

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

DEPT: Public Works *MM*

BOARD AGENDA # *C-4

Urgent Routine

AGENDA DATE May 13, 2014

CEO Concur with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of a Purchase Agreement to Acquire a Temporary Construction Easement (TCE) for the Crows Landing Road at West Main Intersection Upgrade Project, Parcel Owner: Gerald A. Wagner and Rosemary J. Wagner, Trustees, Trustees, Assessor's Parcel Number: 022-039-003 (Portion, Exhibit 1) and 022-039-004 (Portion, Exhibit 2)

STAFF RECOMMENDATIONS:

1. Approve the purchase agreement for the acquisition of a TCE in the parcel identified as Assessor's Parcel Number (APN) 022-039-003 (Portion, Exhibit 1) and 022-039-004 (Portion, Exhibit 2).
2. Authorize the Chairman of the Board to execute the agreement.

FISCAL IMPACT:

The total estimated cost for this project is \$2,900,000. The \$96,418 for the purchase of the TCE is funded 100% from the Public Facilities Fee-Regional Transportation Impact Fee program and consists of \$94,568 for compensation associated with the purchase of this property, and \$1,850 for estimated title insurance and escrow fees. Funding is available in the Fiscal Year 2013-2014 Public Works Road Projects Budget.

BOARD ACTION AS FOLLOWS:

No. 2014-235

On motion of Supervisor Withrow, Seconded by Supervisor O'Brien

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

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 a Purchase Agreement to Acquire a Temporary Construction Easement (TCE) for the Crows Landing Road at West Main Intersection Upgrade Project, Parcel Owner: Gerald A. Wagner and Rosemary J. Wagner, Trustees, Trustees, Assessor's Parcel Number: 022-039-003 (Portion, Exhibit 1) and 022-039-004 (Portion, Exhibit 2)

DISCUSSION:

The Crows Landing Road at West Main Intersection Upgrade project proposes to improve the intersection of Crows Landing Road and West Main Street. The proposed upgrades include:

- Construction of traffic signals;
- Widening the approaches and intersection to allow for dedicated left turn lanes;
- Improving pedestrian safety by:
 - constructing Americans with Disabilities Act of 1990 accessible crosswalks and ramps; and,
 - widening the shoulders;
- Installing median dividers at the intersection; and,
- Improving the storm drain runoff control by:
 - installing a storm drainage system; and,
 - upgrading the existing storm drain pump station.

The County needs to acquire ROW from Gerald A. Wagner and Rosemary J. Wagner, Trustees of the Wagner Family Trust Agreement, dated April 8, 1999, to accomplish this project. The property is located at 9936 and 9942 Crows Landing Road, Crows Landing, CA. The property owner has agreed to accept the following terms as outlined in the Agreement for Acquisition of Property in Attachment 1:

Property Owners:	Gerald A. Wagner and Rosemary J. Wagner, Trustees
Amount of Compensation:	\$94,568
Assessor's Parcel Number:	022-039-003 (Portion, Exhibit 1) and 022-039-004 (Portion, Exhibit 2)
Right-of-Way Acquisition Area:	0.0554± and 0.0470± Acres (Respectively)

The amount of compensation has been determined to be within the range of just compensation by an independent appraiser hired by the Consultant that is contracted with the County for all-inclusive engineering and project delivery services.

Overall, in order to construct the project, ROW acquisitions are required from eight parcels. Acquisitions have been negotiated and completed with the owners and/or tenants of two parcels.

POLICY ISSUES:

The recommended actions are consistent with the Board's priorities of providing A Safe Community, A Healthy Community, and A Well-Planned Infrastructure System by improving intersection safety and reducing greenhouse gas emissions by improving traffic flow in this area of Stanislaus County.

Approval of a Purchase Agreement to Acquire a Temporary Construction Easement for the Crows Crows Landing Road at West Main Intersection Upgrade Project, Parcel Owner: Gerald A. Wagner and Rosemary J. Wagner, Trustees, Trustees, Assessor's Parcel Number: 022-039-003 (Portion, Exhibit 1) and 022-039-004 (Portion, Exhibit 2)

STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT PERSON:

Matt Machado, Public Works Director. Telephone: (209) 525-4130.

