

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

DEPT: Public Works *MAA*

BOARD AGENDA # *C-1

Urgent Routine

AGENDA DATE May 19, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of Purchase Agreement to Acquire Road Right-of-Way through a Roadway Easement for the Ladd Road at McHenry Avenue Intersection Project and the McHenry Avenue Widening Project, Parcel Owner Berberian Properties, LLC, APN: 004-076-007

STAFF RECOMMENDATIONS:

1. Approve the purchase agreement for the subject acquisition.
2. Authorize the Chairman of the Board to execute the agreement.
3. Direct the Auditor-Controller to make the necessary budget adjustments per the financial transaction sheet.
4. Direct the Auditor-Controller to issue a warrant in the total amount of \$72,866, payable to Old Republic Title Company, for the purchase amount of \$71,366 and \$1,500 for estimated escrow fees and title insurance.

FISCAL IMPACT:

The total estimated cost for the Ladd Road at McHenry Avenue Intersection Project is \$2,427,490 and approximately \$3,200,000 for the McHenry Widening project. The \$72,866 for the purchase of this right-of-way is funded 100% by the Regional Transportation Impact Fee Program (RTIF) and consists of \$71,366 for the purchase of the road easement, \$1,500 for estimated escrow and title insurance fees.

BOARD ACTION AS FOLLOWS:

No. 2009-341

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

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

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of Purchase Agreement to Acquire Road Right-of-Way through a Roadway Easement for the Ladd Road at McHenry Avenue Intersection Project and the McHenry Avenue Widening Project, Parcel Owner Berberian Properties, LLC, APN: 004-076-007

DISCUSSION:

In January 2004, the Board of Supervisors approved the Public Works Department Traffic Congestion Relief Program. The Traffic Congestion Relief Program provides for the installation of traffic signals, left turn lanes and related improvements on selected roadways throughout the County, including the improvements to the Ladd Road at McHenry Avenue intersection.

In June 2004, the Board of Supervisors awarded a contract to Wood Rodgers for environmental and engineering services for the Ladd Road and McHenry Avenue intersection improvements.

The proposed new traffic signal and additional through and turn lanes will improve traffic safety and enhance the flow of traffic through this intersection. Installation of safety lighting and shoulder widening will also be completed.

On July 24, 2007, the Board of Supervisors approved the Initial Study/Mitigated Negative Declaration for the Ladd Road at McHenry Avenue Intersection Project.

In June of 2008, the County purchased right-of-way through a roadway easement from this land owner for the purposes of facilitating the construction of the improved Ladd Road and McHenry Avenue intersection. As a result of this project, it is necessary to relocate overhead utilities to the west side of McHenry Avenue. To accomplish the relocation of these overhead utilities, an additional portion of the Berberian property must be acquired through a roadway easement to facilitate the overhead utilities and the future McHenry Avenue Widening Project.

On January 27, 2009, the Board of Supervisors approved and adopted the Addendum to the Adopted Mitigated Negative Declaration environmental document for the Ladd Road at McHenry Avenue Intersection Project. This document was amended to include a larger study area to include the lands necessary for utility relocations, north of the intersection. The Ladd Road at McHenry Avenue Intersection Project requires the relocation of several utility poles. The pole relocations can be accomplished within the existing right-of-way at the expense of the utility company per the County franchise agreement. However, the future McHenry Widening Project will require that the poles be relocated again at the expense of the County. Thus, the Department of Public Works recommends the purchase of the roadway easement now and relocation of the poles to their final location within the ultimate McHenry right-of-way, as determined by the utility company. This recommendation is expected to save the County the cost of a second pole relocation, estimated at a total cost of \$90,000.

Approval of Purchase Agreement to Acquire Road Right-of-Way through a Roadway Easement for the Ladd Road at McHenry Avenue Intersection Project and the McHenry Avenue Widening Project, Parcel Owner Berberian Properties, LLC, APN: 004-076-007

To accomplish the intersection project and the future McHenry Avenue Widening Project, the County will need to acquire an additional roadway easement from the Berberian parcel on the west side of McHenry Avenue. The property owner has agreed to accept the following:

Property Owners: Berberian Properties, LLC
Amount of Compensation: \$71,366
Assessors Parcel Number: 004-076-007
Right-of-Way Area: 0.925 acres

The amount of compensation has been determined to be within the range of just compensation by an independent appraiser hired by the County.

