



Meeting Date: 03 / 10 /09

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Lou Balderrama, City Engineer

Agenda Item No. I-7

Reviewed By: City Manager [Signature]

City Attorney [Signature]

Finance [Signature]

Public Works [Signature]

DATE: February 27, 2009

TO: City Council

FROM: Lou Balderrama, City Engineer
Public Works Department [Signature]

SUBJECT: Hueneme Road Widening Project - Right-of-Way Acquisition

RECOMMENDATION

That City Council approve and authorize the mayor to execute the Right-of-Way Purchase Agreement in the amount of \$64,200 with and accept an easement deed from A & J Oxnard, Limited Liability Company (LLC) immediately east of Saviers Road (Agreement No. A-7144).

DISCUSSION

The Hueneme Road Widening Project is an approved Capital Improvement Project. Hueneme Road is a 2-lane road with the exception of a mile long 4-lane segment within the urban portion of Port Hueneme and Oxnard from Ventura Road to Saviers Road. The purpose of the project is to extend the 4-lane segment from Saviers Road to Acturus Avenue to provide increased traffic capacity, a median and center turn lane for safety, bike lane on both sides of the road, and to upgrade railroad crossing signalization and protection equipment.

This project requires the City to acquire additional right-of-way for road widening from the property owned by A & J Oxnard located at the south side of Hueneme Road, just east of Saviers Road. Public Works staff retained the services of Hamner, Jewell and Associates for the right-of-way acquisition. An appraisal was performed in accordance with Federal requirements, and was presented to the property owner. Staff negotiated with and was able to reach an agreement for the right-of-way with A & J Oxnard (Attachment No. 1). The right-of-way property was appraised at \$64,200 or \$21 per square foot based on a market value approach of several comparable industrial land sales within Ventura County from December 2005 to April 2007. The recommended Council action is necessary in order for staff to proceed with the Hueneme Road Widening Project.

FINANCIAL IMPACT

The total cost of the right-of-way acquisition of \$64,200 will be funded from the Hueneme Road Improvement Project No. 983109 Account No. 354-9832-826-8604.

Attachment #1 Agreement for Right-of-Way Acquisition

Attachment #2 Easement Deed from A&J Oxnard, LLC

RIGHT OF WAY PURCHASE AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this 10th day of March, 2009, by and between A & J Oxnard, a California Limited Liability Company, hereinafter called “Grantor”, and the City of Oxnard, a Municipal Corporation, hereinafter called “City”.

An instrument in the form of an Easement Deed (“Deed”) covering the property particularly described therein (“Property”) has been executed concurrently with this Agreement and delivered to City representatives.

In consideration of which, and other considerations hereinafter set forth, it is mutually agreed as follows:

1. The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for said document and shall relieve the City of all further obligations or claims concerning the City’s acquisition of the Property, or on account of the location, grade or construction of the proposed public improvements, except as stated in Paragraphs 2.E. and 2.F. below.

2. The City shall:

A. PAYMENT - Pay to the order of the Grantor the sum of \$64,200.00 as consideration in full for the real property rights described in the Deed, for the loss, replacement and moving of any improvements, and for entering into this Agreement. Said sum shall be paid at close of escrow, which shall occur when title to the Property has vested in City free and clear of all monetary liens, encumbrances and assessments, as well as easements, liens, encumbrances or leases, recorded or unrecorded, which would interfere with the City’s proposed use of the easement except as have been accepted in writing by the City.

B. RECORDATION OF INSTRUMENT - Accept the Deed herein referenced and cause the same to be recorded in the office of the Ventura County Recorder at such time as when clear title can be conveyed.

C. MISCELLANEOUS COSTS - Pay all escrow, title insurance, and recording fees incurred in this transaction.

D. CLEARANCE OF BONDS, ASSESSMENTS, OR DELINQUENT TAXES – Have the authority to deduct and pay from the amount shown in Clause 2.A. above any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid nondelinquent assessments which have become a lien at the close of escrow. City agrees to obtain and provide Grantor an updated title report within 14 days of Grantor’s execution hereof to determine any such items.

E. CONSTRUCTION AND TEMPORARY EASEMENT AREA RESTORATION-

Generally restore that portion of Grantor's real property utilized for the Temporary Construction Easement to a comparable condition as that which existed before City's construction, to the extent reasonably practical.