DB:sn

L:\ROADS\9729 - Crows Landing Rd at West Main Ave TS\Design\Board\Wagner_022-039-003 & 022-039-003\9729_BOS

5-6-14_CLRWMIU_Wagner.pdf

Project: Crows Landing Road at West Main
Street Intersection Upgrade Project
Grantor: The Wagner Family Trust
Agreement dated 4/08/1999
APN(s): 022-039-003 & 004

AGREEMENT FOR TEMPORARY CONTRUCTION EASEMENT

This Agreement for Temporary Constrution Easement is between the **County of Stanislaus** (County) and **Gerald A. Wagner and Rosemary J. Wagner, Trustees of the Wagner Family Trust Agreement dated April 8, 1999** (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, the real property interest described in the Exhibits, attached hereto which is incorporated herein by this reference (the "Property").

2. DELIVERY OF DOCUMENTS.

All documents necessary for the transfer of the Property shall be executed and delivered by Grantor to the County's designated Acquisition Agent.

This transaction shall be handled through an escrow with N/A.

3. PURCHASE PRICE AND TITLE.

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

Road Deed	\$	N/A
Two Temporary Construction Easements (Exhibits 1, 2):		
4,458+/- sq. ft.X \$2.75/s.f.X10% (for 1 yr)	\$	1,225.00
Cost to Cure (New Truck Scale and appurtenances)	\$	75,000.00
Administrative Settlement	\$	18,343.00
	Total	\$ 94,568.00

County shall deliver the Purchase Price no later than 45 days after Board of Supervisors approval and after delivery and execution of all necessary transfer documents. Grantor shall convey good, marketable and insurable title to the Property free and clear of all liens, encumbrances, taxes, assessments and leases recorded and/or unrecorded.

Title insurance is not required.

County shall pay all costs of any recording fees incurred in this transaction.

Grantor agrees that if claims are submitted by lien-holders, the County is hereby authorized to honor such claims and deduct the amount of said claims from the amount to be paid to the property owner. The County will notify the Grantor of any such claims prior to payment.

Grantor acknowledges that the acquisition of the Property by the County is for a public purpose, and therefore, the Property is otherwise subject to taking by the power of eminent domain. Grantor acknowledges that this transaction is a negotiated settlement in lieu of condemnation and agrees that the Purchase Price to be paid herein shall constitute full and fair compensation and consideration for any and all claims that Grantor may have against the County by reason of the acquisition, improvement, possession, use and/or occupancy of the Property, and Grantor waives any and all claims, including, but not limited to, claims for attorney fees, pre-condemnation damages, severance damages, business goodwill, relocation assistance, or any other claim.

If any eminent domain action that includes the Property, or any portion thereof, has been filed by the County, Grantor hereby agrees and consents to dismissal of said action. Grantor waives any and all claims to any money that may have been deposited with the State Treasurer in such action and further waives any and all claims for damages, costs, or litigation expenses, including attorney's fees, arising by virtue of the abandonment of the action pursuant to Section 1268.510 of the California Code of Civil Procedure.

4. POSSESSION.

Grantor agrees that immediately upon approval of this Agreement by County, the County may enter upon and take possession of the Property.

County agrees to leave that portion of said tract of land upon which entry is required in as neat and presentable condition as existed prior to such entry, with all fences, structures and other property, not compensated for herein, belonging to the Grantor, which the County and its authorized agents and contractors may find it necessary to remove or relocate in order to construct or reconstruct said Project to be replaced as nearly in their original condition and position as is reasonably possible.

County and its authorized agents and contractors will maintain public access during normal business hours to the business during construction.

5. HAZARDOUS WASTE MATERIAL.

The Grantor hereby represents and warrants that during the period of Grantor's ownership of the Property, there have been no disposals or releases of hazardous substances on, from, or under the Property. Grantor further represents and warrants that Grantor has no

knowledge of any disposal or release of hazardous substances, on, from, or under the Property which may have occurred prior to Grantor taking title to the Property.