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.

CB:la L:\ROADS\9216 - McHenry Ave Widening (Ladd Rd to Hogue Rd) Phase 1\Design\Board Items\Design Process\Right of Way Berberian.pdf

AUDITOR-CONTROLLER BUDGET JOURNAL



Balance Type	Budget	
Category	Budget - Upload	
Source		
Currency	USD	
Budget Name	LEGAL BUDGET	
Batch Name		BO#
Journal Name		
Journal description	Transfer Budget to the Ladd Road @ McHenry Avenue Intersection Improvement Project	
Period	JUL-08 to JUN-09	
Organization	Stanislaus Budget Org	

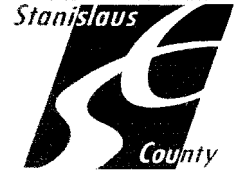
Line	Coding Structure						Debit		Credit		Description
	Fund 4	Org 7	Account 5	G/L Proj 7	Loc 6	Misc 6	incr appropriations decr est revenue	decr appropriations incr est revenue			
1	1102	40310	72600	9216	0	0.0	72,866.00				
2	1102	40310	63280	0	0	0.0		72,866.00			
3	1102	40310	46615	0	0	0.0	72,866.00				
4	1102	40310	44615	9216	0	0.0		72,866.00			
5						0					
6						0					
7						0					
8						0					
9						0					
10						0					
11						0					
12						0					
13						0					
14						0					
15						0					
16						0					
17						0					
18						0					
19						0					
20						0					
21						0					
22						0					
23						0					
24						0					
25						0					
Totals							145,732.00	145,732.00			

Transfer Budget to the Ladd Road @ McHenry Avenue Intersection Improvement Project

Requesting Department	CEO	Auditors Office Only	
Sharon Andrews			
Signature 4/27/09	Signature 05/21/09	Prepared By 	Admin Approval (\$75K+) 4/27/09
Date	Date	Date	Date

Contact Person & Phone Number

**AUDITOR-CONTROLLER
STANDARD JOURNAL VOUCHER**



BATCH SCREEN

Batch PW
 Period Apr-09
 Description _____

JOURNAL SCREEN

Journal PW SKA JV
 Category Transfer
 Balance Type A A = Actual or E = Encumbrance
 Description Transfer funds from RTIF to Ladd Road @ McHenry Avenue Intersection Improvement Project
 Control Total 42,075.00

Line	Coding Structure						Debit	Credit	Description	
	Fund 4	Org 7	Account 5	G/L Proj 7	Loc 6	Misc 6				
1	2400	61270	85850	0	0	0.0	72,866.00		Transfer out	
2	1102	40310	46615	9216		0.0		72,866.00	Transfer in	
3						0.0				
4						0.0				
5						0.0				
6						0.0				
7						0.0				
8						0.0				
9						0.0				
10						0.0				
11						0.0				
12						0.0				
13						0.0				
14						0.0				
15						0.0				
16						0.0				
17						0.0				
18						0.0				
19						0.0				
20						0.0				
21						0.0				
22						0.0				
23						0.0				
24						0.0				
25						0.0				
26						0.0				
27						0.0				
Totals								72,866.00	72,866.00	

Explanation: Transfer funds from RTIF to Ladd Road @ McHenry Avenue Intersection Improvement Project

Departments Outside Auditors' Office		Auditors Office Only	
SHARON ANDREWS <i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>
Prepared by	Supervisor's Approval	Prepared By	Admin Approval (\$75K+)
4/27/09	4/27/09		4/27/09
Date	Date	Date	Date

Project: McHenry Avenue Widening
Grantor: Berberian Properties, LLC
APN.: 004-076-007

AGREEMENT FOR ACQUISITION OF PROPERTY

This Agreement for Acquisition of Property is between the County of Stanislaus (County) and Berberian Properties, LLC, a California limited liability company, formerly known as Berberian Trust Properties, a California General Partnership (Grantor). This Agreement is expressly subject to approval by the County Board of Supervisors.

1. PROPERTY.

Grantor agrees to sell to County, and County agrees to purchase from Grantor, on the terms and conditions set forth in this Agreement, Grantor's interest in the real property interest described in the Exhibits attached hereto which are incorporated herein by this reference (the "Property"). County represents and agrees that access, ingress and egress to Grantor's remaining property from McHenry Avenue shall be unaffected by the sale hereunder or the subsequent improvement of the Property.

2. DELIVERY OF DOCUMENTS/ESCROW.

All documents necessary for the transfer of easement rights to the Property shall be executed and delivered by Grantor to the escrow holder for recordation and/or delivery to the County's designated Acquisition Agent.

This transaction shall be handled through an escrow with Old Republic Title Company, 1140 Scenic Drive, Suite 110, Modesto, CA 95350, at (209) 544-1823.

3. PURCHASE PRICE AND TITLE.

The consideration to be paid by the County for easement rights to the Property is as follows:

Permanent Easement (40,307 sq. ft X \$1.72/sq. ft.)	\$69,328.00
Damages (loss of trees 55 x \$37.05)	\$ 2,038.00
Benefits	\$ 0.00
Total	\$71,366.00

County shall deliver the Purchase Price no later than 45 days after Board of Supervisors approval and upon delivery and execution of all necessary transfer documents. The Purchase Price shall be delivered to Grantor net of any deductions so that Grantor shall receive the full \$71,366.00. Grantor shall convey by Road Easement to County its easement rights to the Property, in its "AS-IS", "WHERE IS" condition. If the transaction described in this Agreement does not close by July 1, 2009, either party may cancel this Agreement.

Grantor makes no warranties or representations regarding the physical condition or title to the Property. Accordingly, County shall rely on an ALTA extended coverage owner's policy of title insurance ("Title Policy"), with survey exception if County elects not to obtain an ALTA survey for the Property. The Title Policy shall be paid for by the County and shall be in the amount of the Purchase Price, showing title to the easement rights of the Property interest vested in County. It shall be a condition precedent to County's obligations under this Agreement that escrow holder is able to issue the Title Policy to County.

County shall pay all costs of any escrow, title insurance, transfer tax, recording fees and other closing costs incurred in this transaction.

Grantor and County acknowledge that this transaction is a negotiated settlement in lieu of condemnation and agree that the Purchase Price to be paid herein is in full settlement of any claims for compensation or damages that may have arisen, including, but not limited to, attorney fees, pre-condemnation damages, severance damages, business goodwill, or any other claim regarding the acquisition of the Property or construction of improvements thereon.

4. PRORATION OF TAXES.

Real property taxes shall be prorated as of the recordation of the deed conveying title to County, except that where County has taken possession of the Property, taxes shall be prorated as of the date of possession.

5. POSSESSION.

Grantor agrees that immediately upon approval of this Agreement by County, the County may, upon giving Grantor written notice, enter upon and take possession of the Property. County shall be responsible for any losses or claims resulting from or related to its taking possession of the Property.

6. HAZARDOUS WASTE MATERIAL

Grantor makes no warranties or representations whatsoever regarding disposals or releases of hazardous substances on, from, or under the Property. County is advised to investigate.

///
///
///
///
///
//

**Agreement for Purchase
Berberian Properties, LLC
Page 3 of 3**

MAY 19 2009

**IN WITNESS WHEREOF, the parties have executed this Agreement on _____
as follows:**

COUNTY OF STANISLAUS

GRANTOR

**Berberian Properties, LLC, a California
limited liability company, formerly
known as Berberian Trust Properties,
a California General Partnership**



Jim DeMartini
Chairman of the Board of Supervisors


By _____
Arnold H. Gazarian

**ATTEST:
Christine Ferraro Tallman
Clerk of the Board of Supervisors of the
County of Stanislaus, State of California**

By: 

