

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Public Works *AM*

BOARD AGENDA # \*C-1

Urgent  Routine

AGENDA DATE February 26, 2008

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Authorize the Director of Public Works to Sign the Consent to Common Use Agreement with the Modesto Irrigation District for the Pirrone Road Canal Crossing

STAFF RECOMMENDATIONS:

Authorize the Director of Public Works to sign the Consent to Common Use Agreement with the Modesto Irrigation District for the Pirrone Road Canal Crossing.

FISCAL IMPACT:

There is no fiscal impact authorizing the Director of Public Works to sign the Consent to Common Use Agreement with the specified Modesto Irrigation District.

BOARD ACTION AS FOLLOWS:

No. 2008-123

On motion of Supervisor Monteith, Seconded by Supervisor Grover  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, DeMartini, and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST:

*Christine Ferraro*  
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize the Director of Public Works to Sign the Consent to Common Use Agreement with the Modesto Irrigation District for the Pirrone Road Canal Crossing

DISCUSSION:

The Pirrone Road Project is part of the original Salida Community Plan. The Salida Community Plan was approved in December 1988 and encompassed approximately 700 acres of land. The plan included a mix of land uses, including residential, commercial, industrial, and public lands for schools, neighborhood parks and storm drainage facilities.

Modesto Irrigation District (MID) requires that the canal construction be completed by March 15, 2008. Due to the canal construction timing limitations, the Pirrone Road Project was separated into two phases. Phase 1 is the Pirrone Road Improvement Project and Phase 2 is the Pirrone Road Canal Crossing Project.

The limits of the Pirrone Road Canal Crossing Project shall be 50 feet south of the MID lateral to 375 feet north.

The Pirrone Road Canal Crossing Project will consist of overlaying a segment of Pirrone Road with asphalt concrete, pavement and irrigation structure widening, and constructing concrete curb, gutter, and sidewalk.

On January 28, 2008, the Board of Supervisors awarded the contract for the Pirrone Road Canal Crossing Project to Richard Townsend Construction, Inc., of Oakdale, California,

The improvements to Pirrone Road require that the existing Modesto Irrigation District Canal Crossing be widened to accommodate the road improvements. The existing canal crossing is within irrigation right-of-way that was acquired by the Modesto Irrigation District prior to the right-of-way for roads by Stanislaus County. Modesto Irrigation District requires that the County obtain a Consent to Common Use Agreement that specifies the rights of each agency regarding the improvements to the road and modification to the irrigation facilities.

In summary, the Consent to Common Use Agreement specifies:

1. MID consents to the construction of the improvements;
2. Construction shall not take place during the irrigation season;
3. Maintenance of the facilities constructed;
4. Liability of each agency; and,
5. Indemnification of each agency.

POLICY ISSUES:

The Board should consider if the recommended actions are consistent with its priorities of providing a safe community, a healthy community and a well-planned infrastructure system.

STAFFING IMPACT:

There is no staffing impact associated with this item.



Stanislaus, County Recorder  
Lee Lundrigan Co Recorder Office  
DOC- 2008-0037346-00

Thursday, APR 10, 2008 11:26:49  
Ttl Pd \$0.00 Nbr-0002518001  
OHK/R2/1-12

RECORDED AT THE REQUEST OF:

AND

AFTER RECORDING RETURN TO:

Modesto Irrigation District  
1231 Eleventh Street  
P. O. Box 4060  
Modesto, CA 95352

1204

**AGREEMENT CONSENTING TO COMMON USE**

This Agreement Consenting to Common Use is made on February 26, 2008, by and between the Modesto Irrigation District, an irrigation district, hereinafter referred to as "District," and Stanislaus County, a political subdivision of the State of California, hereinafter referred to as "County."

This Agreement is made with reference to the following facts:

A. The District is the owner in possession of certain real property within the County of Stanislaus consisting of a strip of land with certain improvements thereon, which real property is commonly known as and referred to as District's Lateral No. 8, hereinafter referred to as "Lateral 8."

B. County desires, at County's expense, to extend the existing road crossing facility along District's Lateral 8 for the purpose of widening and improving Pirrone Road, and to make such improvements to the District's Lateral 8 as are necessary to maintain Lateral 8 in light of the installation of the new crossing facility (collectively, the "Facility Installation").

C. The new Facility Installation will occupy a portion of District's right-of-way of its Lateral 8, which portion is hereinafter referred to as the "Area of Common Use", as described in Exhibit "A" and shown in Exhibit "B" attached hereto.