The Purchase Price of the Property reflects the fair market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous substances which requires mitigation under Federal or State law, the County reserves the right to recover its clean-up costs from those who caused or contributed to the contamination, or who may be otherwise deemed responsible parties.

6. **ENTIRE AGREEMENT.**

This Agreement and the attached Exhibits constitute the entire agreement between the parties relating to the sale of the Property. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the County and Grantor.

(INTENTIONALLY LEFT BLANK)

**Agreement for Purchase
Gerald A. & Rosemary J. Wagner, Trustee
Page 4 of 4**

IN WITNESS WHEREOF, the parties have executed this Agreement on May 13, 2014 as follows:

COUNTY OF STANISLAUS



Jim DeMartini
Chairman of the Board of Supervisors

**GRANTOR:
The Wagner Family Trust Agreement
dated April 8, 1999**


By: 

Gerald A. Wagner, as Trustee

By: 

Rosemary J. Wagner, as Trustee

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

By: 

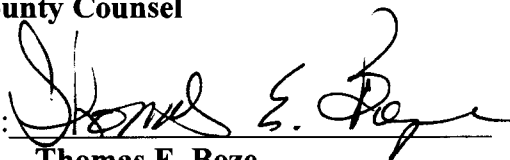
Patricia Gonzales
Deputy Clerk

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



Matthew 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

EXHIBIT "1"

RETURN TO:
STANISLAUS COUNTY
DEPARTMENT OF PUBLIC WORKS
1716 MORGAN ROAD
MODESTO, CA 95358

Road Name: Crows Landing Road at West Main Street
APN: 022-039-003

TEMPORARY CONSTRUCTION EASEMENT

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

Gerald A. Wagner and Rosemary J. Wagner, Trustee of the Wagner Family Trust Agreement dated April 8, 1999,

do hereby grant to the COUNTY OF STANISLAUS, a political subdivision of the State of California, a **temporary construction easement** for access and construction purposes in the real property in the County of Stanislaus, State of California, described as:

SEE EXHIBIT "A" AND "B"

By [Signature] as Trustee
Gerald A. Wagner, as Trustee

By [Signature] as Trustee
Rosemary J. Wagner, as Trustee

Dated: April 17, 2014

Dated: April 17, 2014

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 deed or grant dated _____ From **Gerald A. Wagner and Rosemary J. Wagner, Trustee of the Wagner Family Trust Agreement dated April 8, 1999** to County of Stanislaus, a political subdivision of the State of California, 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 March 8, 2011 in accordance with the provisions of Government Code Section 27281, and the grantee consents to recordation thereof by its duly authorized officer.

The Temporary Construction Easement shall commence on the date of this agreement and shall automatically terminate and expire upon the date of the improvements are completed and a Notice of Completion is filed for record with the Stanislaus County Recorder. All rights and benefits of the Grantee in, to and under the Temporary Construction Easement shall automatically terminate and shall cease to be enforceable or in effect.

Matthew Machado, Director of Public Works
of Stanislaus County, State of California

By [Signature]

Dated: 4/30/14

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF Stanislaus)

On April 17, 2014 before me, Maria Eleni Leles, Notary
Public, personally appeared Gerald A. Wagner and Rosemary J. Wagner

_____, 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 Maria Eleni Leles, Notary Public
Maria Eleni Leles, Notary Public

(Seal)

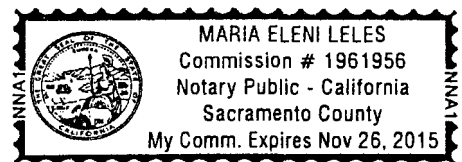


EXHIBIT "A"

TEMPORARY CONSTRUCTION EASEMENT
LEGAL DESCRIPTION
(APN: 022-039-003)

