



COUNCIL AGENDA: 03-15-05

ITEM: 4.7

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 03-08-05

Approved

Date

3/2/05

Council District: 7

SNI: West Evergreen

SUBJECT: FINDING AND DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR CONDEMNING A PORTION OF REAL PROPERTY OWNED BY EDITH GUEVARA TOGETHER WITH A TEMPORARY CONSTRUCTION EASEMENT ON AN ADJACENT PORTION FOR PURPOSES OF THE TOWERS LANE IMPROVEMENT PROJECT CONSISTING OF CONVERSION OF A PRIVATE STREET TO A PUBLIC STREET AND AUTHORIZING THE ACQUISITION OF THESE INTERESTS BY EMINENT DOMAIN

RECOMMENDATION

Adoption of a resolution determining that the public interest and necessity require the acquisition of a portion of a residential parcel currently used as a private street for purposes of converting the acquired property to a public street and installing new asphalt paving, curbs, gutters, storm drainage, sanitary sewer, sidewalks, streetlights and related improvements from the owner, Edith Guevara and located at 2942 Towers Lane, San José, CA 95124 (APN No. 670-13-010) together with a temporary construction easement on an adjacent portion, and authorizing the City Attorney to file suit in eminent domain to acquire such property interests, to apply for an order for possession before judgment, and to prosecute the action to final judgment, and authorizing the deposit of money in court for possession of the property from the funds lawfully available. CEQA: Exempt, PP02-03-046.

BACKGROUND

Towers Lane is a private dirt road that intersects Aborn Road just west of King Road. For over 50 years, nine single-family homes and a church at 1573 Aborn Road have relied on this dirt road for access. These properties together with several vacant lots and a home at 1577 Aborn Road comprise a total of 15 assessor parcels which belong to 12 property owners.

Property owners along Towers Lane first approached the City with a request that the private street be converted to a publicly maintained street right-of-way in order to address the safety and aesthetic problems resulting from the difficulty of obtaining consensus on maintenance issues among abutting owners. It was subsequently determined that the project would require the City to enter into agreements to acquire portions of 14 assessor parcels belonging to 11 of the owners together with temporary construction easements on adjacent portions of the same parcels. In addition, the church property at 1573 Aborn Road would supply the City with a temporary construction easement on a portion of its parcel without the need for a donation agreement.

The proposed Towers Lane Improvement Project will improve the current private dirt roadway to a City standard 34-foot curb to curb two lane minor residential street with sidewalks, storm and sanitary sewers. Towers Lane will be connected to Aborn Road at the southerly end and Amberly Lane at the northerly end. In order to construct the Project, the City must acquire portions of 14 assessor parcels belonging to 11 of the owners together with temporary construction easements on adjacent portions of the same parcels. In addition, the City will need to acquire a temporary construction easement only on the church parcel.

On November 11, 2003, Council adopted a resolution authorizing the Manager to negotiate and execute agreements with the 11 owners of the properties for donation of the portions to be conveyed to the City together with temporary construction easements on adjacent portions. All agreements were fully executed by all 11 owners and the City, with the church providing a temporary construction easement on its parcel. Ten of the 11 owners with fully executed donation agreements met their obligations to the City and their grant deeds have been recorded. Ms. Guevara has not complied with the donation agreement pertaining to her property. Ms. Guevara has insisted upon removal of unrelated, existing municipal building code violation liens against her property as a condition of her execution of a grant deed conveying ownership of the portion needed by the City for the street improvement project.

The proposed fee acquisition is a 26-foot strip along the front of the Guevara property. The proposed Temporary Construction Easement is a 10-foot strip of the Guevara front yard, directly behind the proposed fee acquisition. Street and sidewalk improvements will be constructed in the fee acquisition area. The attachments to this memorandum include Exhibit A-1 (legal description of portion of Guevara parcel to be acquired), Exhibit A-2 (plat map of acquisition portion), Exhibit B-1 (legal description of portion covered by temporary construction easement), Exhibit B-2 (plat map of temporary construction area), Exhibit B-3 (legal interest description of the temporary construction easement), and Exhibit C (location map).

It is anticipated that construction will commence in June 2005 and be completed by December 2005. Copies of the Towers Lane Street Improvement Plans are on file in the Transportation and Development Services Division office in Room 300 in City Hall and are available for inspection.

ANALYSIS

Acquisition

City staff determined that acquisition pursuant to the eminent domain process was the only alternative means available to acquire the Guevara property and temporary construction easement and complete the project in view of the owner's failure to comply with the previously executed donation agreement.

An appraisal was conducted for the City by Diaz, Diaz and Boyd, Inc. and completed on January 7, 2005. In satisfaction of Government Code section 7267.2, an offer to purchase letter specifying a total compensation amount of \$42,700, together with a copy of the appraisal containing legal descriptions and plat maps, was sent to Ms. Guevara by certified mail, on February 11, 2005. As of the date of preparation of this memorandum, no response to the February 11, 2005 offer had been received from Ms. Guevara.

Resolution of Necessity

On February 25, 2005, a notice was sent to Edith Guevara, the owner of record, notifying her that a hearing is scheduled on March 15, 2005 before the City Council to consider the adoption of a Resolution of Necessity determining the following issues:

1. Whether the public interest and necessity require the proposed project.

The existing segment of Towers Lane extending north from the Aborn Road intersection is comprised of a private dirt road which has experienced severe degradation due to lack of maintenance. A portion of Towers Lane at its northern terminus was converted to a public street with full right-of-way amenities upon development of three residential parcels fronting the western side of the street for a distance of approximately 300 feet. This portion of Towers Lane was also connected to Amberly Lane, one of the new public streets constructed as part of the new residential development. The current degraded condition of Towers Lane together with lack of street lights, proper drainage facilities and other related improvements constitute a significant public safety risk for motorists, pedestrians, bicyclists and other users of the private street. The proposed project will reduce the risks to the traveling public by widening and upgrading Towers Lane in accordance with City roadway engineering standards. The proposed Towers Lane project will function as a through street as it makes connections to existing adjacent streets upon completion.

2. Whether the proposed project is planned and located in a manner that would be most compatible with the greatest public good and the least private injury.

As stated below in the section titled "Public Outreach," numerous community meetings have been held with all of the owners of the properties needed for this project. Support for the conversion of the private street to a public street including all of the related improvements has been very strong and consistent throughout the outreach process. Moreover, all of the owners including Ms. Guevara have executed agreements in which they committed themselves to donating portions of their properties together with temporary construction easements on adjacent portions. The conversion of the subject properties to a public street will eliminate the public hazard posed by the private street's present condition and greatly contribute to enhancing the overall appearance and image of the neighborhood. The conversion of Towers Lane to a public street will also permit the City to have PG&E relocate its utility facilities from the middle of the existing private street to the sidewalk area of the future public right of way, which will enhance public safety.

The alignment and cross-section of the proposed public street improvements have been designed to provide a City standard 34-foot curb to curb roadway plus sidewalks and storm and sanitary sewers. A 34-foot roadway is required for residential streets by the City's roadway engineering standards.

3. Whether the property sought to be acquired is necessary for the project.

The existing private roadway is narrower than the City's engineering standards require for residential streets. In addition to the area of the existing dirt street, the City will need to acquire a portion of several front yards to construct an appropriately wide street and sidewalks. At the Guevara parcel, the street and sidewalk alignment will occupy 26 feet of the Guevara parcel. Currently, half street improvement across the Guevara parcel is already improved by a previous residential development. The half street improvement in front of the Guevara parcel will match the existing improvement across the street to complete that segment of Towers Lane. As stated above, all of the properties needed for the future street improvement have been acquired with the exception of the Guevara property. The Guevara property is located near the middle of the project area making it indispensable to the project as the continuity of the future public street would otherwise be interrupted. All of the required properties on either side of Towers Lane are contiguous to one another.

4. Whether the offer required by Section 7267.2 of the Government Code has been made to the owners of record.

A title report issued by Old Republic Title Company on December 11, 2003 shows the owner of record of the subject property to be Edith Guevara, an unmarried woman.

An appraisal was conducted for the City by Diaz, Diaz and Boyd, Inc. and completed on January 7, 2005. In satisfaction of Government Code section 7267.2, an offer to purchase letter specifying a total compensation amount of \$42,700 including \$8,100 for the temporary construction easement and \$34,600 for the portion of the parcel being acquired in fee, together with a copy of the appraisal containing legal descriptions and plat maps, was sent to Ms. Guevara certified mail, on February 11, 2005. As of the date of preparation of this memorandum, no response to the February 11, 2005 offer had been received from Ms. Guevara.

A notice of the March 15, 2005 hearing was sent to Edith Guevara on February 25, 2005.

CONCLUSION

Staff is requesting that the City utilize its power of eminent domain under Sections 1240.010, 1240.110 and 1240.120 of the California Code of Civil Procedure, all of which authorize the City to acquire the proposed property interests from Edith Guevara.

If a Resolution of Necessity is adopted, the City Attorney will then file the necessary papers with the court to commence an eminent domain action. Upon the filing of an eminent domain action, a deposit of probable compensation may be made. A request for an Order for Prejudgment Possession may also be made which would allow the City to take possession of the property before the issue of just compensation is determined.

PUBLIC OUTREACH

To date, six community meetings have been conducted by staff since project inception. In those meetings, the project's scope was discussed including the need for the property owners to donate the necessary right-of-way.

COORDINATION

Preparation of this memorandum has been coordinated with the Planning, Building and Code Enforcement Department, the City Attorney's Office and the City Manager's Budget Office.

COST IMPLICATIONS

The total project budget is \$1,790,000. Of this amount \$100,000 was assumed for land acquisition.

Total budget estimate for all land costs: \$100,000

Amount of recommendation in this acquisition: \$42,700
 (This amount reflects City's offer to be deposited with filing of condemnation in court)

Estimated amount of remaining acquisitions: \$0
 No additional land acquisitions are necessary

Estimated Balance for Land Acquisition: \$57,300

At this point, land acquisition costs are tracking within budgeted levels. However, the ultimate cost for land acquisition is dependent on the outcome of court proceedings.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. For Contract	Budget Page	Last Budget Action (Date, Ord. No.)
001	4243	Towers Lane Improvements	121315	\$1,053,000		2004-2005 Adopted Capital Budget, Page V - 1061	10/12/04 Ord, No.27267
450	4845	Towers Lane Improvements	121315	\$420,000		2004-2005 Adopted Capital Budget, Page V - 1061	
545	4271	Miscellaneous Rehabilitation Projects	121315	\$5,429,000*		2004-2005 Adopted Capital Budget, V-182	2/08/05 Ord. No. 27350
		TOTAL		\$6,902,000			

* A small portion of this miscellaneous funding will be used for sanitary improvements related to the Towers Lane Improvements project.

HONORABLE MAYOR AND CITY COUNCIL

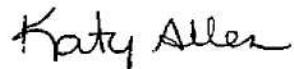
03-08-05

Subject: Public Use and Necessity Hearing-Guevara Towers Lane Property

Page 7

CEQA

Exempt, PP02-03-046.



KATY ALLEN

Director, Public Works Department

DF:hla

3_15_05#4r5.doc

Attachment

EXHIBIT A-1
LEGAL DESCRIPTION OF PROPERTY

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, being more particularly described as follows:

The southwesterly 26.00 feet, measured at a right angle to the southwest line, of Parcel One as described in the Grant Deed recorded on March 26, 1998 as Document No. 14110413, Official Records of Santa Clara County; the description of said Parcel One being repeated herein as follows:

"BEGINNING at the point of intersection of the Northwesterly line of Loupe Avenue with the Southwesterly line of King Road, also known as Silver Creek Road; thence along said line of Loupe Avenue, S. 51(58' W. 708.66 feet to a 3/4 inch iron pipe; thence leaving said line of Loupe Avenue and running N. 38(02' W. 503.07 feet to the true point of beginning, said true point of beginning also being the most Easterly corner of that certain parcel of land described in the Deed from E.G. Wehant, et ux. to E.E. Spain, et ux, dated April 29, 1948 and recorded April 30, 1948 in Book 1607 of Official Records, Page 448, Santa Clara County Records; thence continuing along last named course N. 38(12' W. 150.0 feet to the most Easterly corner of the land conveyed by E.E. Spain, et ux. to Joe A. Sanchez, et ux. by Deed dated October 3, 1950 and recorded October 6, 1950 in Book 2069 of Official Records, page 519, Santa Clara County Records; running thence along the Southeasterly line of the land conveyed to Sanchez, S. 50(32' W. 135.92 feet to a point on the Southwesterly line of land conveyed to said Spain; running thence along said Southwesterly line; S. 38(02' E. 150 feet to the most Southerly corner of land conveyed to said Spain; thence along the Southeasterly line of the land conveyed to said Spain, N. 52(32' E. 135.92 feet to the true point of beginning, and being a part of the Rancho Yerba Buena."

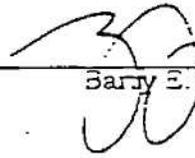
The Right-of-Way Donation contains approximately 3,900.00 square feet (0.09 acres).

This description was prepared from record information only and does not reflect data based on a field survey. The Basis of Bearings for this description is the bearing N 38°02' W, being the

bearing of the southwesterly line of Parcel One as described in the Grant Deed recorded on March 26, 1998 as Document No. 14110413. Official Records of Santa Clara County.

Attached hereto and by reference a part hereof is a plat labeled "EXHIBIT ^{A2} PLAT" depicting the subject property.

The above description of real property was prepared by me in conformance with the requirements of Section 3725 (g, k, l, m) of the Business and Professions Code of the State of California.


8.23.02
Barry E. Ng, PLS 7713

670-43-910





SOUTHWESTERLY LINE
OF KING ROAD

KING ROAD
(A.K.A. SILVER CREEK ROAD)

POINT OF BEGINNING
PARCEL ONE

670-13-004
LANDS OF CARRISTA TRUST

N 38°02' W

150.00'

TRUE POINT OF BEGINNING
PARCEL ONE

503.07'

NORTHWESTERLY LINE
OF LOUPE AVENUE

S 51°58' W
700.66'

670-13-023
LANDS OF SANDREE

N 60°22' E 135.92'

17' INGRESS-EGRESS/
UTILITY EASEMENT
PER 2436 O.R. 501

15' P.G. & E. EASEMENT
PER 1422 O.R. 536

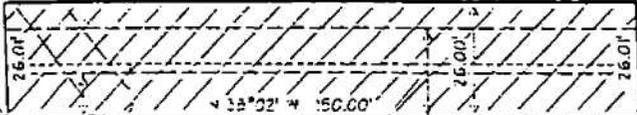
670-13-010
PARCEL ONE PER
DOCUMENT NO. 1410413

670-13-009
LANDS OF
THE DAT TAT TRAN
FAMILY TRUST

20.951'

S 25°05' W

E 33°02' E 150.00'



S 51°58' W

S 51°58' W

ABORN ROAD (FORMERLY LOUPE AVENUE)

TOWERS LANE

S 33°02' E

TOWERS LANE

(BASIS OF BEARINGS)
10' PUBLIC UTILITIES EASEMENT
PER DOC. NO. 15334000

AMBERLY LANE

670-42-027
LANDS OF KHAKH

670-42-031
LANDS OF BARRETT

670-13-014
LANDS OF MARQUEE

670-13-015
LANDS OF DAN
MINH DUC, LLC



SUBJECT PROPERTY CONTAINS
APPROXIMATELY 3,900.00 SQUARE FEET (0.09 ACRES)

22:23-0109*

EXHIBIT 'A-2' PLAT

PREPARED BY
CITY OF SAN JOSE
SURVEY SECTION
AUGUST 23, 2002

DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, being more particularly described as follows:

A 10.00 foot wide strip of land, the southwest line of which is coincident with the northeast line of the following described property:

The southwesterly 26.00 feet, measured at a right angle to the southwest line, of Parcel One as described in the Grant Deed recorded on March 26, 1998 as Document No. 14110413, Official Records of Santa Clara County; the description of said Parcel One being repeated herein as follows:

"BEGINNING at the point of intersection of the Northwesterly line of Loupe Avenue with the Southwesterly line of King Road, also known as Silver Creek Road; thence along said line of Loupe Avenue, S. 51(58' W. 708.66 feet to a ¾ inch iron pipe; thence leaving said line of Loupe Avenue and running N. 38(02' W. 503.07 feet to the true point of beginning, said true point of beginning also being the most Easterly corner of that certain parcel of land described in the Deed from E.G. Wehunt, et ux. to E.E. Spain, et ux, dated April 29, 1948 and recorded April 30, 1948 in Book 1607 of Official Records, Page 448, Santa Clara County Records; thence continuing along last named course N. 38(12' W. 150.0 feet to the most Easterly corner of the land conveyed by E.E. Spain, et ux, to Joe A. Sanchez, et ux, by Deed dated October 3, 1950 and recorded October 6, 1950 in Book 2069 of Official Records, page 519, Santa Clara County Records; running thence along the Southeasterly line of the land conveyed to Sanchez, S. 50(32' W. 135.92 feet to a point on the Southwesterly line of land conveyed to said Spain; running thence along said Southwesterly line; S. 38(02' E 150 feet to the most Southerly corner of land conveyed to said Spain; thence along the Southeasterly line of the land conveyed to said Spain, N. 52(32' E. 135.92 feet to the true point of beginning, and being a part of the Rancho Yerba Buena."

The Temporary Construction Easement contains approximately 1,500 square feet (0.03 acres).

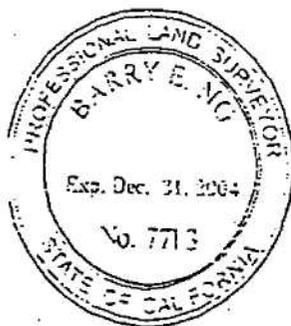
This description was prepared from record information only and does not reflect data based on a field survey. The Basis of Bearings for this description is the bearing N 38°02' W, being the bearing of the southwesterly line of Parcel One as described in the Grant Deed recorded on March 26, 1998 as Document No. 14110413, Official Records of Santa Clara County.

Attached hereto and by reference a part hereof is a plat labeled "EXHIBIT 'B-2' PLAT" depicting the subject property.

The above description of real property was prepared by me in conformance with the requirements of Section 3726, (a), (b), (c) of the Business and Professions Code of the State of California.

 8.23.02
Barry E. Ng, PLS 7713

570-13-0107CE





SOUTHWESTERLY LINE
OF KING ROAD

KING ROAD
(A.K.A. SILVER CREEK ROAD)

POINT OF BEGINNING
PARCEL ONE

970-43-004
LANDS OF ENVESTA TRUST

N 33°02' W

503.07

S 51°58' W
100.00'

TRUE POINT OF BEGINNING
PARCEL ONE

SOUTHWESTERLY LINE
OF LIME AVENUE

ALBORN ROAD (FORMERLY LOUPE AVENUE)

N 89°16' W
5 51°58' W

TOWERS
LANE

S 33°02' E

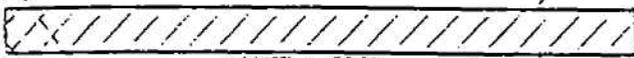
970-43-023
LANDS OF ENVESTA TRUST

970-43-010
PARCEL ONE PER
DOCUMENT NO. 1440413

970-43-009
LANDS OF
THE DAT TAT TRAN
FAMILY TRUST

12' ACCESS-EGRESS
UTILITY EASEMENT
PER 1436 O.L. 101

10' E. EASEMENT
PER 1422 O.L. 106



N 33°02' W 150.00'

N 33°02' W 150.00'

(BASIS OF BEARINGS)
20' PUBLIC UTILITIES EASEMENT
PER DOC. NO. 15334000

TOWERS LANE

AMBERLY LANE

970-42-027
LANDS OF KHAZE

970-42-031
LANDS OF BARRETT

970-43-014
LANDS OF WARGUEZ

970-43-015
LANDS OF DAN
MINH DUC LLC



TEMPORARY CONSTRUCTION EASEMENT CONTAINS
APPROXIMATELY 1,500.00 SQUARE FEET (0.03 ACRES)

22-13-01072

EXHIBIT 'B-2' PLAT

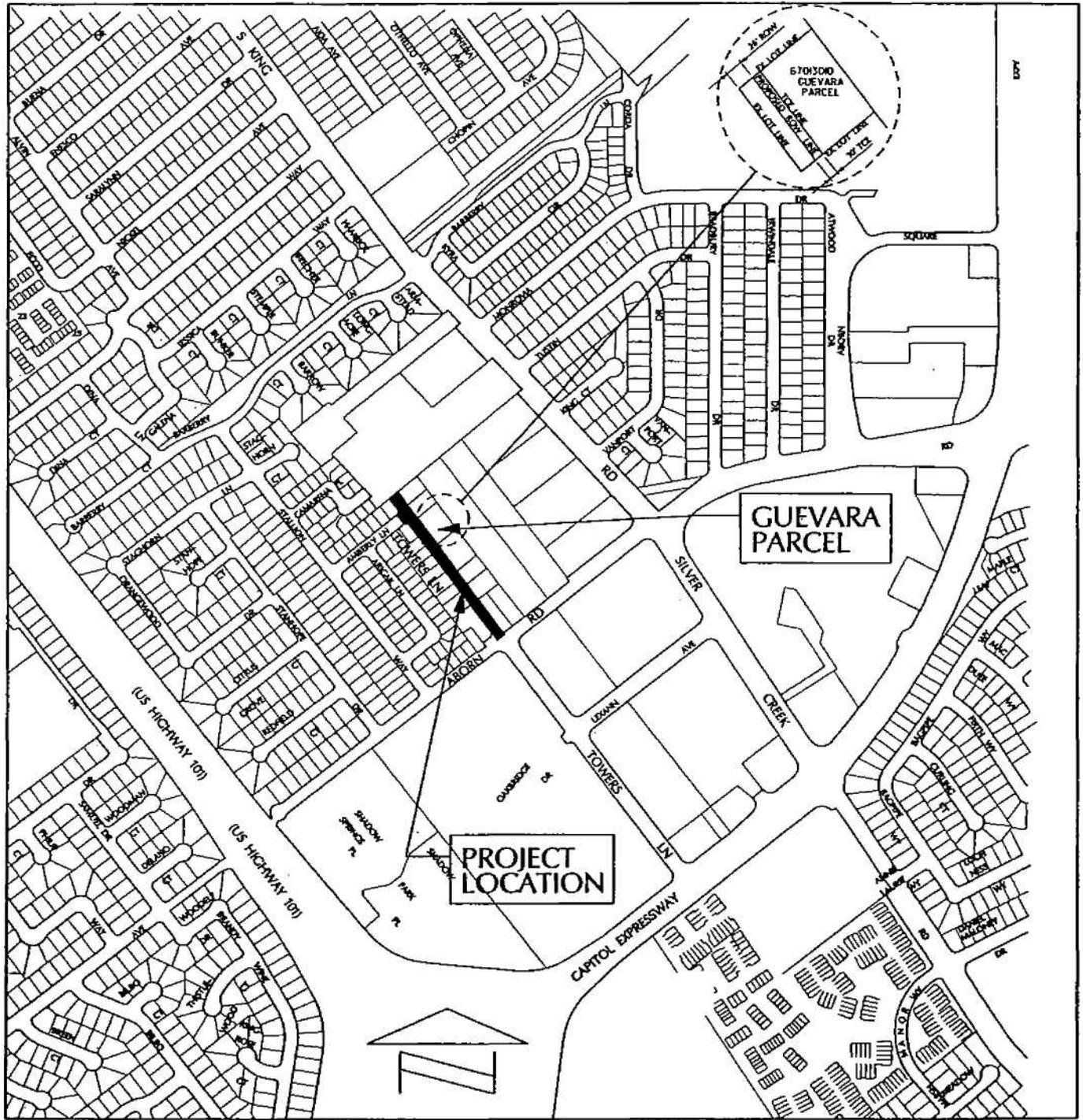
PREPARED BY
CITY OF SAN JOSE
SURVEY SECTION
AUGUST 23, 2002

EXHIBIT B-3

Legal Interest Description (Temporary Construction Easement)

A temporary construction easement ("TCE") to utilize the area described in the attached legal description and plat as a working area for workers, vehicles and equipment during all weekday daylight hours, together with the right to use of the area for purposes of overnight parking of vehicles and equipment, storage of construction materials and supplies or as a working area during non-daylight hours or on days other than weekdays in case of emergency. The term shall be 18 months commencing on execution of the property and TCE purchase agreement. This TCE also entitles the City to operate and regulate the use of the Easement Area in accordance with all applicable federal, state and local laws.

As to any other parties other than the property owner and City, the easement is exclusive. The City shall be obligated to repair or replace in kind any existing improvements located within the TCE area which are damaged during construction.



LOCATION MAP

EXHIBIT C

NOT TO SCALE