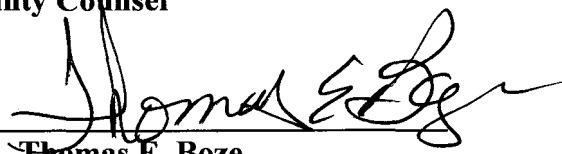
Deputy Clerk

**APPROVED AS TO CONTENT:
Department of Public Works**



Matt Machado, Director

**APPROVED AS TO FORM:
John P. Doering
County Counsel**

By: 

Thomas E. Boze
Deputy County Counsel



NO FEE
RECORDING REQUESTED BY: BOARD OF SUPERVISORS
RETURN TO: STANISLAUS COUNTY
DEPARTMENT OF PUBLIC WORKS
1010 10th Street, Suite 3500
Modesto, CA 95354

EXHIBIT

Road Name: McHenry Avenue
APN: 004-076-007 (portion)

ROAD EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

BERBERIAN PROPERTIES, LLC, a California limited liability company, formerly known as BERBERIAN TRUST PROPERTIES, a California General Partnership,

does hereby grant to the COUNTY OF STANISLAUS an easement for public road and highway purposes in the real property in the County of Stanislaus, State of California described as:

SEE EXHIBIT "A"

Arnold H. Gazarian

Dated: _____

APPROVED as to description: _____ Dated: _____

CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDATION

This is to certify that the interest in real property conveyed by the Road Easement dated: _____ from Berberian Properties, LLC, a California limited liability company to County of Stanislaus, a political corporation and/or governmental agency, is hereby accepted by the undersigned officer or agent on behalf of the Board of Supervisors of the County of Stanislaus, pursuant to authority conferred by resolution of the Board of Supervisors of the County of Stanislaus adopted on _____ in accordance with the provision of Government Code Section 27281, and the grantee consents to recordation thereof by its duly authorized officer.

MATT MACHADO, Public Works Director
of Stanislaus County, State of California

Dated: _____

640-07
(Berberian)

EXHIBIT "A"
LEGAL DESCRIPTION
STANISLAUS COUNTY-MCHENRY AVENUE RIGHT OF WAY WIDENING
A.P.N. 004-076-007

All that certain piece or parcel of land situate in the County of Stanislaus, State of California, lying within the Northwest quarter of Section 29, Township 2 South, Range 9 East, Mount Diablo Meridian, being described as follows:


All that certain portion of Parcels 1, 2, 3 and 5 as conveyed to Berberian Trust Properties, a California general partnership by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on July 31, 1998, as Document Number 1998-069310, being more particularly described as follows:

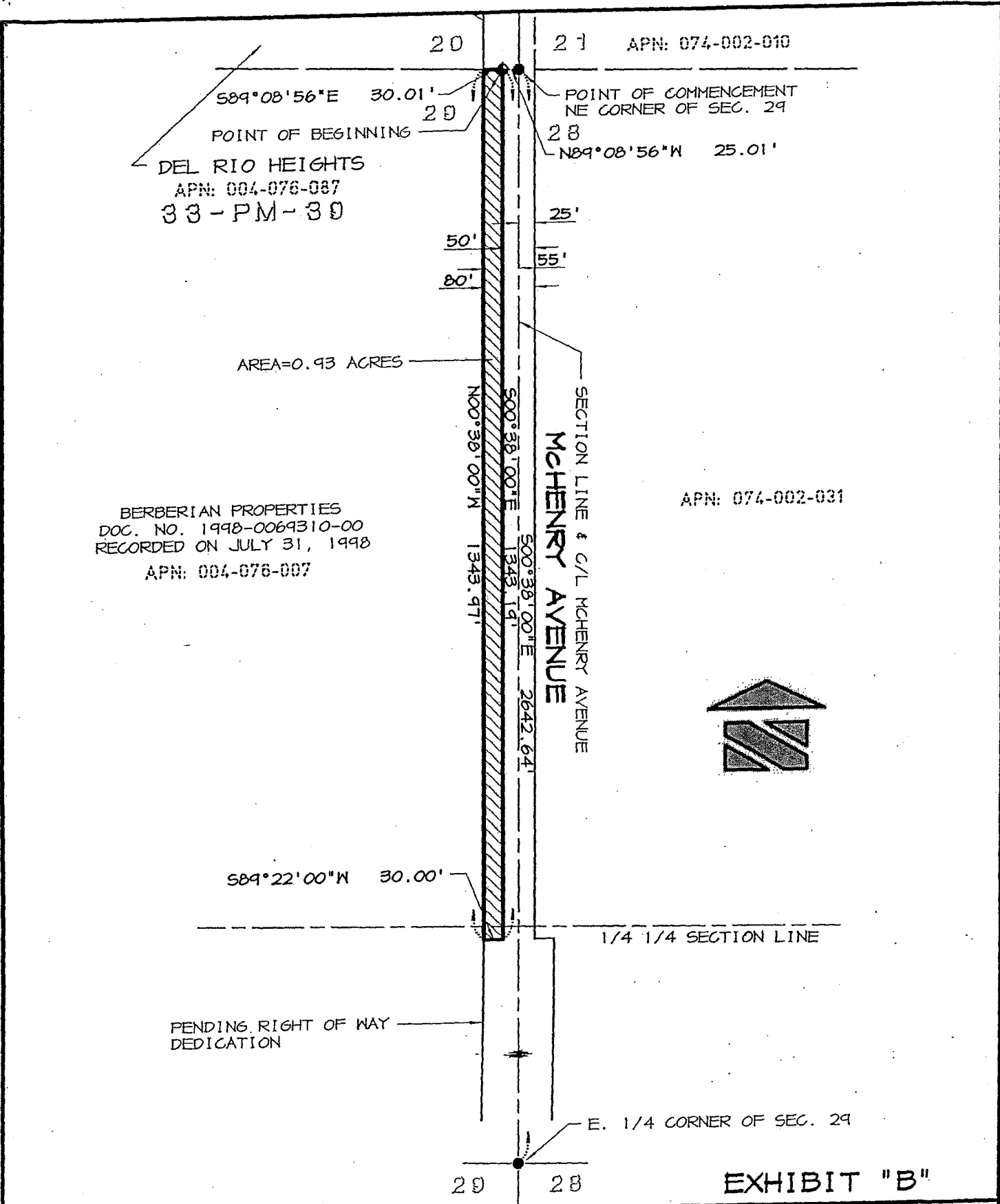
Commencing at the Northeast corner of said section 29, said point lying on the centerline of a County Road known as McHenry Avenue; thence North 89°08'56" West along the North line of said Section 29, a distance of 25.01 feet to the West right of way line of said McHenry Avenue, said point also being the Northeast corner of said Parcel 5 and being the TRUE POINT OF BEGINNING; thence South 00°38'00" East along the West right of way line of said McHenry Avenue, a distance of 1343.19 feet; thence South 89°22'00" West, a distance of 30.00 feet; thence North 00°38'00" West along a line that is parallel with and 30.00 feet west of said west right of way line, a distance of 1343.97 feet to the North line of said Section; thence South 89°08'56" East along the North line of said Section, a distance of 30.01 feet to the TRUE POINT OF BEGINNING.

CONTAINING 40,307 square feet more or less.

SUBJECT TO all easements and/or rights-of-way of record.




Dave L. Skidmore, L.S. 7126
License Expires 12/31/08
7/02/08



DEL RIO HEIGHTS
 APN: 004-076-087
 33-PM-30

BERBERIAN PROPERTIES
 DOC. NO. 1998-0069310-00
 RECORDED ON JULY 31, 1998
 APN: 004-076-007

APN: 074-002-031



EXHIBIT "B"

DRAWN	AG
DATE	5/8/08
SCALE	1"=200'
JOB #	640-07
DWG.	BERBERIAN

**PLAT TO ACCOMPANY
 LEGAL DESCRIPTION**

BERBERIAN PROPERTIES
 APN: 004-076-007
 BEING A PORTION OF LAND IN THE NE QUARTER
 OF SECTION 29, T. 2 S, R. 9 E., H.D.M.
 STANISLAUS COUNTY CALIFORNIA



**ASSOCIATED
 ENGINEERING, INC.**
 Surveying • Design • Planning
 4206 TECHNOLOGY DRIVE
 MODESTO, CALIFORNIA 95356
 PH: (209) 545-3390 FAX: (209) 545-3875