AREA 6

That portion of the property described in the deed to Gerald A. Wagner and Rosemary J. Wagner, trustees of the Wagner Family Trust Agreement, recorded April 16, 1999 as Document No. 039404, Stanislaus County Records, situate in the southwest quarter of Section 16, Township 5 South, Range 9 East, Mount Diablo Meridian, Stanislaus County, California, more particularly described as follows:

Commencing at the section corner common to Sections 16, 17, 20 and 21, said Township and Range; thence, along the west line of said southwest quarter of Section 16, North $00^{\circ}10'22''$ East 235.00 feet; thence South $89^{\circ}17'47''$ East 32.88 feet to the easterly right-of-way line of Crows Landing Road and the true **POINT OF BEGINNING** of this description;

thence along said easterly right-of-way line, North $00^{\circ}08'32''$ East 175.01 feet;

thence along the northerly line of said Wagner Trust property, South $89^{\circ}17'47''$ East 17.00 feet;

thence parallel with and 17.00 feet easterly from said easterly right-of-way line, South $00^{\circ}08'32''$ West 95.00 feet;

thence North $89^{\circ}51'28''$ West 7.00 feet;

thence parallel with and 10.00 feet easterly from said easterly right-of-way line, South $00^{\circ}08'32''$ West 79.94 feet;

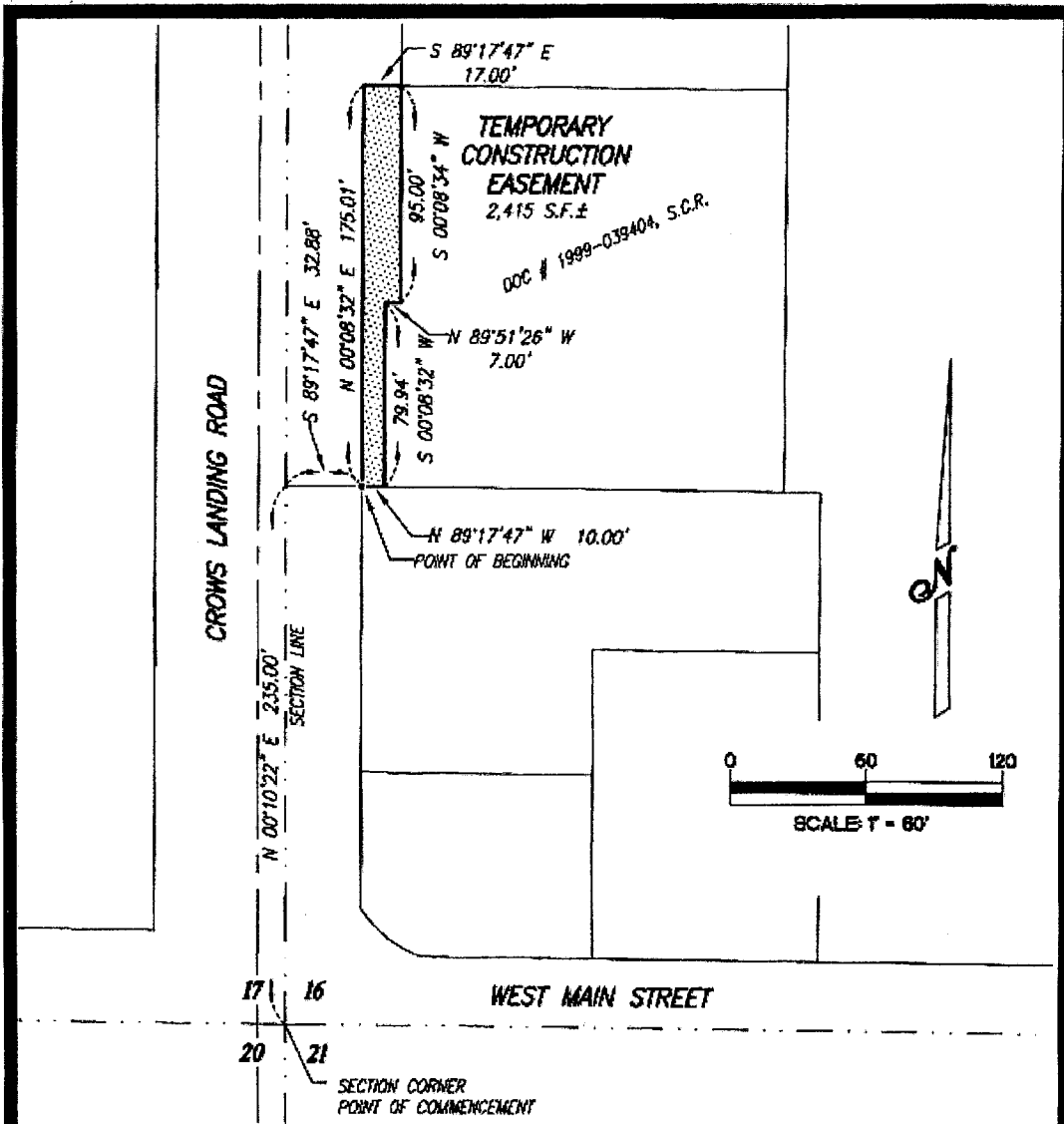
thence along the south line of said Wagner Trust property, North $89^{\circ}17'47''$ West 10.00 feet to the point of beginning.

