



TOWN OF LOS GATOS
PARKS & PUBLIC WORKS DEPARTMENT
PHONE (408) 399-5770

SERVICE CENTER
41 MILES AVENUE
LOS GATOS, CA 95030

VIA EMAIL AND CERTIFIED MAIL

June 4, 2024

Ray M. Elam, III
Trustee, Elam Family Trust
1432 Sea Ridge Drive
Newport Beach, CA 92660
E-mail: budelam@gmail.com

Re: Offer Pursuant to Government Code Section 7267.2 to Acquire a Portion of 14915 Shannon Road, Los Gatos, CA (APN 537-27-047)

Dear Mr. Elam:

The Town of Los Gatos ("Town") is offering to purchase a portion of your property located at 14915 Shannon Road, Los Gatos, CA (APN 537-27-047) ("Larger Parcel"). The purpose of this letter is to transmit a formal offer to acquire a portion of the Larger Parcel from you pursuant to Government Code section 7267.2.

The Town proposes to acquire an approximately 29,807 square foot portion of the Larger Parcel comprised of:

- (a) an approximately 21,929 square foot strip of land within the existing Shannon Road right of way; and
- (b) an approximately 7,878 square foot strip of land along the Larger Parcel's frontage on Shannon Road (the "Subject Property").

A detailed legal description of the Subject Property is attached hereto as **Exhibit 1**. The Town needs to acquire the Subject Property for the Shannon Road Capital Improvement Project (CIP No. 811-0008) (the "Project"). The Project will repair the roadbed, increase Shannon Road's pavement width, install guardrails, and install retaining walls on the north side of the road. The Subject Property is within the area of the Project, and acquisition of the Subject Property is necessary for the Project.

The Town would prefer to resolve this matter by negotiated purchase. Section 7267.2 of the Government Code requires the Town to make you an offer which represents the appraised fair market value of the property necessary for the Project. The Town offers the sum of Thirty-Nine

Thousand Four Hundred and no/100 Dollars (\$39,400.00) for the Subject Property, which is more particularly described and depicted in the exhibits attached to the Summary Statement and Summary of the Basis for Just Compensation ("Summary Statement"), attached hereto as **Exhibit 2**. The Summary Statement demonstrates the value of the Subject Property. As provided in Government Code Section 7267.2, the offer is conditioned upon the Town Council's approval of the offer by either execution of a contract of acquisition or adoption of a Resolution of Necessity.

Furthermore, pursuant to Code of Civil Procedure Section 1263.025(a), the Town will pay the reasonable costs, not to exceed Five Thousand Dollars (\$5,000.00), of an independent appraisal of the Subject Property, ordered by you. To be eligible for reimbursement, the independent appraisal must be conducted by an appraiser licensed by the State Office of Real Estate Appraisers. In addition, pursuant to Code of Civil Procedure Section 1263.615, the Town is unable to offer you continued use of the fee interest after acquisition because the Town will begin the Project within two years of the acquisition. Finally, attached hereto as **Exhibit 3** is an informational pamphlet describing the eminent domain process and your rights under the Eminent Domain Law.

As indicated, the Town would like to resolve this matter with you by agreement, as the Town believes that a negotiated purchase best serves everyone's interests. If you ultimately elect to reject the Town's offer for the Subject Property, and the Town chooses to proceed with acquiring the Subject Property through the eminent domain process, you are entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California. Please do not hesitate to contact me if you have any questions.

Sincerely,

Town of Los Gatos



Nicolle Burnham

Director of Parks and Public Works

Exhibits

1. Final Grant of Right of Way Description
2. Appraisal Summary Statement
3. Eminent Domain Information Pamphlet

CC: Gabrielle Whelan (*via email only to gwhelan@losgatosca.gov*)
Jennifer Armer (*via email only to jarmer@losgatosca.gov*)
Gary Heap (*via email only to gheap@losgatosca.gov*)
Nicholas Muscolino (*via email only to nmuscolino@bwslaw.com*)

EXHIBIT A
LEGAL DESCRIPTION
Shannon Road Grant of Right of Way

All that certain real property situate in the Town of Los Gatos, County of Santa Clara, State of California, being a portion of the lands granted to Diane Barnett and Ray M. Elam, III as Co-Trustees of the Elam Family Trust A by deed filed for record May 29, 2015 as Document 22970019 in the office of the Santa Clara County Recorder, being more particularly described as follows:

Commencing at an iron pipe in monument box located at the northerly terminus of that certain course shown as "N 46° 11' 21" W, 394.60'" on the map entitled "Record of Survey of the Monument Line of Shannon Road..." filed for record July 13, 1978 in Book 422 of Maps at Pages 39-46 in said Recorder's office; said course being depicted on sheet 4 of 8 therein, thence from said point of commencement North 07°12'24" West, 26.58 feet to the true Point of Beginning of this description; thence South 55°48'03" East, 31.91 feet; thence South 48°26'38" East, 45.97 feet; thence South 46°41'49" East, 107.02 feet; thence South 45°34'03" East, 124.07 feet to the beginning of a curve concave northeasterly having a radius of 500.00 feet; thence southeasterly along the arc of said curve 74.81 feet through a central angle of 08°34'21" to the beginning of a non-tangent curve concave northeasterly having a radius of 350.00 feet, from which point the radius bears North 34°44'06" East; thence southeasterly along the arc of said curve 99.18 feet through a central angle of 16°14'09"; thence South 71°30'03" East, 57.32 feet to the beginning of a curve concave southerly having a radius of 375.00 feet; thence easterly along the arc of said curve 38.43 feet through a central angle of 5°52'20"; thence South 65°37'44" East, 153.47 feet; thence North 24°22'16" East, 5.00 feet; thence South 65°37'44" East, 9.00 feet; thence South 24°22'16" West, 5.00 feet; thence South 65°37'44" East, 33.94 feet; thence North 24°22'16" East, 33.00 feet; thence South 65°37'44" East, 20.00 feet; thence South 24°22'16" West, 33.00 feet; thence South 65°37'44" East, 68.97 feet to the beginning of a curve concave southerly having a radius of 325.00 feet; thence southeasterly 44.19 feet through a central angle of 07°47'28"; thence South 57°50' 15" East, 25.21 feet; thence North 32°09'45" East, 5.00 feet; thence South 57°50'15" East, 10.00 feet; thence South 32°09'45" West, 5.00 feet; thence South 57°50'15" East, 33.40 feet to the beginning of a non-tangent curve concave southwesterly having a radius of 335.00 feet, from which point the radius bears South 43°55'48" West; thence southerly along the arc of said curve 54.96 feet through a central angle of 09°24'00"; thence South 25°59'14" East, 57.73 feet to a point in the westerly line of that certain 72.14 acre tract granted to Manuel F. Escover by deed dated November 27, 1922, filed for record in Book 566 of Deeds at Page 403 in said Recorder's office, from which point an iron pipe in monument box located at the southerly terminus of that certain course shown as "N 30°09'05" W, 240.63'" on sheet 4 of said Record of Survey bears South 16°54'19" East, 167.68 feet; thence along said westerly line South 23°40'51" West, 38.50 feet to an iron pipe set at the southwesterly corner of said 72.14 acre tract; said corner being further described as

LEGAL DESCRIPTION (cont.)
Shannon Road Grant of Right of Way

lying in the center of Shannon Road; thence along the southwest line of said lands of Elam et. al., said southwest line also being the centerline of Shannon Road, the following courses and distances, each as shown on that certain map entitled "Record of Survey of a portion of Shannon Road" filed for record May, 28, 2024 in Book 962 of Maps at Page 10 in said Recorder's office, North 24°21'16" West, 20.92 feet to the beginning of a curve concave southwesterly having a radius of 285.00 feet; thence northwesterly along the arc of said curve 214.93 feet through a central angle of 43°12'32"; thence North 67°33'47" West, 69.26 feet to the beginning of a curve concave northerly having a radius of 500.00 feet; thence northwesterly along the arc of said curve 25.95 feet through a central angle of 02°58'26"; thence North 64°35'21" West, 150.28 feet to the beginning of a curve concave southerly having a radius of 750.00 feet; thence westerly along the arc of said curve 90.05 feet through a central angle of 06°52'46"; thence North 71°28'07" West, 42.02 feet to the beginning of a curve concave northerly having a radius of 360.00 feet; thence northwesterly along the arc of said curve 161.26 feet through a central angle of 25°39'54"; thence North 45°48'13" West, 199.08 feet to the beginning of a curve concave southwesterly having a radius of 2,500.00 feet; thence northwesterly along the arc of said curve 127.44 feet through a central angle of 02°55'14"; thence leaving said centerline of Shannon Road North 41°16'33" East, 20.00 feet to the point of beginning.

Containing 29,807 square feet, more or less.

Bearings used in this description are based upon the California Coordinate System of 1983 (CCS83), Zone 3.

Prepared under the direction of:



Charles M. Weakley, L.S. 6421

DATUM NOTE:

Bearings shown are based upon the California Coordinate System of 1983 (CCS1983), Zone 3, epoch 2021.3.

CURVE DATA TABLE			
NO.	DELTA	LENGTH	RADIUS
C1	08° 34' 21"	74.81'	500.00'
C2	16° 14' 09"	99.18'	350.00'
C3	05° 52' 20"	38.43'	375.00'

LINE DATA TABLE		
NO.	BEARING	DISTANCE
L1	N07° 12' 24"W	26.58'
L2	S55° 48' 03"E	31.91'
L3	S48° 26' 38"E	45.97'
L4	S71° 30' 03"E	57.32'
L5	S65° 37' 44"E	153.47'
L23	N71° 28' 07"W	42.02'
L24	N41° 16' 33"E	20.00'

Point of Commencement, Fnd. monument per R-1
N: 1,907,166.93
E: 6,145,747.40



LEGEND

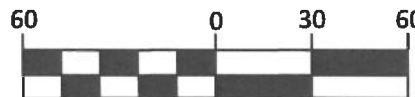
C1 or L1 See curve or line data table
Rad Radial Bearing
R-1 Bk. 422 Maps, Pg. 39-46

