GRANTED TO  
THE CITY OF FRESNO

PROJ. ID. PW00605 CO SQ002  
FUND NO. 22050 RES TYPE  
ORG. NO. 189901

DR. BY AJ  
CH. BY H.B.  
DATE JUNE 24, 2011  
SCALE NO SCALE

SHEET NO. 1  
OF 1 SHEETS  
15-A-8835

# Vicinity Map APN 477-021-23