F. INDEMNIFICATION – Indemnify, defend and hold harmless Grantor, its members, partners, shareholders, agents, representatives, employees, officers, directors, property managers and their respective successors and assigns from any and all claims, damages, costs, judgments, actions, causes of action, demands, obligations, expenses and fees, including without limitation, attorneys fees and consultant's fees, or liability (collectively "Claims") caused by City or its officers, employees, representatives, consultants or agents specifically arising from City's construction and restoration work on Grantor's property or specifically resulting from City's operation of City road facilities on Grantor's property. City's obligations hereunder shall not extend to that portion of any Claims that are caused by the negligence or intentional misconduct of Grantor, its representatives or agents. This indemnification shall survive the close of escrow and shall not merge with the Easement Deed.

3. The Grantor:

A. PAYMENT ON MORTGAGE OR DEED OF TRUST - Agrees that any or all monies payable under this Agreement up to and including the total amount of the unpaid principal and interest on the note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said mortgage(s) or deed(s) of trust, shall upon demand(s) and after a reasonable opportunity, specifically 30 days, for Grantor to negotiate a release by the beneficiary, be made payable to the mortgagee(s) or beneficiary(s) entitled thereunder.

B. LEASE INDEMNIFICATION - Warrants that there are no oral or written leases on all or any portion of the areas described in the Deed. If there are any leases, Grantor agrees to hold the City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any lease of said property held by tenant of Grantor.

C. PERMISSION TO ENTER - Grants to the City, its agents and contractors, permission to enter upon the real property areas described in the Deed, including the temporary construction easement area, before the close of escrow for the purposes of preparation for and construction of the City's road project, subject to all applicable terms and conditions contained in this Agreement and the associated Deed.

D. HAZARDOUS WASTE - Warrants and represents that Grantor has no reason to believe that any hazardous waste, extremely hazardous waste, or hazardous substance (as those terms are defined in sections 25117, 25115, and 25316 of the California Health and Safety Code) has come to be located on, beneath or within the Easement Areas described in the Deed. If Grantor becomes aware of the presence of any hazardous waste, extremely hazardous waste, or hazardous substance on, beneath, or within these areas, Grantor shall immediately so advise the City.

4. The City and Grantor agree:

A. ESCROW - To open an escrow in accordance with this Agreement at Camarillo Escrow Company. This Agreement constitutes the joint escrow instructions of City and Grantor, and the escrow agent to whom these instructions are delivered (hereinafter "Escrow Agent") is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time and will make all due effort to close escrow within ninety days of execution by Grantor and delivery to City of this Agreement and the associated Deed..

As soon as possible after opening of escrow, City will deposit the executed Deed, with Certificate of Acceptance attached, with the Escrow Agent on Grantor's behalf. City agrees to deposit the purchase price upon demand of the Escrow Agent. City and Grantor agree to execute and deposit with Escrow Agent all additional instruments as may be necessary to complete this transaction. All funds received in this escrow shall be deposited with other escrow funds in a general escrow fund account(s) and may be transferred to any other such escrow trust account in any State or national bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account.

Any taxes which have been paid by Grantor, prior to opening of this escrow, shall not be pro-rated between City and Grantor, but Grantor shall have the sole right after close of escrow to apply to the County Tax Collector of Ventura County for any refund of such taxes which may be due Grantor for the period after City's acquisition.

- i) ESCROW AGENT DIRECTIVES - The Escrow Agent is authorized to, and shall:
- a) Pay and charge Grantor for any due and unpaid taxes and/or any penalties and interest thereon, and for any delinquent assessments or bonds against that portion of the Property subject to this Agreement, as required to convey clear title.
 - b) Pay and charge City for any escrow fees, charges and costs payable under Paragraph 2.C. of this Agreement.
 - c) Disburse funds and deliver the Deed when conditions of this escrow have been fulfilled by City and Grantor.
 - d) Following recording of the Deed, provide City, at City's expense, with a CLTA Standard Coverage Policy of Title Insurance in the amount of \$64,200.00 issued by Chicago Title Company showing that title to the Property is vested in City, subject only to the following exceptions, and the printed exceptions and stipulations in said policy:
 - 1) The lien for real property taxes not yet due and for assessments not yet due and real property taxes for the fiscal year in which escrow closes; and

2) Other items as may be approved in writing by City.

- ii) CLOSE OF ESCROW - The term "close of escrow", if and where written in this Agreement, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is hereby authorized when Escrow Agent has completed performance under paragraph 4A(i) above. **TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE AS SOON AS POSSIBLE.** If (except for deposit of money by City, which shall be made by City upon demand of Escrow Agent before close of escrow) this escrow is not in condition to close within 150 days from date of these instructions, any party who then shall have fully complied with his instructions may, in writing, demand the return of his money or Property; but if none have complied, no demand for return thereof shall be recognized until five (5) days after Escrow Agent shall have mailed copies of such demand to all other parties at their respective addresses shown in these escrow instructions, and if any objections are raised with said five (5) day period, Escrow Agent is authorized to hold all papers or documents until instructed by a court of competent jurisdiction or mutual written instructions. If no demands are made, proceed with closing this escrow as soon as possible.