EXHIBIT B
Plat to Accompany Legal Description

MOUNTAIN PACIFIC
SURVEYS

1735 Enterprise Dr, Suite 109 PH (707) 425-6234
Fairfield, CA 94533 FAX (707) 425-1969

GRAPHIC SCALE



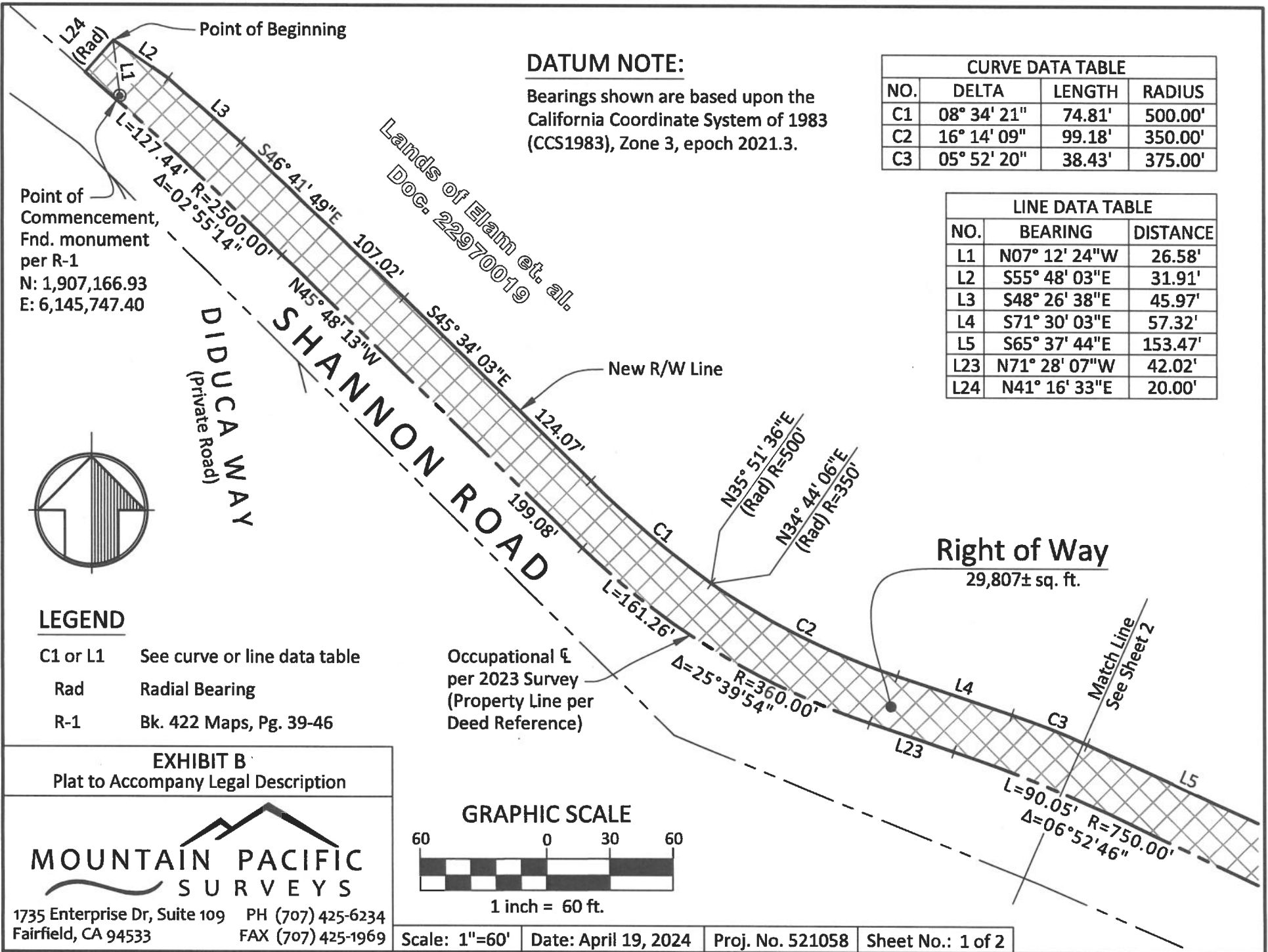
1 inch = 60 ft.