Containing 2,415 square feet, more or less.



A handwritten signature in black ink, appearing to read "Kevin W. Spenser", written over a horizontal line.

July 2, 2013



**EXHIBIT "B" - AREA 6
PLAT TO ACCOMPANY LEGAL DESCRIPTION**

North Star
Engineering Group, Inc.

• CIVIL ENGINEERING • SURVEYING • PLANNING •

620 12th Street Modesto, CA 95354
(209) 524-3525 Phone (209) 524-3526 Fax

JOB NO: 11-982
SCALE: 1" = 60'
DR BY: NM
CK BY: KWS
FILE: TCE dad-B
DATE: July 2, 2013



SIGNATURE: *[Handwritten Signature]*

NO FEE
RECORDING REQUESTED BY:
BOARD OF SUPERVISORS

EXHIBIT "2"

RETURN TO:
STANISLAUS COUNTY
DEPARTMENT OF PUBLIC WORKS
1716 MORGAN ROAD
MODESTO, CA 95358

Road Name: Crows Landing Road at West Main
Street
APN: 022-039-004

TEMPORARY CONSTRUCTION EASEMENT

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

Gerald A. Wagner and Rosemary J. Wagner, trustees of the Wagner Family Trust Agreement, dated April 8, 1999

does hereby grant to the COUNTY OF STANISLAUS, a political subdivision of the State of California a **temporary construction easement** for access and construction purposes in the real property in the County of Stanislaus, State of California described as:

SEE EXHIBIT "A" AND "B"

(sign) [Signature] as Trustee Rosemary J. Wagner as Trustee
 (print) Gerald A. Wagner, as Trustee Rosemary J. Wagner as Trustee
 Dated: April 17, 2014 April 17 2014

APPROVED as to description: L.S.F. Dated: 7/16/2013

CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDATION

This is to certify that the interest in real property conveyed by the deed or grant dated From Gerald A. & Rosemary J. Wagner, trustees of the Wagner Family Trust Agreement, dated April 8, 1999 to the County of Stanislaus, a political subdivision of the State of California 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 March 8, 2011 in accordance with the provisions of Government Code Section 27281, and the grantee consents to recordation thereof by its duly authorized officer.

The Temporary Construction Easement shall commence on the date of this agreement and shall automatically terminate and expire upon the date of the improvements are completed and a notice of completion is filed for record with the Stanislaus County Recorder. All rights and benefits of the Grantee in, to and under the Temporary Construction Easement shall automatically terminate and shall cease to be enforceable or in effect.