Now, therefore, IT IS AGREED as follows:

1. District, pursuant to the terms and conditions hereinafter set forth, hereby consents to the County's construction of the Facility Installation within the Area of Common Use. The Facility Installation shall be located within the Area of Common Use as set forth on Exhibits A and B, attached hereto. The facilities to be installed and maintained under this Agreement shall conform to the plans and specifications attached hereto as Exhibit "D" and incorporated herein by this reference.

12

2. District hereby grants to County a Temporary Construction Easement at each end of the Area of Common Use, as described in Exhibit "C" and shown in Exhibit "B" attached hereto. These temporary easements shall be used only for the purpose of and only for the period during initial construction of the new Facility Installation.

3. County acknowledges District's title to District's property and facilities situated at Lateral 8 within the Area of Common Use. District has and maintains the right to make full use of District's property and facilities in the Area of Common Use without need for any further permit or permission from County.

4. Except as specifically provided for in this Agreement, no alteration, improvement, installation, construction or use shall be made or permitted by County in, under, along, across, upon or in respect to the Area of Common Use or any other property or facility of District, without the prior written consent of District. County shall have no license, right or privilege with respect to the Area of Common Use, or any other property or facility of District, other than the permission and privileges expressly granted by this Agreement

5. The construction of the Facility Installation consented to in Paragraph 1 of this Agreement shall be in compliance with the provisions of this Agreement and shall be coordinated with District's Water and Electric Operations Divisions.

6. County shall obtain District's approval of any and all facilities, construction plans and schedules, and provide the names and telephone numbers of the contractors, inspectors and the project manager responsible for making improvements within the Area of Common Use prior to commencement of any work within the Area of Common Use; provided however, that such approval shall not be unreasonably withheld. District may, at its discretion, but is not required to, inspect any and all work performed by County, or County's employees, agents or contractors, in the Area of Common Use. District's rights hereunder to inspect and approve, shall not impose any duty or obligation on District, nor shall such rights relieve County of the sole responsibility for the facilities, construction, plans, schedules and work, or relieve County of its contractual responsibilities hereunder.

7. County shall pay District for all reasonable time spent in reviewing plans, inspecting County's work performed in, along, under or near the Area of Common Use, or ensuring compliance of the terms and conditions of this Agreement. The amount charged shall not exceed the employees' weighted labor rate plus other costs actually incurred. Payment shall be made by County within thirty (30) days of submission of an invoice.

8. County shall not perform any work within the Area of Common Use during any irrigation season which would interfere with the delivery of irrigation water. The parties hereto are mindful of the fact that District's irrigation season ordinarily, but not necessarily, ends late October and begins the first of March of the following year.

9. Inasmuch as District's irrigation facilities within the Area of Common Use will have been changed by County pursuant to this Agreement, County agrees to maintain, repair or replace such irrigation facilities at County's expense in a timely manner as and

when such maintenance, repair or replacement is necessary, unless such maintenance, repair or replacement is made necessary by negligent or wrongful acts of District, its agents, contractors or employees. In no event shall the County be liable for any betterment, changes or alterations in said facility made by or at the request of District for District's sole benefit.

10. Prior to any excavation by County within the Area of Common Use, whether at the time of construction of the Facility Installation or during subsequent periods or instances of maintenance, County or its contractor shall contact District and the Underground Service Alert (U.S.A. - 1-800-642-2444) for the purpose of determining the location of underground facilities, equipment and other improvements within said Area of Common Use. County shall be solely responsible for locating all underground improvements during construction and maintenance of the Facility Installation within the Area of Common Use.

11. Except as otherwise set forth herein, the Facility Installation shall, as between County and District, be the property of County and County shall have the sole responsibility and liability for said Facility Installation. County shall at all times maintain, at its own cost and expense, the Facility Installation. County agrees to assume the sole and exclusive risk for damage to property or injury or death to any persons, arising from, or in any way related to, the County's maintenance of or failure to maintain the Facility Installation. The District shall have no duty or obligation to maintain the Facility Installation

12. Except as expressly set forth herein, this Agreement shall not in any way alter, modify or terminate any of District's rights in its property or facilities. Both County and District shall use the Area of Common Use in such a manner as to not interfere unreasonably with the rights of other. Nothing herein contained shall be construed as a release or waiver of any claim for compensation or damages which District or County may now have, or may hereafter acquire, resulting from the construction of additional facilities or the alteration of facilities by either County or District in such a manner as to cause an unreasonable interference with the use of the Area of Common Use by the other.

13. Except in emergencies, District shall give reasonable notice to County before performing any work on District's property or facilities in the Area of Common Use. No additional permit will be required to do such work, provided, that in all cases, District shall make adequate provision for the protection of the traveling public when performing work on the District's property or facilities in the Area of Common Use.

14. If the construction, use or maintenance of the Facility Installation, or any portion thereof, causes damage, injury or degradation of the Area of Common Use, or District's property or facilities on or around the Area of Common Use, County shall, at its sole cost and expense, repair said damage, injury or degradation upon notice by the District. Any such repair shall be performed in a timely manner and shall be in strict accordance with plans acceptable to the District.

15. (a) County shall defend, indemnify and hold District, its directors, officers, agents and employees, and each of them, harmless from and against any and all damages, losses, claims and liabilities arising from any act, omission or negligence of County

or County's agents, contractors or employees, or any of them, or arising from any accident, injury, or damage whatsoever caused to any person or property, occurring in, or in any manner connected directly or indirectly with, the performance of this Agreement or the maintenance or use of the Facility Installation and from and against all costs, expenses, liabilities and attorneys' fees incurred in, or in connection with, any such claim or proceeding brought thereon.

(b) County shall promptly pay District, on demand, full money compensation for any damage to any of District's property or facilities caused by, or in any manner connected directly or indirectly with, the performance of this Agreement or the maintenance or use of the Facility Installation.

16. In the event that District is required to relocate any District facilities in order for County to install, maintain or operate the Facility Installation, District shall, at County's sole expense, perform such relocation, provided, however, that no relocation of District facilities shall be performed until District receives and records appropriate easements, satisfactory to District, for District's relocated facilities.

17. County shall have the right to allow utility companies to install their facilities within the Area of Common Use, provided, however that any utility wishing to install their facilities within the Area of Common Use will be required to enter into an agreement permitting such installation with the District prior to the commencement of any work.

18. It is expressly understood and agreed that this Agreement shall operate to give County the rights herein provided for only insofar as District may do so under and by virtue of the rights that District has in that portion of District's Lateral 8 real property to which this Agreement applies. It is further expressly understood and agreed that this Agreement is made without representation or warranty of any kind.

19. District makes no representation as to, and does not warrant, the condition of its Lateral 8, either at the inception of this Agreement or as to any future point in time. Nothing in this Agreement shall be construed as creating or imposing upon District any duty or obligation to maintain or repair the Area of Common Use or the District's Lateral 8.

20. This Agreement is made solely for the benefit of County, and it is not made for the benefit of any person, firm, association, corporation or public entity not a party hereto, and no person, firm association, corporation or public entity other than County shall have any right to enforce this Agreement.

21. This Agreement contains all the agreements of the parties hereto and cannot be amended or modified except by a written agreement executed by the parties.

22. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of both parties: provided, however that neither party shall assign its rights or obligations hereunder without the prior consent of the other party.

23. Time is of the essence of each provision of this Agreement.

24. All exhibits referred to in this Agreement are attached hereto and incorporated herein by reference.


25. In the event that the Area of Common Use is no longer used by County for the purposes agreed, County at its expense, shall remove County's improvements or take other closure action acceptable to District, and restore the Area of Common Use to its original condition or to a condition acceptable to the District. At such time as the Area of Common Use is no longer used by County for the purposes agreed, all rights granted to County hereunder shall terminate.

26. If any of County's privileges or duties are to be exercised or performed by any independent contractor or contractors, County shall, effectively and appropriately, bind such contractor or contractors, contractually to the duties and obligations of County hereunder. In that connection, County shall among other requirements, require said contractor or contractors to maintain reasonable insurance coverage and to indemnify, defend and hold District harmless from and against any and all claims, damages, loss, liability and expenses, including court costs and attorney's fees, arising out of or on account of, any injury to or death of any person or persons, or damage to property of any kind whatsoever and to whosoever belonging, arising out of, in any manner directly or indirectly connected with, said contractors or contractors acts or omission in exercising County's privileges or performing County's duties created by the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written

STANISLAUS COUNTY, a  
political subdivision of the State of  
California

MODESTO IRRIGATION DISTRICT, an  
irrigation district

  
Matt Machado  
Director of Public Works

  
Allen Short  
General Manager

T.O.

  
Approved as to Form - Counsel  
Thomas E. Boze

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Stanislaus



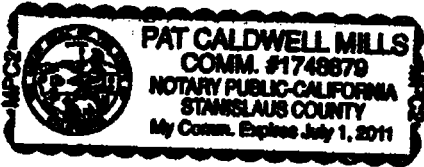
On March 20, 2008 before me, Pat Caldwell Mills, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Allen Short, General Manager  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Pat Caldwell Mills  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Agreement Consenting to Common Use

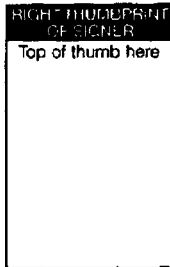
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_



THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Public Works *adm*

BOARD AGENDA # \*C-1

Urgent  Routine

AGENDA DATE February 26, 2008

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Authorize the Director of Public Works to Sign the Consent to Common Use Agreement with the Modesto Irrigation District for the Pirrone Road Canal Crossing

STAFF RECOMMENDATIONS:

Authorize the Director of Public Works to sign the Consent to Common Use Agreement with the Modesto Irrigation District for the Pirrone Road Canal Crossing.

FISCAL IMPACT:

There is no fiscal impact authorizing the Director of Public Works to sign the Consent to Common Use Agreement with the specified Modesto Irrigation District.

BOARD ACTION AS FOLLOWS:

No. 2008-123

On motion of Supervisor Monteith, Seconded by Supervisor Grover

and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, DeMartini, and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1)  Approved as recommended
- 2)  Denied
- 3)  Approved as amended
- 4)  Other:

MOTION:

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

CHRISTINE FERRARO TALLMAN

Clerk of the Board of Supervisors of the County of Stanislaus, State of California

By *Juzi Seibert*



*Christine Ferraro*

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

**RESOLUTION NO. 2008-46  
APPROVING AGREEMENT CONSENTING TO  
COMMON USE BETWEEN MODESTO IRRIGATION  
DISTRICT AND STANISLAUS COUNTY**

BE IT RESOLVED, That the Board of Directors of the Modesto Irrigation District does hereby authorize and direct the General Manager to execute that certain Agreement Consenting to Common Use by and between Modesto Irrigation District and Stanislaus County, whereby the District consents to the County's proposed plans to widen and improve Pirrone Road along the District's Lateral No. 8. Reference is hereby made to said Agreement for full facts and circumstances.

Moved by Director Van Groningen, seconded by Director Kidd, that the foregoing resolution be adopted.

The following vote was had:

Ayes: Directors Hensley, Kidd, Serpa, Van Groningen and Warda

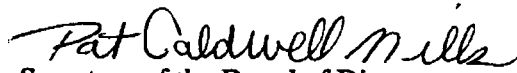
Noes: Directors None

Absent: Directors None

The President declared the resolution adopted.

oOo

I, Pat Caldwell Mills, Secretary of the Board of Directors of the Modesto Irrigation District, do hereby CERTIFY that the foregoing is a full, true and correct copy of a resolution duly adopted at a special meeting of said Board of Directors held the 18<sup>th</sup> day of March 2008.

  
Secretary of the Board of Directors  
of the Modesto Irrigation District

**Exhibit A**  
**Pirrone Road Canal Improvements**  
**Consent to Common Use**

**Beginning at the North Quarter Corner of Section 33, Township 2 South, Range 8 East, Mount Diablo Base and Meridian, as shown on Parcel Map 53 PM 91, thence**

**N 89° 57' 20"W, 1501.22' to a non tangent curve, with a radius of 970.00', which bears N 86° 56' 44" E, said point being on the east right-of-way for Pirrone Road, thence,**

**Along said curve, concave to the right, through a central angle of 22°52' 58", a distance of 387.40', thence,**

**S 25° 55' 56" E, 384.45', to a point on a non-tangent curve, with a radius of 2170.00 feet, whose radius bears N 64° 03' 59" E, thence**

**Along said curve, concave to the right, through a central angle of 17° 11' 36", a distance of 651.17', thence**

**S 43° 07'23" E, 430.92', to the true point of beginning, said point being on the north right-of-way line for the Modesto Irrigation District Lateral No. 8, thence**

**S 43° 07' 23" E, 73.42 feet, said point being on the south right-of-way line for the Modesto Irrigation District Lateral No. 8, thence**

**Along the southside right-of-way line, N 82° 04' 36"W, 34.27 feet, said point being on the eastern right-of-way of Pirrone Road, as dedicated on Parcel Map 53 PM 91, thence**

**Along the northerly extension of the easterly right-of-way of Pirrone Road, N 43° 07' 23" W, 73.42', said point being the north right-of-way of the Modesto Irrigation District Lateral No. 8, thence**