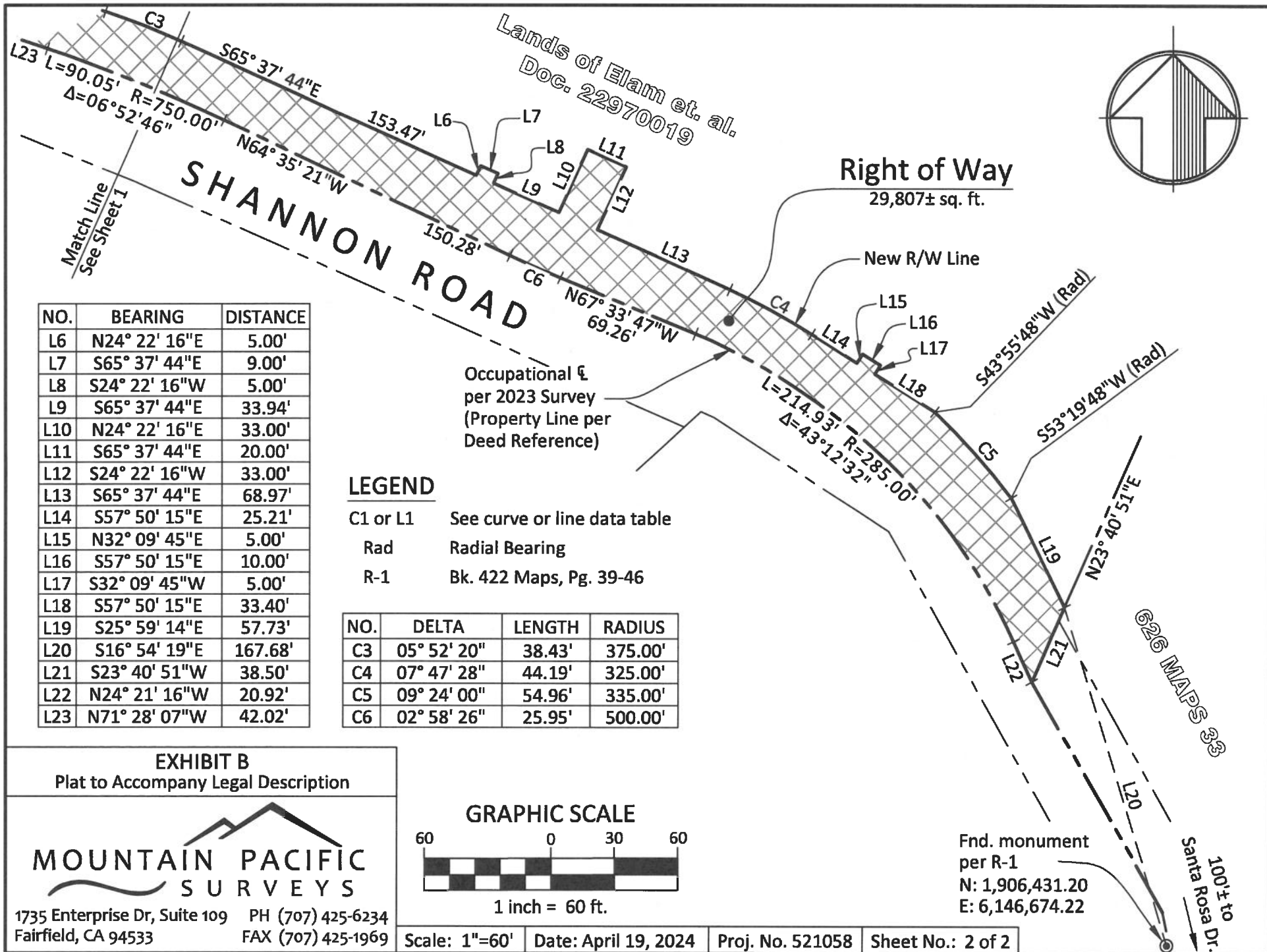
Scale: 1"=60'

Date: April 19, 2024

Proj. No. 521058

Sheet No.: 1 of 2





APPRAISAL SUMMARY STATEMENT

Page 1 of 4

PROPERTY AND PROJECT INFORMATION

Project: Shannon Road Capitol Improvement Project

Parcel No.: 521058

APN: 537-27-047

Owner: Elam

Date Acquired: Many years ago

Property Address: 14915 Shannon Road

Locale: Los Gatos, Santa Clara County, California

Total Property Area: 27.09 acres of land

Property to be Acquired: Part ☒ All ☐

Including Access Rights: Yes ☐ No ☒

Development Application: A Development Application has been submitted to Los Gatos to create nine residential lots on the property. According to City Planning, it has received negative feedback. Concerns include challenges developing on the hillside and the proposed density or number of housing units. At this time, it is unknown if the application will be approved or not, and if it is approved, it is unknown how many residential lots there will be. The Larger Parcel has no development entitlements and is appraised as unentitled residential land.

BASIS OF VALUATION

The market value for the property to be acquired is based upon an appraisal prepared in accordance with accepted appraisal principles and procedures.

Code of Civil Procedure Section 1263.320 defines Fair Market Value as follows:

- (a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.
- (b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

California Government Code Section 7267.2 sets forth the obligations for a public entity to appraise and attempt to negotiate the purchase of real property that is sought to be acquired for a public project. Section 7267.2(a)(1) provides in pertinent part: A decrease or increase in the fair market value of real property to be acquired prior to the date of valuation caused by the public improvement for which the property is acquired, or by the likelihood that the property would be acquired for the improvement,

EXHIBIT 2

APPRAISAL SUMMARY STATEMENT

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other than that due to physical deterioration within the reasonable control of the owner or occupant, shall be disregarded in determining the compensation of the property.

BASIC PROPERTY ACQUISITION DATA

Interest Valued: Fee Simple Estate, partially encumbered by Public Right of Way

Effective Date of Value Opinion: April 22, 2024

Applicable Zoning: RC, Resource Conservation

Area to be Acquired: 29,807 Square Feet of land in Fee consisting of
21,929 Square Feet of land Encumbered by Public Right of Way
7,878 Square Feet of land Unencumbered

Highest and Best Use: Residential

Current Use: Mostly vacant land with a home, barns, corral, and horse arena

VALUATION

Sales Comparison Approach

In this approach, the local market was investigated for land sales of size, condition, and utility similar to the Larger Parcel. The Larger Parcel is suitable for residential development and the comparable sales are similar. I also considered the marketing history of the property.

The property has a long history of being marketed for sale and the following table summarizes the listing activity from the Santa Clara County Multiple Listing Service (MLS). The property was originally listed for sale in September 2018 for \$14,000,000. The property was re-listed for sale several times over the past six years with listings expiring or being cancelled. The asking price has been reduced several times to the most recent asking price of \$5,998,000 (\$5.08 per square foot). This most recent listing was canceled February 21, 2024. Four different real estate brokerage firms have listed the property.

HISTORY OF MARKETING ACTIVITY								
MLS No	Entry Date	Cancelled Date	Expired Date	Original Price	Per Sq Ft	Revised Price	Per Sq Ft	Realtor
81723111	9/12/2018		3/11/2019	\$14,000,000	\$11.86	\$12,000,000	\$10.17	Cushman & Wakefield
81756346	6/12/2019		9/30/2020	\$10,400,000	\$8.81	\$7,995,000	\$6.78	Christie's
81756442	6/13/2019		9/30/2020	\$10,400,000	\$8.81	\$7,995,000	\$6.78	Christie's
81831602	2/26/2021	7/13/2021		\$7,999,888	\$6.78			Intero Real Estate
81853717	8/5/2021	9/14/2022		\$7,998,000	\$6.78			Boyenga Team
81871839	12/5/2021	9/14/2022		\$7,998,000	\$6.78			Boyenga Team
81929202	5/22/2023		10/30/2023	\$7,998,000	\$6.78			Boyenga Team
81951068	1/10/2024	2/21/2024		\$5,998,000	\$5.08			Boyenga Team

APPRAISAL SUMMARY STATEMENT

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LAND SALES							
Sale No	Address APN	Sale Date Doc No	Grantor Grantee	Acres Sq Ft	Zoning General Plan Specific Plan	Sale Price Per Sq Ft	Terms & Circumstances
	Subject Property Los Gatos Santa Clara County 537-27-047	Asking Price	N/A	27.090 1,180,040	RD Resource <u>Conservation</u> <u>Agricultural</u> Hillside Specific Plan 2.5-10 acres per dwelling min lot size one acre	\$7,998,000 (Original) \$6.78 \$5,998,000 (Most Recent) \$5.08	N/A
1	401 Surmont Dr Los Gatos Santa Clara County 527-20-002	12/5/23 25571085	Laurie Bate Srikanth Kasa & Swetha Poreddy	12.430 541,451	HR Hillside <u>Residential 2.5 (2.5-10)</u> Hillside Residential <u>2.5-10 acres per dwelling</u> Hillside Specific Plan 2.5-10 acres per dwelling min lot size one acre	\$3,000,000 \$5.54	Grant Deed available at County Recorders Office during normal business hours
2	300 Mountain Laurel Ln Los Gatos Santa Clara County 567-24-023	10/21/20 24664405	The Dagney Group Kunling Wu	8.137 354,448	HR Hillside <u>Residential 2.5 (2.5-10)</u> Hillside Residential <u>2.5-10 acres per dwelling</u> Hillside Specific Plan 2.5-10 acres per dwelling min lot size one acre	\$1,700,000 \$4.80	Grant Deed available at County Recorders Office during normal business hours
3	Mireval Rd Los Gatos Santa Clara County 532-25-027	7/13/23 25500141	Catherine Sturla Rupinder Singh Rahal & Balwinder Kaur Brar	15.060 656,014	HR Hillside <u>Residential 5 (5-40)</u> Hillside Residential <u>2.5-10 acres per dwelling</u> Hillside Specific Plan 2.5-10 acres per dwelling min lot size one acre	\$1,120,000 \$1.71	Grant Deed available at County Recorders Office during normal business hours
4	15435 Blackberry Hill Rd Los Gatos Santa Clara County 532-25-015 10% interest -014	9/3/21 25089194	Triumph REO Assets Robert & Yaffa Scranton	10.067 438,519	Hillside <u>Hillside</u> In Santa Clara County Sphere of Influence Los Gatos	\$1,170,000 \$2.67	Grant Deed available at County Recorders Office during normal business hours
5	11041 Stevens Canyon Rd Cupertino Santa Clara County 342-19-002, 003 342-20-005	12/2/22 25411063	Viray Properties Victor Zuniga Cabrera & Hortencia Gonzalez Rodriguez	19.670 856,825	RHS Residential <u>Hillside</u> Very Low Density Residential 5-20 Acres	\$2,100,000 \$2.45	Grant Deed available at County Recorders Office during normal business hours
6	22315 Regnart Rd Cupertino Santa Clara County 366-02-032	2/7/22 25235151	Robert & Punita Bigler Gangaswamy Kempahonnaiah & Latha Govindaraju	5.270 229,561	RHS Residential <u>Hillside</u> Very Low Density Residential 5-20 Acres	\$1,450,000 \$6.32	Grant Deed available at County Recorders Office during normal business hours

After analyzing the comparable land sales and considering the marketing history of the Larger Parcel, I conclude to \$5.00 per square foot for the Larger Parcel land outside of the Shannon Road public right of way.

The Larger Parcel includes 21,929 square feet of land encumbered by the Shannon Road public right of way. The California Department of Transportation Right of Way Manual, Section 7.04.10.00 defines "underlying fee" as the portion of ownership encumbered by a public road easement. The public has virtually full control over the use of the land within this easement and the only right the underlying fee owner has is one of reversion. The underlying fee is typically valued at \$1.00, which is the value I placed on the Larger Parcel land within the Shannon Road public right of way.

APPRAISAL SUMMARY STATEMENT

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A. Value of the Whole Before the Acquisition

The unencumbered land is valued at \$5.00 per square foot and the land encumbered by the public right of way is valued at \$1.00.

Fee Land	1,158,111	sq ft x \$5.00	per sq ft =	\$5,790,555
Public Road Easement	21,929	sq ft	=	\$1
Total	1,180,040	sq ft		\$5,790,556

B. Value of the Part Acquired as Part of the Whole

The unencumbered fee acquisition land is valued at the same \$5.00 per square foot value as the unencumbered Larger Parcel. The acquisition of the land encumbered by the public right of way is valued at \$1.00.

Fee Land	7,878	sq ft x \$5.00	per sq ft =	\$39,390
Public Road Easement	21,929	nominal value		\$1
Total	29,807	sq ft		\$39,391

C. Value of the Remainder as Part of the Whole

The value of the Remainder is the value of the Larger Parcel less the Part Acquired. The Remainder land is unencumbered and is valued at \$5.00 per square foot. All of the public right of way land is included in the acquisition.

Fee Land	1,150,233	sq ft x \$5.00	per sq ft =	\$5,751,165
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D. Value of the Remainder After the Acquisition and Before Consideration of Benefits

The value of the remainder after the acquisition and before consideration of benefits is considered to be the same as the value of the remainder as part of the whole.

E. Severance Damages

No severance damages were identified.

F. Value of the Remainder After the Acquisition and After Consideration of Benefits

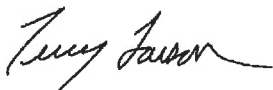
The Value of the Remainder After the Acquisition and Considering Damages, but *After* Considering Benefits is enhanced compared to the Value of the Remainder After the Acquisition and Considering Damages, but *Before* Considering Benefits.

G. Benefits

The remainder property benefits from construction of the Project that will make repairs to Shannon Road. Benefits can only be used to offset damages, and no damages are identified. Therefore, benefits are not quantified as this time.

FINAL VALUE OF THE PROPOSED ACQUISITION

Based on the investigation and analysis, it is my opinion that the Fair Market Value of the Fee Simple Estate in the Proposed Partial Acquisition, as of April 22, 2024 is \$39,400. I declare under penalty of perjury that the foregoing is true and correct. Executed at San Ramon, California, this 8th day of May 2024.



Terry S Larson, MAI
Certified General Real Estate Appraiser
State of California #AG007041, Exp. 11/30/2024

EMINENT DOMAIN INFORMATIONAL PAMPHLET

Introduction

California Government Code Section 7267.2 requires that a public entity provide property owners with an informational pamphlet describing the eminent domain process and the property owners' rights under the Eminent Domain Law at the time the public entity offers to purchase the owners' property or portions of their property. This informational pamphlet provides a general overview of the eminent domain process and answers questions commonly asked by property owners regarding their rights. This is an informational pamphlet only and is not intended to give a complete statement of all state or federal laws and regulations regarding eminent domain or to provide property owners with any form of legal advice.

Overview of The Eminent Domain Process

What is eminent domain?

Eminent domain is the acquisition of private property by a public entity for a public use. Public entities, such as the state and the federal government, counties, cities, redevelopment agencies, and school districts, may acquire real property for a public use if they meet all legal requirements, including the payment of just compensation to the property owners or into the court for the benefit of the owners. (CALIFORNIA CONSTITUTION, art. I, sec. 19). Public uses include, but are not limited to roads, sewer lines, parks, public facilities, police stations, fire stations, libraries, and schools. The acquisition of real property to remedy blight consistent with the Redevelopment Law is also a public use (Health and Safety Code Section 33000 *et seq.*).

A public entity may acquire any interest in real property such as a fee interest, permanent easement, slope easement, or temporary construction easement. A public entity may acquire only the real property interests that are needed for the public use. If a public entity acquires a portion of a parcel and this results in damage to the remainder parcel, the owner is entitled to be compensated for the loss of value, if any, to the remainder parcel. This is called severance damages. If the appraiser determines that the remainder parcel will be left in a size, shape or condition to be of little or no value to the owner, the public entity will offer to purchase the entire parcel. The property owners can decide whether they want the public entity to acquire such uneconomic remnants.

The law requires a public entity to make every reasonable effort to acquire property expeditiously by negotiated purchase. As discussed more fully below, there are several steps that a public entity must take prior to acquiring property by eminent domain. These legal prerequisites are meant to protect property owners and to ensure that they have an opportunity to participate in the acquisition process. These preacquisition steps include the appraisal process, offers and negotiations.

Appraisal Process

The public entity is required to obtain a fair market value appraisal of the real property before it can acquire it by eminent domain.

Notice Informing Owners of Public Entity's Decision to Appraise Their Property

When a public entity identifies a real property or real property interest ("subject property") that it may need for a proposed project, it sends to the property owners a notice informing the owners that it intends to appraise the subject property. This notice informs the owners that the public entity has decided to appraise the subject property and notifies them that an appraiser will be contacting them. An appraiser licensed by the Office of Real Estate Appraisers will contact the owners and request permission to inspect the subject property. The appraiser will also invite the property owners to accompany the appraiser on the inspection of the subject property and to provide to the appraiser any information that the owners consider relevant to the value of the property. Permitting the inspection and accompanying the appraiser on the site inspection will allow the appraiser to fully assess the value of the subject property. If the owners do not allow the appraiser to inspect the subject property, the appraiser will inspect it from the public right of way.

Appraisal

After the appraiser inspects the property, the appraiser prepares an appraisal of the fair market value of the property.

What is fair market value?