Matt Machado, Director of Public Works
Stanislaus County, State of California

By [Signature] Dated: 4/30/14

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

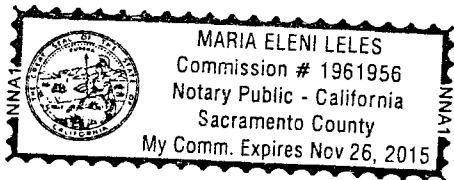
State of California

County of Stanislaus

On April 17, 2014 before me, Maria Eleni Leles Notary Public

personally appeared Gerald A. Wagner and Rosemary J. Wagner

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: Maria Eleni Leles, 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:

Document Date: Number of Pages:

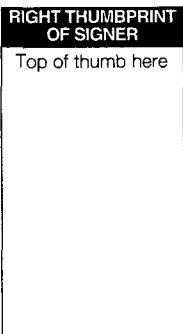
Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

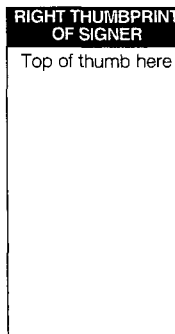
Signer's Name: Signer's Name:

Corporate Officer -- Title(s): Corporate Officer -- Title(s):

- Individual
Partner -- Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:



- Individual
Partner -- Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:



Signer Is Representing:

Signer Is Representing:

Exhibit "A"

TEMPORARY CONSTRUCTION EASEMENT LEGAL DESCRIPTION

AREA 7

That portion of the property described in the deed to Gerald A. Wagner and Rosemary J. Wagner, trustees of the Wagner Family Trust Agreement, recorded April 16, 1999 as Document No. 039403, Stanislaus County Records, situate in the southwest quarter of Section 16, Township 5 South, Range 9 East, Mount Diablo Meridian, Stanislaus County, California, more particularly described as follows:

Commencing at the section corner common to Sections 16, 17, 20 and 21, said Township and Range; thence, along the west line of said southwest quarter of Section 16, North 00°10'22" East 110.00 feet; thence South 89°17'47" East 32.94 feet to the easterly right-of-way line of Crows Landing Road and the true **POINT OF BEGINNING** of this description;

thence along said easterly right-of-way line, North 00°08'32" East 1125.00 feet;

thence along the northerly line of said Wagner Trust property, South 89°17'47" East 10.00 feet;

thence parallel with and 10.00 feet easterly from said easterly right-of-way line, South 00°08'32" West 11.59 feet;

thence South 89°51'28" East 11.05 feet;

thence parallel with and 21.05 feet easterly from said easterly right-of-way line, South 00°08'32" West 72.05 feet;

thence North 89°51'28" West 11.05 feet;

thence parallel with and 10.00 feet easterly from said easterly right-of-way line, South 00°08'32" West 41.35 feet;

thence along the south line of said Wagner Trust property, North 89°17'47" West 10.00 feet to the point of beginning.

Containing 2,046 square feet, more or less.



A handwritten signature in black ink, appearing to read "Keith W. Spencer".

July 2, 2013

CROWS LANDING ROAD

SECTION LINE

N 00°10'22" E
110.00'

17 16
20 21

SECTION CORNER
POINT OF COMMENCEMENT



SCALE: 1" = 60'



S 89°17'47" E 10.00'
S 00°08'32" W 11.59'
S 89°51'28" E 11.05'

**TEMPORARY
CONSTRUCTION
EASEMENT**

2,046 S.F.±

DOC # 1999-039403, S.C.R.

N 00°08'32" E 125.00'
72.05'
S 00°08'32" W

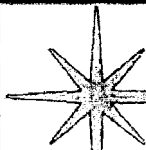
N 89°51'28" W
11.05'
S 00°08'32" W
41.35'

N 89°17'47" W
10.00'

POINT OF BEGINNING

WEST MAIN STREET

**EXHIBIT "B" - AREA 7
PLAT TO ACCOMPANY LEGAL DESCRIPTION**



North Star

Engineering Group, Inc.

• CIVIL ENGINEERING • SURVEYING • PLANNING •
620 12th Street Modesto, CA 95354
(209) 524-3525 Phone (209) 524-3526 Fax

JOB NO: 11-982

SCALE: 1" = 60'

DR BY: NM

CK BY: KWS

FILE: TCE ded-9

DATE: July 2, 2013

SIGNATURE:

