



STAFF REPORT

DATE: July 11, 2017
TO: Honorable Mayor and City Council Members
FROM: Derek P. Cole, City Attorney
SUBJECT: Resolution of Necessity, 541 Laurel Road

Recommendation:

Adopt the Resolution of Necessity (4/5 vote required).

Introduction:

The City is working with the Western Area Power Administration (WAPA) for the relocation of their facility to accommodate proposed pavement widening and signal improvements as part of the City's Laurel Road and Rose Avenue Signalization Project" CIP 191. In order to accommodate this utility relocation, the City will need a strip along the frontage of Laurel Road 25' feet deep for street improvements (approximately 3,624.51 square feet), an easement strip for a WAPA power line along the frontage of Laurel Road 30' feet deep (approximately 4,349.41 square feet), and to remove 32 eucalyptus trees for construction, all of which are located at 541 Laurel Road ("Property"). This Property is owned by Robert E. Beck, trustee of the Robert E. Beck Living Trust ("Owner"). Portions of this Property must therefore be acquired in furtherance of the utility relocation and intersection improvement projects.

Attached as exhibits to the proposed Resolution are: 1) the legal description of and plat map depicting the proposed street dedication; 2) the legal description of and plat map depicting the proposed transmission line easement; and 3) a plat map showing both the roadway dedication and transmission line easement.

Staff has been in contact with the attorney of the Owner. An appraiser was retained, who assigned a fair market value to the portions of the Property to be acquired. An offer from the City to acquire portions of the property for the amount stated in the appraisal was made but not yet accepted. Therefore, in order to meet the construction schedule, the City must consider the filing of an eminent domain action, which will allow the City to proceed with the project while the fair market value is determined by the Court.

Before an eminent domain case can be filed, the City Council must adopt, by at least a 4/5 vote, a "Resolution of Necessity." This resolution makes certain findings required by state law and authorizes the city attorney to begin the proceedings.

It must be emphasized that the price to be paid for the property is NOT the subject of this hearing. This hearing has the sole purpose of determining whether the statutory findings can be made.

Statutory Findings: -

The statutory findings required to be made, and the facts supporting the making of the findings, are as follows:

1. *The project is planned and located in a manner that will be most compatible with the greatest public good and the least private injury.*

Facts: Yes, the acquisition would be a part of the City's WAPA utility pole relocation project, which is part of the broader Laurel Road and Rose Avenue Signalization Project CIP 191. This Laurel Road and Rose Avenue project will result in a widening of the intersection, construction of new traffic signals, and an improvement of the traffic flows on Laurel Road at Rose Avenue. This project will improve the safety of a major intersection in the City and improve the quality of the City's public infrastructure, as well as enhance the quality of life for residents as a whole.

A strip necessary for street improvements and another easement strip for a WAPA power line are located on the front end of the subject property. The taking cannot be avoided due to the location of the utility poles and the proposed widening of Laurel Road. The removal of the 32 trees is necessary for the commencement of construction related to these projects.

2. *The taking of the project is necessary for the proposed project.*

Facts: Yes, as stated above, without these portions of the Property, the City cannot make the desired street improvements and construct a WAPA power line. Additionally, the 32 trees on the Property must be removed to make room for construction related to these projects.

3. *The offer to purchase required by California Government Code Sec. 7267.2 was made to the owners of the property interests.*

Facts: Yes, a written offer to acquire the listed portions of the property at the fair market value as determined by the MAI appraiser was made on May 15, 2017.

4. *The necessary notice of this hearing was given as required by Code of Civil Procedure Sec. 1245.235.*

Facts: Yes, the notice was given by the City Clerk on June ____, 2017.

5. *The City of Oakley has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain.*

Facts: Yes, as outlined in this staff report.

6. *The City of Oakley has complied with all provisions of the California Environmental Quality Act for the project.*

Facts: Yes, through association with the CEQA compliant WAPA utility relocation project.

7. *If any portion of the property is appropriated for a public use, the public uses are necessary and paramount pursuant to Code of Civil Procedure Sec. 1240.610, or alternatively, will not unreasonably interfere with or impair the continuance of the public use as it then exists or can be reasonably expected to exist in the future.*

Facts: Yes, the street dedication and transmission line easement acquired, and the removal of the 32 trees, will be used for public purposes.

Fiscal Impact:

Acquisition of this property is included in the costs of the Laurel Road and Rose Avenue Signalization Project budget.

Conclusion:

If the City Council wishes to proceed with the project, then this Resolution should be adopted.

Attachments

- 1) Resolution with Exhibits

Cc: Bryan Montgomery, City Manager
Derek Cole, City Attorney
Kevin Rohani, City Engineer

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY DECLARING
THE NECESSITY TO COMMENCE EMINENT DOMAIN PROCEEDINGS FOR THE
ACQUISITION OF PORTIONS OF 541 LAUREL ROAD, OAKLEY**

WHEREAS after consideration of the staff report, staff presentation, discussion, oral testimony and evidence presented at the hearing on the date of the adoption of this Resolution, all of which are incorporated as if set forth herein, the City Council of the City of Oakley by vote of at least two-thirds of its members, FINDS, DETERMINES, DECLARES AND RESOLVES that:

- a) The public interest, convenience and necessity require the proposed project, to wit: Acquisition of a strip in fee along the frontage of Laurel Road for a street dedication, acquisition of a transmission line easement along the frontage of Laurel Road, and the removal of 32 eucalyptus trees for construction, all of which are located at 541 Laurel Road and all uses appurtenant thereto ("Project"); and
- b) The portion of the real property to be acquired fee simple is described and depicted in Exhibit "A," the portion of the real property to be acquired as a Western Area Power Administration easement is described and depicted in Exhibit "B," and the strip in fee and transmission line easement are depicted together in Exhibit "C," attached hereto and incorporated herein by this reference ("Property"). The Property is located within the City of Oakley, County of Contra Costa, State of California.
- c) The use of eminent domain to acquire the Property is authorized by Streets & Highways Code Sec. 10102;
- d) The Project is planned and located in a manner that will be most compatible with the greatest public good and least private injury; and
- e) The taking of the Property is necessary for the proposed project and such taking is authorized by Section 19, Article I of the California Constitution, Section 1230.010 *et seq* of the California Code of Civil Procedure, and other applicable law; and
- f) The offer to purchase required by California Government Code Sec. 7267.2 was made to the owner of the Property interests; and
- g) The necessary notice of this Resolution has been given, as required by Code of Civil Procedure section 1245.235;
- h) The City of Oakley has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the property interests described herein; and

- i) The City of Oakley has fully complied with all provisions of the California Environmental Quality Act for the Project; and

WHEREAS the City Council hereby declares that it is its intention to acquire the Property in the name of the City of Oakley in accordance with the laws of the State of California governing condemnation proceedings; and

WHEREAS the City Council further finds that if the Property has been appropriated to some public use, the public uses to which it is to be applied by the City, as described above, are more necessary and paramount public uses, pursuant to Code of Civil Procedure Sec. 1240.610 or, alternatively, will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future, pursuant to Code of Civil Procedure Sec. 1240.510;

NOW, THEREFORE, BE IT RESOLVED that the City Attorney is authorized and directed to prepare, institute and prosecute in the name of the City of Oakley such proceedings in the proper Court having jurisdiction thereof as may be necessary for the acquisition of said Property, including the filing of a motion for an Order of Possession prior to judgment.

BE IT FURTHER RESOLVED that this Resolution shall be effective immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Oakley at a regular meeting held on the 11th day of July, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

Kevin Romick, Mayor

ATTEST:

Libby Vreonis, City Clerk
By Kim Carmody, Deputy City Clerk

Date



April 28, 2017
BKF No. 20167094
Page 1 of 1

EXHIBIT "A"
Legal Description

STREET DEDICATION
Portion of Lands of The Robert E. Beck Living Trust

Real property in the City of Oakley, County of Contra Costa, State of California, described as follows:

Being a portion of the lands described in that certain Quitclaim Deed, recorded on May 7, 2009 as Document No. 2009-0103062, Official Records of Contra Costa County, and more particularly described as follows:

BEGINNING at the northeasterly corner of said Lands (Doc: 2009-0103062), said corner being also a point on the southerly line of Laurel Road, formerly known as Laurel Avenue, and being 50.00 feet in width;

Thence leaving said corner and along the easterly line of said Lands, South 00°45'30" West, 25.00 feet;

Thence parallel with said southerly line of Laurel Road, North 89°30'10" West, 145.00 feet to the westerly line of said Lands;

Thence along said westerly line, North 00°45'30" East, 25.00 feet to said southerly line of Laurel Road;

Thence along said southerly line, South 89°30'10" East, 145.00 feet to the point of **BEGINNING**.

Containing an area of 3,625 square feet or 0.083 acres, more or less.

Being also a portion of Contra Costa County Assessor's Parcel No. 034-290-098 per Roll Year 2016-2017.

As shown on plat attached hereto and by this reference made part hereof as Exhibit B.

John Koroyan

John Koroyan
P.L.S. No. 8883

APRIL 28, 2017
Dated



40'

50'

STREET DEDICATION
3,625 SQ. FT.±

(FORMERLY LAUREL AVENUE)
LAUREL ROAD
(WIDTH VARIES)

S89°30'10"E 145.00'

P.O.B.

L2

L1

N89°30'10"W 145.00'

THE ROBERT E. BECK
LIVING TRUST
DOC. 2009-0103062

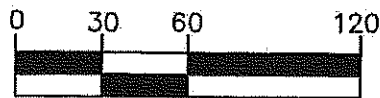
APN 034-290-098

ADDRESS:
541 LAUREL ROAD
OAKLEY, CA 94561

ROSE AVENUE
(65' WIDE)

1"=60'

LINE TABLE		
NO.	BEARING	LENGTH
L1	S00°45'30"W	25.00'
L2	N00°45'30"E	25.00'



SCALE IN FEET



LEGEND

P.O.B. POINT OF BEGINNING
APN ASSESSOR'S PARCEL NUMBER

EXHIBIT "B"

PLAT TO ACCOMPANY
LEGAL DESCRIPTION

K:\2016\167094\SUR\DWG\PLAT\541 Laurel Rd - Street Dedication.dwg



1730 N. FIRST STREET
SUITE 600
SAN JOSE, CA 95112
408-467-9100
408-467-9199 (FAX)

Subject **STREET DEDICATION**
 PORTION OF APN 034-290-098
 Job No. 20167094 OAKLEY, CA
 By JG Date 04-28-17 Chkd. JVK
 SHEET 1 OF 1



April 28, 2017
BKF No. 20167094
Page 1 of 1

EXHIBIT "A"
Legal Description

TRANSMISSION LINE EASEMENT
Portion of Lands of The Robert E. Beck Living Trust

Real property in the City of Oakley, County of Contra Costa, State of California, described as follows:

Being a portion of the lands described in that certain Quitclaim Deed, recorded on May 7, 2009 as Document No. 2009-0103062, Official Records of Contra Costa County, and more particularly described as follows:

Beginning at the northeasterly corner of said Lands (Doc. 2009-0103062), said corner being also a point on the southerly line of Laurel Road, formerly known as Laurel Avenue, and being 50.00 feet in width;

Thence leaving said corner and along the easterly line of said Lands, South 00°45'30" West, 25.00 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence leaving said point and continuing along said easterly line, South 00°45'30" West, 35.00 feet;

Thence parallel with said southerly line of Laurel Road, North 89°30'10" West, 145.00 feet to the westerly line of said Lands;

Thence along said westerly line, North 00°45'30" East, 35.00 feet;

Thence parallel with said southerly line of Laurel Road, South 89°30'10" East, 145.00 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing an area of 5,075 square feet or 0.117 acres, more or less.