The Eminent Domain Law defines fair market value as the highest price on the date of value that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for selling the property, and a buyer, ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. (Code of Civil Procedure Section 1263.320). The appraisal will take into consideration the highest and best use of the property. It can take several weeks or months for an appraisal to be completed, depending on the appraiser's workload.

After the appraisal is completed, staff will review the appraisal to see if it complies with the requirements of the Eminent Domain Law. Staff will then recommend that the governing body of the public entity approve the appraisal and set just compensation. Just compensation must be at least the fair market value of the property as set forth in the appraisal.

Offer

When will the property owners receive an offer to purchase the property?

The public entity will provide the owner with a written offer to purchase the property after it sets just compensation. The public entity generally sends the written offer within thirty (30) days from the date on which the public entity sets just compensation. The public entity cannot offer to purchase the property for less than the fair market value of the property as determined by the appraisal. (Government Code Section 7267.2).

What must the public entity include in the written offer to purchase the property?

Government Code Section 7267.2 requires that the offer include a written statement of, and summary of the basis for, the amount the public entity established as just compensation. The offer must also include the following:

- The date of value, highest and best use, and applicable zoning of property;
- The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value; and
- Where appropriate, a separate statement of the just compensation for the real property acquired and for damages to the remainder, including the calculations and narrative explanation supporting the compensation and any offsetting benefits.

If the property is owner-occupied residential property and contains no more than four residential units, the owners are entitled to review a copy of the appraisal.

Negotiations

The public entity will negotiate with the property owners for the sale of the property after it sends the offer letter

Do the property owners have the right to obtain their own appraisal of the property?

Yes. Property owners have always had the right to obtain their own appraisal of their real property. As of January 1, 2007, however, the public entity must offer to pay the property owners' reasonable costs, up to \$5,000.00, for an independent appraisal of their property. The law requires that an appraiser licensed by the Office of Real Estate Appraisers prepare the independent appraisal. The public entity will inform the owners

of their rights to be reimbursed for these appraisal costs at the time it sends the offer letter.

Are the property owners required to accept the public entity's offer to purchase the property?

No. The property owners are encouraged to contact the public entity to negotiate the sale of the property. The owners can negotiate the amount they believe to be the fair market value of the property and the terms and conditions of the offer.

Are there any advantages to selling the property to a public entity?

Yes. The property owner will receive at least the fair market value of the property and will not be responsible for real estate commissions, title fees, title insurance, escrow fees, closing costs, and other fees and costs. Some acquisitions by public entities in lieu of condemnation may result in tax benefits to the property owners. The Internal Revenue Service will look at specific criteria to determine whether the acquisition by the public entity qualifies for tax benefits. Accordingly, property owners are encouraged to discuss any such tax benefits with their tax advisors.

Negotiated Acquisition

If a negotiated agreement for the sale of the property is reached, the public entity will prepare a purchase and sale agreement. In such cases, the conveyance of the property is handled through an escrow.

Resolution of Necessity

If the public entity and the property owners do not reach an agreement for the sale of the property, the public entity can hold a hearing to determine whether it will acquire the real property by eminent domain.

Notice of Hearing on Resolution of Necessity

If the public entity has determined that it is necessary to consider the acquisition of the real property by eminent domain, it will send a written notice to the property owners informing them of the date, time and location of the public entity's hearing at which it will consider the adoption of a resolution of necessity. (Code of Civil Procedure Section 1245.235). The notice informs the property owners of their right to be heard at this hearing and of their right to present evidence and to preserve their objections to the public entity's right to take the property.

The Eminent Domain Law requires that a public entity make all of the following findings pursuant to Code of Civil Procedure Section 1245.230 to adopt a resolution of necessity authorizing the public entity to acquire the property by eminent domain:

- That the public interest and necessity require the project;
- That the project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
- That the subject property is necessary for the project; and
- That either the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

A public entity may adopt a resolution of necessity only after the governing body has given each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized assessment roll notice and a reasonable opportunity to appear and be heard on the above matters.

The governing body of the public entity will consider all written and oral evidence before it at the hearing, including any objections to the adoption of the resolution of necessity. The public entity can adopt a resolution of necessity authorizing the acquisition of property by eminent domain if at least two-thirds of the all of the members of the governing body vote to adopt the resolution. If the governing body consists of five members, the adoption of a resolution of necessity requires at least four out of five affirmative votes.

Eminent Domain Proceeding

The resolution of necessity is the document that authorizes the public entity's attorneys to commence an eminent domain proceeding. Accordingly, if the governing body of the public entity adopts a resolution of necessity, its attorneys will prepare a complaint in eminent domain and related pleadings to acquire the property by eminent domain. Generally, the complaint in eminent domain will name as defendants any parties that have a recorded interest in the parcel, including the record owners, tenants, easement holders whose interests may be impacted by the acquisition of the property or beneficiaries under deeds of trust. The public entity will serve the property owners and other named defendants with a copy of the summons, complaint and related documents filed with the court. The defendants served with the summons and complaint have thirty (30) days from the date that they are served with the summons and complaint to file an answer or responsive pleading with the court. (Code of Civil Procedure Section 412.20). Property owners should consider retaining an attorney with experience in eminent domain proceedings to represent them in such proceedings. The parties can continue to negotiate after the eminent domain proceeding is filed.

Orders for Prejudgment Possession and Deposit of Probable Compensation

Can the public entity take possession of the property before trial?