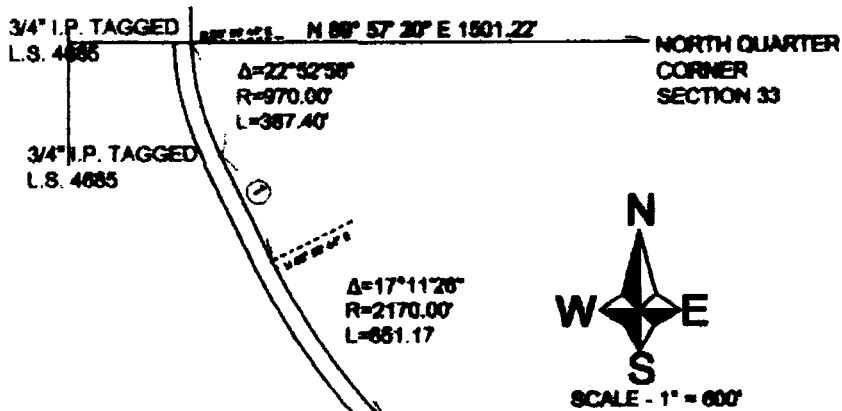
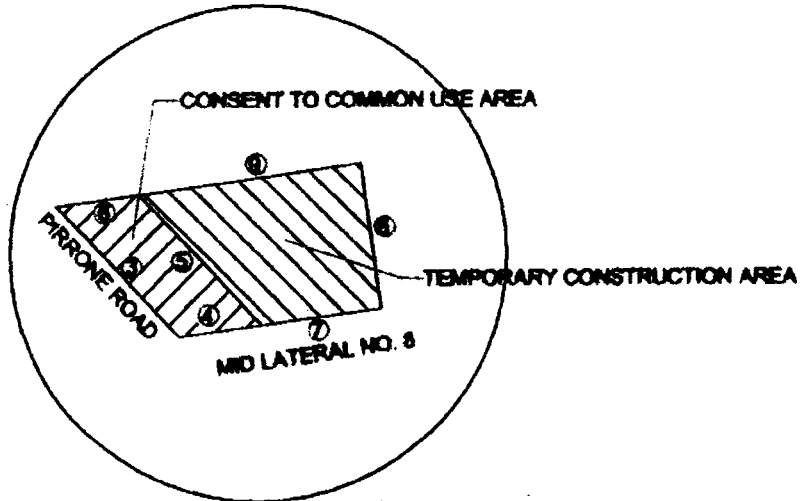
**Along the north right-of-way of Modesto Irrigation District Lateral No. 8, S 82° 04' 36" E, 34.27, to the true point of beginning.**

**Containing 1027.97 square feet.**

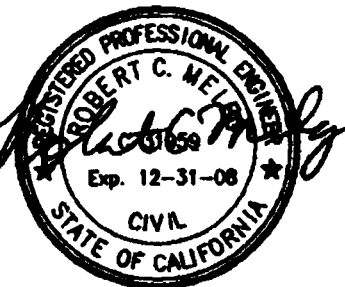


11/30/07

**EXHIBIT B**  
**PIRRONE ROAD CONSENT TO COMMON USE**  
 DETAIL "A"  
 NOT TO SCALE



LINE NO.	BEARING	DISTANCE
1	S 25° 55' 58" E	384.45'
2	S 43° 07' 23" E	430.92'
3	S 43° 07' 23" E	73.42'
4	N 82° 04' 38" E	34.27'
5	N 43° 07' 23" W	73.42'
6	S 82° 04' 38" E	34.27'
7	N 82° 04' 38" E	80.00'
8	N 7° 58' 24" W	80.00'
9	S 82° 04' 38" W	82.10'



11/30/07

**Exhibit C**  
**Pirrone Road Canal Improvements**  
**Temporary Construction Area**

Beginning at the north right-of-way line for the Modesto Irrigation District Lateral No. 8 and the eastern right-of-way line for Pirrone Road, said point being the true point of beginning, thence

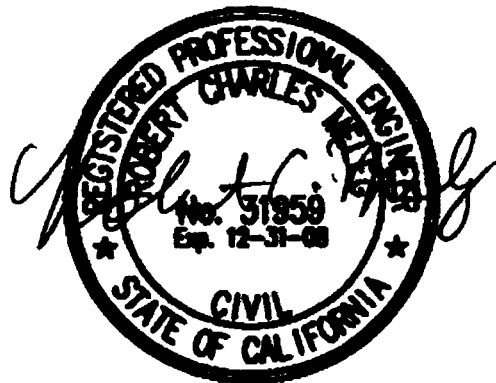
S 43° 07' 23" E, 73.42', said point being on the south right-of-way line for the Modesto Irrigation District Lateral No. 8, thence

Along the said south right-of-way line, N 82° 04'36" E, 50.00', thence

N 7° 55' 24" W, 60', said point being on the North right-of-way line for the Modesto Irrigation District Lateral No. 8, thence

Along the said north right-of-way line, S 82° 04'36" W, 92.10', to the true point of beginning.

Containing 4,268.91 square feet



11/30/07