



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Hans F. Larsen
Kim Walesh

**SUBJECT: ROUTE 101/YERBA BUENA ROAD
RIGHT-OF-WAY**

DATE: December 5, 2011

Approved

Date

12/12/11

COUNCIL DISTRICT: 2, 7 & 8

RECOMMENDATION

- (a) Approve an ordinance pursuant to Section 1702 of the City Charter to authorize the establishment of a public right-of-way over an approximately 850 feet long by a variable of 25-45 feet wide piece of City-owned property that currently comprises a portion of Ramblewood Park adjacent to Route 101 southbound off-ramp to Yerba Buena Road to accommodate the Route 101 Improvement Project, Phase II.
- (b) Adopt a resolution declaring parcels located at the interchange of Route 101 and Yerba Buena Road, and identified in Exhibit A, as surplus to the needs of the City.
- (c) Adopt a resolution authorizing the City Manager to negotiate and execute:
 - (1) A Highway Easement Deed with the State of California for the area within Ramblewood Park established by Council as a public right-of-way in Recommendation (a) to provide Caltrans the property rights associated with the ownership, operations and maintenance of existing State of California facilities along the Route 101 southbound off ramp to Yerba Buena Road;
 - (2) A Right of Entry and Transfer Agreement to:
 - (a) Provide the State of California the temporary entry rights to:
 - (1) Operate and maintain certain highway improvements previously constructed;
 - (2) Facilitate the right-of-way certification to complete the Route 101 Improvement Project, Phase II; and
 - (3) Undertake construction of such Phase II.
 - (b) Accomplish the subsequent transfer by City to the State of California of City's interest in the property declared surplus for the operation and maintenance of Route 101; and
 - (3) Any additional documents and to take any additional actions necessary to effect the terms of agreements authorized in Recommendations (c)(1) and (c)(2).

OUTCOME

The recommended action establishes a public right-of-way over a portion of Ramblewood Park and allows the City to enter into agreements with Caltrans to resolve outstanding right-of-way issues in the vicinity of the Route 101/Yerba Buena interchange. This allows Caltrans to certify that they are in possession of the right-of-way necessary to proceed with advertising the Route 101 Freeway Improvement Project, Phase II (between Capitol Expressway and Yerba Buena Road) for construction beginning in the second half of 2012. Meeting this deadline is a prerequisite toward securing the Corridor Mobility Improvement Account (CMIA) funding currently programmed for Phase II in the amount of \$24,000,000.

BACKGROUND

Route 101 Corridor Improvements

The Route 101 Freeway Improvement Project, between I-280 and Yerba Buena Road is one of the City's top freeway priorities for implementation. The project will reduce traffic congestion, improve mobility and traffic safety, and improve local access to East San José and the Evergreen areas. Due to the cost and complexity of the project the Route 101 Improvement Project has been divided into two phases:

- Phase I consists of freeway improvements between I-280 and Capitol Expressway and includes the replacement of the Tully Road overcrossing at Route 101, reconfiguration of the Route 101/Tully Road interchange from a full cloverleaf to a partial cloverleaf interchange, and the construction of a fifth southbound lane. Phase I is currently under construction and will be completed in the spring of 2012.
- Phase II consists of freeway improvements between Capitol Expressway and Yerba Buena Road and includes the modification of the Route 101/Capitol Expressway interchange from a full cloverleaf to a partial cloverleaf, extension of the fifth southbound lane from Capitol Expressway to Yerba Buena Road, construction of a southbound Route 101 auxiliary lane between Capitol Expressway and Yerba Buena Road, removal of the existing southbound collector-distributor road between Capitol Expressway and Yerba Buena Road to construct a separate Yerba Buena Road off ramp from southbound Route 101, and modification of the northbound on ramp from Yerba Buena Road. Phase II construction is expected to follow the completion of Phase I.

Prior to the advancement of Phase II, certain right-of-way transfers between the City and Caltrans that were contemplated to be included as part of the original construction of the Route 101/Yerba Buena interchange must be addressed.

Prior Obligations between the City and Caltrans for the Route 101/Yerba Buena Interchange

The City and Caltrans entered into two agreements associated with the original Route 101/Yerba Buena interchange. The first was a freeway agreement executed on December 3, 1985, and the second a Cooperative and Escrow agreement for the interchange construction executed on June 17, 1986. These two agreements with Caltrans contemplated that the City would acquire and convey to Caltrans the necessary right-of-way to build the Route 101/Yerba Buena interchange. The City acquired those property rights required by Caltrans to construct the Route 101/Yerba Buena interchange, however, the transfer of the properties to Caltrans was not completed.

In order to advance the Route 101 Phase II Improvement project, Caltrans requires that the right-of-way be certified. The right-of-way certification is a written statement summarizing the ownership and control of the right-of-way necessary for the proposed construction project and normally requires all right-of-way transfers to be completed prior to certification. The purpose is to document the property interests of all property owners within the project limits and make sure Caltrans has the authority to construct the project prior to the solicitation of construction bids. Currently, Caltrans is unable to complete the right-of-way certification to move the project to bid because the City still owns certain property within the Phase II project limits.

Special Right-of-Way Considerations

For the Phase II project there is a portion of the existing right-of-way and associated improvements that was constructed within Ramblewood Park and will require special considerations as part of the conveyance to Caltrans.

Ramblewood Park is a 9.4 acre facility located on the western edge of Route 101 just north of Yerba Buena Road. On November 5, 2002, the residents of San José voted to approve the use of certain portions of Ramblewood Park for school purposes. Voter approval was required due to the restrictions of Section 1700 of the City Charter requiring voter approval for any leases, permits, or licenses of parkland for more than three years. After receiving voter approval, the City entered into a lease agreement with Franklin-McKinley School District on January 23, 2004, to allow Ramblewood Elementary School to be built on park lands. The area of the park property subject to this lease consists of 4.08 acres. Ramblewood Park borders Route 101 for a length of approximately 850 feet along its eastern boundary. Along this boundary, a portion of the existing Route 101 southbound off ramp to Yerba Buena Road and a combined soundwall/retaining wall system were constructed on what is currently described as Ramblewood Park property.

Schedule

In order to secure the CMIA funding currently programmed for Phase II in the amount of \$24,000,000, the right-of-way needs to be certified in early 2012 and the Route 101/Capitol/Yerba Buena project must be advertised in early 2012.

ANALYSIS

Charter Section 1702 and Highway Easement in Ramblewood Park

As currently described, Ramblewood Park extends into the Route 101 southbound off ramp to Yerba Buena Road. Along the off ramp, a retaining wall approximately 600 feet long and 30 feet high was constructed to hold back the soil mass of the Ramblewood Park. A sound wall approximately 200 feet long and 10 feet high sits on top of the retaining wall closest to Yerba Buena Road. Caltrans requires that 15 feet inboard along the school side of the soundwall/retaining wall be part of the freeway right-of-way limits in order to access and maintain the soundwall/retaining wall system. Typically, Caltrans requires fee ownership of areas within the freeway right-of-way limits. However, for this section of right-of-way Caltrans has agreed to accept a highway easement from the City.

The City Charter in Section 1702 provides that the Council, by ordinance, may authorize the opening, establishment, and/or maintenance of streets or other public ways in or through any public parks, public places, or other public property of the City. Staff recommends that the Council adopt an ordinance to designate 31,109 square feet along the eastern boundary of Ramblewood Park as a public right-of-way. Staff also recommends that the 31,109 square feet of public right-of-way be transferred to Caltrans in the form of a highway easement. The proposed area of the highway easement is shown on Exhibit B. These actions complete a portion of the City's prior obligation to convey to Caltrans the right-of-way required for the original Route 101/Yerba Buena interchange and typically should not impact the current or future use and enjoyment of the remaining school grounds and parklands.

It should be noted that Caltrans may need to conduct inspections and perform maintenance activities along the soundwall/retaining wall that may disturb the existing landscape, irrigation, and hardscape within the school/park boundary. In consideration of the fact that this area should have been conveyed to the State as part of the previous highway project in 1986 without impact thereon of the school/park, it is contemplated that the City would accept responsibility for any restoration work necessitated due to damages caused by Caltrans to the existing school landscaping, irrigation, and hardscape in connection with the easement. However, Caltrans would be responsible for maintaining its improvements in the easement area in good condition and would be otherwise responsible for any damage or liability occurring by reason of anything done or omitted to be done by Caltrans in connection with the easement.

Staff has been in discussion with Franklin McKinley School District on this matter and District staff have raised no objections to the conveyance of an easement to Caltrans and are prepared to execute a written consent to the Highway Easement.

Right of Entry and Transfer Agreement for Route 101 Improvement Project, Phase II

The Route 101 Improvement Project, Phase II, is scheduled to be advertised in early 2012. The final right-of-way engineering and related documentation to allow for transfer of City's property rights over the remaining right-of-way required for the original Route 101/Yerba Buena interchange can not be completed in time to meet the project advertising schedule. In order to continue with Phase

II, Caltrans has agreed to accept a temporary Right of Entry (ROE) from the City in order to certify the right-of-way pending completion of that transfer. The term of the ROE would be three years and would allow a "one time" three-year extension if the permanent property transfer has not been completed by the end of the initial three-year term. Exhibit B indicates the area to be covered by the ROE.

Included in the ROE would be language that provides for the transfer of those permanent property rights from the City to Caltrans over the remaining right-of-way required for the original Route 101/Yerba Buena interchange, as was contemplated to be conveyed in the 1986 agreement. At present, it is contemplated that substantially the entire area to be covered by the ROE would also be the subject of this further transfer. These properties have already been acquired by the City (although ownership of certain portions has not been verified) and the City's rights therein will be conveyed to Caltrans in fee (not easement) for the use as highway right-of-way. This would include portions of Yerba Buena Road between the north and southbound highway ramps, with respect to which the City would be reserving any rights deemed necessary to continue to operate street and utility facilities.

Municipal Code Chapter 4.20 permits the transfer of City-owned surplus property upon Council finding and determining that the property is not needed for, nor adaptable to, municipal purposes. Further, Municipal Code Section 4.20.080 authorizes the transfer of surplus property through direct sale to government agencies upon such terms and conditions as Council may direct.

Caltrans will complete the right-of-way survey of the area to be transferred in fee and prepare the proper legal descriptions and plats for City review and approval. Once the survey, legal descriptions, and plats are completed and approved by the parties, the City would transfer fee ownership to the State and the State would accept such transfer. It is presently contemplated that such transfer would be made by quitclaim deed (i.e. conveying whatever rights the City may hold) on an "as-is" basis. The consideration the City receives in exchange for the transfer of its property rights is the public benefit derived from the various highway facilities constructed and maintained over or in the vicinity of the areas over which rights are to be transferred.

Delegation of Authority to the City Manager

To more efficiently effect the terms of the highway easement deed and ROE agreement described above, it is further recommended that the City Manager be authorized by the Council to negotiate and execute on behalf of the City any additional documents and to take any additional actions as are necessary to accomplish the same.

EVALUATION AND FOLLOW-UP

No further follow-up actions with the Council are expected for the recommendation action.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The approval of this agreement does not meet any of the above criteria; however, this memorandum will be posted on the City's website for the January 10, 2012, Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office; Department of Parks, Recreation and Neighborhood Services and the Department of Planning, Building and Code Enforcement.

FISCAL/POLICY ALIGNMENT

The recommended action aligns with the Transportation and Aviation City Services Area's strategic goal related to facilitating efficient operations of the regional freeway systems. The adopted 2011-2012 Traffic Capital Budget identifies the Route 101 improvements and upgrades of the Tully, Capitol and Yerba Buena interchanges as priority projects for the City of San José.

COST SUMMARY/IMPLICATIONS

There are no cost implications directly associated with the recommended actions.

CEQA

Mitigated Negative Declaration, File No. OA05-010.

Acting as Lead Agency, Caltrans prepared an Initial Study and adopted a Mitigated Negative Declaration (MND) in 2005 for the US 101 Operational Improvement Project. The City, acting as a Responsible Agency, can rely upon Caltrans' MND for purposes of informing the City's decision to complete the proposed agreement with Caltrans.

HONORABLE MAYOR AND CITY COUNCIL

December 5, 2011

Subject: Route 101/Yerba Buena Road Right-of-Way

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/s/

HANS F. LARSEN

Director of Transportation

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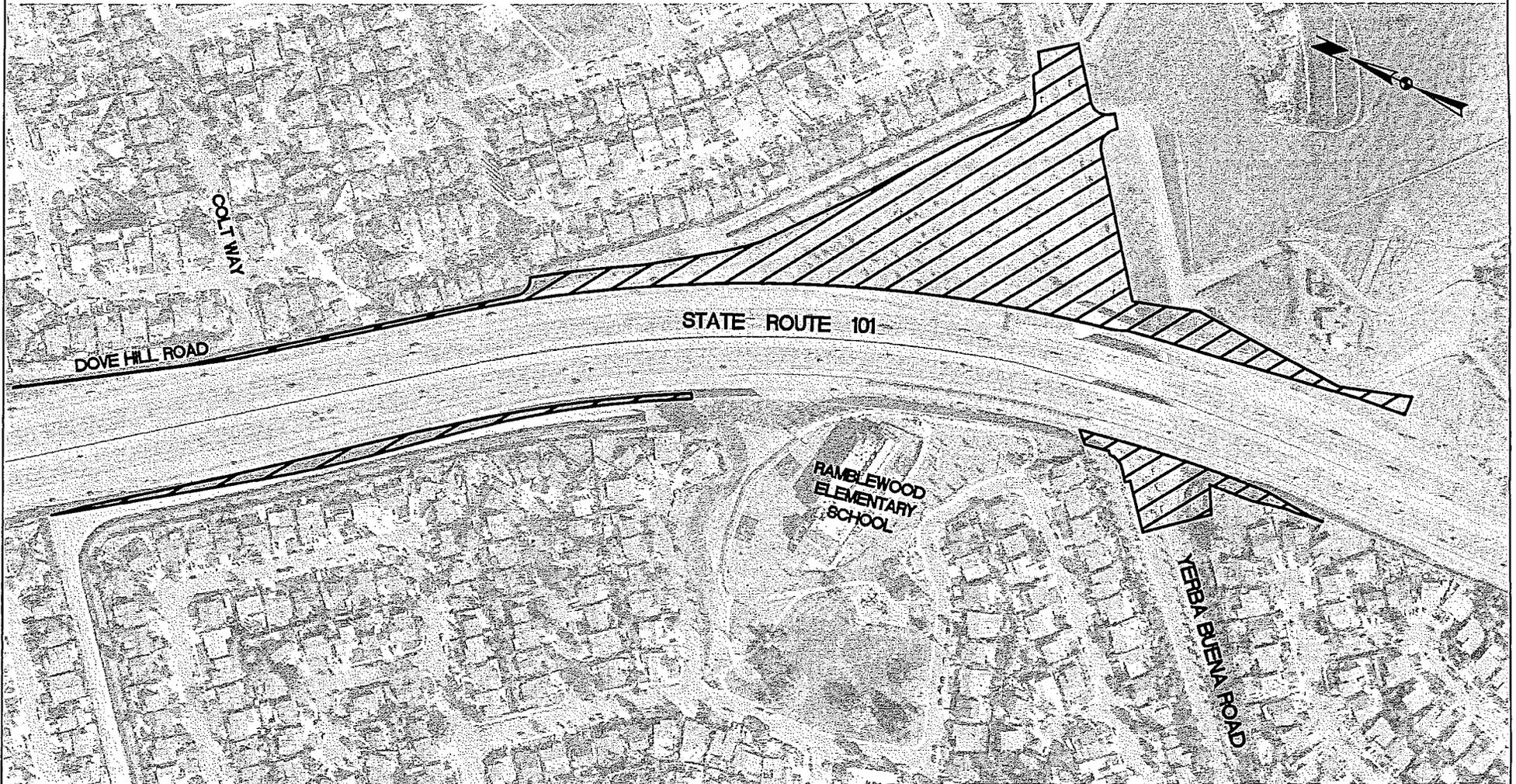
KIM WALESH

Director of Economic Development
Chief Strategist

For questions please contact Ray Salvano, Division Manager for Regional Transportation Projects, at (408) 975-3706.

Attachments

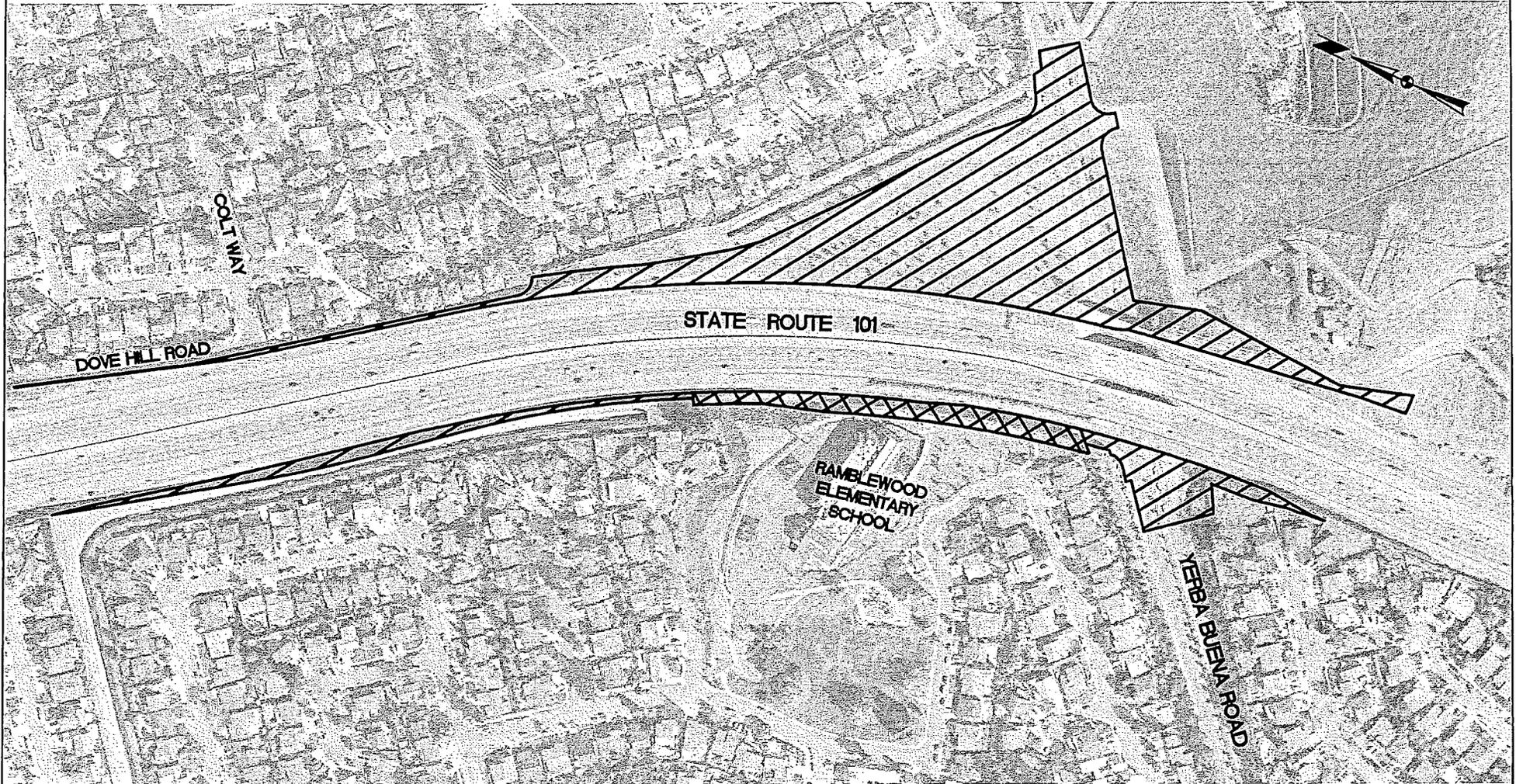
ROUTE 101 IMPROVEMENT PROJECT CAPITOL EXPRESSWAY TO YERBA BUENA ROAD



SURPLUS PROPERTY

SCALE: 1"=300'

ROUTE 101 IMPROVEMENT PROJECT CAPITOL EXPRESSWAY TO YERBA BUENA ROAD



-  RIGHT OF ENTRY
-  HIGHWAY EASEMENT

SCALE: 1"=300'