A public entity may request an order from the court for early possession of the property. This is called an order for prejudgment possession.

Deposit of Probable Compensation

To obtain an order for prejudgment possession, the public entity must show that it is entitled to acquire the property by eminent domain and that it has deposited with the court for deposit into the county treasury or directly with the State Treasury the amount of probable compensation for the real property. The public entity must submit a summary of the basis for the appraisal when it applies to deposit the amount of probable compensation with the court. The date on which the public entity deposits the probable amount of compensation is generally the date of value in the proceeding. This means that the appraisers for the public entity and property owners will determine the fair market value of the real property in the eminent domain proceeding as of the date of value.

Objection to Motion for an Order for Possession

Property owners have the right to oppose a public entity's motion for an order for prejudgment possession. The public entity's motion for an order for prejudgment possession notifies property owners that they have the right to oppose the motion and that they must serve the public entity and file with the court the opposition to the motion within thirty (30) days from the date on which the property owner was served with the motion. If the property owners' opposition asserts a hardship, it has to be supported by a declaration signed under penalty of perjury stating facts supporting the hardship. The public entity can file a reply to the opposition not less than fifteen (15) days before the hearing. At the hearing, if the motion is opposed, the court may enter an order for possession of the property after considering the relevant facts and any opposition if it finds each of the following:

- The public entity is entitled to take the property by eminent domain;
- The public entity has deposited the amount of probable compensation pursuant to Code of Civil Procedure Section 1255.010 *et seq.*;
- There is an overriding need for the public entity to possess the property prior to the issuance of final judgment in the case and the public entity will suffer a substantial hardship if the application for possession is denied or limited; and
- The hardship that the public entity will suffer if possession is denied or limited outweighs any hardship on the defendant or occupant that would

be caused by the granting of the order for possession. (Code of Civil Procedure Section 1255.410).

Withdrawal of Deposit of Probable Compensation

Property owners can apply to withdraw the funds on deposit with the court. Property owners must serve a copy of their application to withdraw the funds on the public entity. The court cannot order the disbursement of the funds on deposit until twenty (20) days after the date on which the application for withdrawal was served on the public entity. The public entity may file an objection to the withdrawal if, for example, other parties to the proceeding are known or believed to have an interest in the just compensation. Property owners waive any challenges to the public entity's right to take if they withdraw the funds on deposit with the court. Property owners do not, however, waive their claims for greater compensation for the property if they withdraw the funds on deposit.

Exchange of Valuation Data

The parties can agree to exchange statements of valuation data containing the information required by Code of Civil Procedure Section 1258.260 or appraisal reports containing that information on a mutually-agreed to date. If the parties do not mutually agree to exchange valuation data on a specific date, the date of exchange is ninety (90) days before the commencement of trial on the issue of just compensation. This gives the parties the opportunity to analyze the fair market value opinions of the other party's expert and sales data or appraisal methodology relied on by the other party's expert. The parties will generally take the depositions of the other party's appraiser. After the parties exchange valuation data, the parties often negotiate a settlement at a mediation, during informal settlement negotiations, or during a mandatory settlement conference.

Trial

In eminent domain proceedings, the judge decides legal issues, such as the right to take, the issue of what constitutes a larger parcel, and the issue of entitlement to certain damages. Property owners are entitled to have the jury determine the amount of just compensation. The parties resolve the majority of eminent domain proceedings prior to trial.

Vacating the Property

When will property owners and tenants be required to move from the property?

If the public entity and property owners reach a negotiated settlement, the public entity will attempt to determine a mutually agreeable date for owners to move. If the property is condemned, the public entity cannot require the owners to move without a

court order. If the subject property is lawfully occupied, the public entity must serve the property owners with a motion for an order for prejudgment possession ninety (90) days before the court hearing. Orders for prejudgment possession are discussed more fully above. If the order for prejudgment possession is granted, the public entity must serve the property owners with the order thirty (30) days before it intends to take possession of the subject property. If the subject property is unoccupied, the public entity must serve the property owners with a motion for an order for possession sixty (60) days before the court hearing. If the order for prejudgment possession is granted, the public entity must serve the property owners with the order for prejudgment possession ten days before it intends to take possession of the subject property.

Relocation Assistance

Property owners and occupants of property (tenants) that are displaced as the result of a public project, may be entitled to relocation assistance and benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 *et seq.*) and the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations). Benefits may include moving expenses, re-establishment costs, rent differential payments, or interest differential payments. A relocation consultant, hired by the public entity, will meet with the property owners and or tenants to determine their eligibility and potential benefits.

Loss of Business Goodwill

Goodwill is the benefit that accrues to a business as a result of its location, reputation, skill and other factors that contribute to a business maintaining and acquiring patrons. Public entities are required to compensate owners of a business conducted on the property, or on the remainder parcel, if the business owners prove all of the following:

- The loss is caused by the taking of the property or the injury to the remainder;
- The loss cannot reasonably be prevented by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill;
- Compensation for the loss will not be included in payments under Section 7262 of the Government Code.
- Compensation for the loss will not duplicated in the compensation otherwise awarded to the owner.

Business owners must raise their claim for loss of business goodwill in their answer to the public entity's complaint. The public entity will engage a business valuation expert to determine the value of the goodwill of the business in the eminent domain proceeding. Business owners also generally engage a business valuation expert in the eminent domain proceeding.