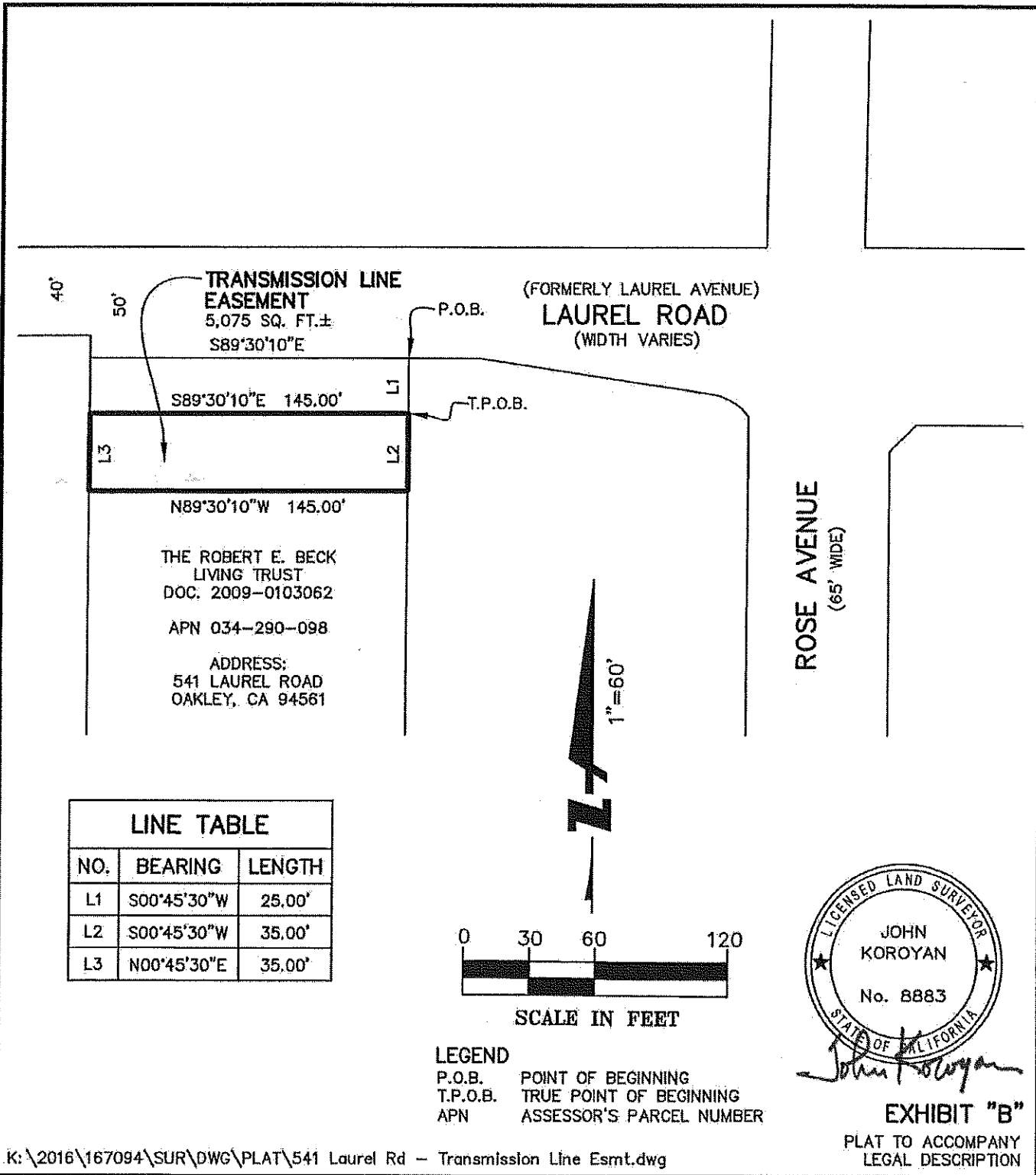
Being also a portion of Contra Costa County Assessor's Parcel No. 034-290-098 per Roll Year 2016-2017.

As shown on plat attached hereto and by this reference made part hereof as Exhibit B.

John Koroyan
John Koroyan
P.L.S. No. 8883

APRIL 28, 2017
Dated





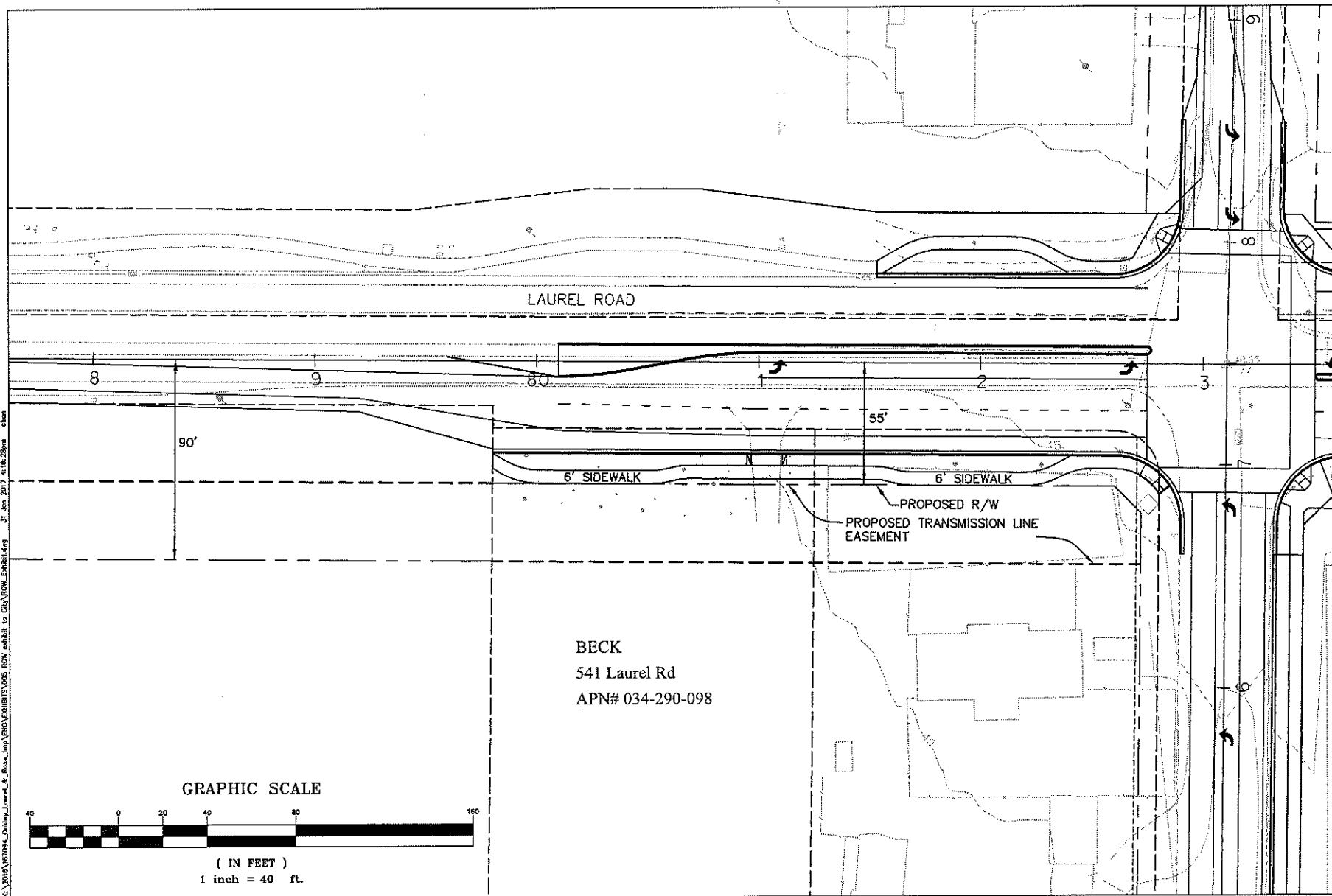
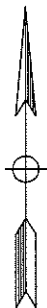
LINE TABLE		
NO.	BEARING	LENGTH
L1	S00°45'30"W	25.00'
L2	S00°45'30"W	35.00'
L3	N00°45'30"E	35.00'

K:\2016\167094\SUR\DWG\PLAT\541 Laurel Rd - Transmission Line Esmt.dwg



1730 N. FIRST STREET
SUITE 600
SAN JOSE, CA 95112
408-467-9100
408-467-9199 (FAX)

Subject TRANSMISSION LINE EASEMENT
PORTION OF APN 034-290-098
Job No. 20167094 OAKLEY, CA
By JG Date 04-28-17 Chkd. JVK
SHEET 1 OF 1



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GRAPHIC SCALE



(IN FEET)
1 inch = 40 ft.

BECK
541 Laurel Rd
APN# 034-290-098