B. TESTING, INSPECTION, ENTRY ON PREMISES, AND RESPONSIBILITY FOR CONDITION OF PREMISES - Grantor grants to City, and its authorized agents, permission to enter upon the Property at all reasonable times prior to close of escrow for the purpose of making all such inspections, tests, borings, samplings, and other such investigations as City shall deem reasonable to determine the physical condition of the Property, including, but not limited to, the existence of asbestos, lead-based paint and other surface coverings, and the existence on or contamination of the Property by "hazardous materials". Should City discover any physical condition of the Property which City deems unacceptable, City may terminate this Agreement and cancel the escrow, by giving written notice to Grantor and escrow holder within forty-five (45) days after the date of City's execution of this Agreement. Upon receipt of written notice of City's intent to terminate this Agreement, escrow holder shall return all money and documents deposited in escrow to the party originally making such deposit, and neither party shall have any further obligation to the other under this Agreement. City's failure to give written notice of termination of this Agreement within forty-five (45) days of the date of City's execution of this Agreement shall be deemed City's acceptance of all such conditions of the Property as City could have discovered by reasonable inspection, testing, boring, sampling, and other investigations of the Property.

As used in this Agreement, the term "hazardous materials" means all flammable, explosive, noxious, toxic, or otherwise dangerous materials, wastes, products, or substances, the handling, use, discharge, or release of which is regulated or the contamination by which is prohibited by any federal, state, or local statute, ordinance, rule, or regulation, including, but not limited to, those substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; The Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; The Resource Conservation & Recovery Act, 42 U.S.C. Section

6901, et seq.; and also including those substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code or as "hazardous substances" in Section 25316 of the California Health and Safety Code; and those chemicals to which reference is made in the Safe Drinking Water and Toxic Enforcement Act of 1986, Section 25249.5, et seq. of the California Health and Safety Code.

C. JUDGMENT IN LIEU OF DEED - In the event Grantor is unable to deliver title in a reasonable time under the terms of the Agreement, the City may file an action in eminent domain to pursue the acquisition of the real property interests described in the referenced Deed, and this Agreement shall constitute a stipulation which may be filed in said proceedings as final and conclusive evidence of the total amount of damages for the taking, including all of the items listed in Section 1260.230 of the Code of Civil Procedure, regarding said property rights.

D. ARTICLE HEADINGS - Article headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

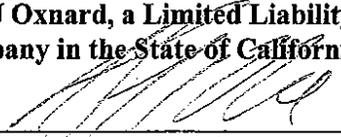
E. COMPLETE UNDERSTANDING - This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements or understandings, written or oral. This Agreement may not be amended except in writing by the parties hereto or their successors or assigns.

F. CITY COUNCIL APPROVAL - This Agreement is subject to and conditioned upon approval and ratification by the City Council of the City of Oxnard. This Agreement is not binding upon the City until executed by the appropriate City official(s) acting in their authorized capacity.

No Obligation Other Than Those Set Forth Herein Will Be Recognized.

GRANTOR:

**A & J Oxnard, a Limited Liability
Company in the State of California**

By: 
Name: Artranik Sinanian
Title: Managing Member

By: _____
Name: _____
Title: _____

Signatures continue on following page

CITY OF OXNARD:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney

APPROVED AS TO CONTENT:



Ken Ortega, Public Works Director

Order No.
Escrow No.

WHEN RECORDED MAIL TO:
City Clerk
City of Oxnard
305 West Third Street
Oxnard, California 93030

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

No fee per Government Code 6103

City Clerk
City of Oxnard
305 West Third Street
Oxnard, California 93030

DOCUMENTARY TRANSFER TAX \$.....
..... Computed on the consideration or value of property conveyed; OR
..... Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

Signature of Defarant or Agent determining tax-Firm Name

No Documentary Transfer Tax per Taxation Code 11922

APN: 231-0-092-105

EASEMENT DEED

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

A & J Oxnard, a California Limited Liability Company in the state of California
(hereinafter referred to as "Grantor"),

hereby GRANT(S) to the City of Oxnard ("City"), a municipal corporation, its successors and assigns:

A. PERMANENT ROADWAY EASEMENT: A perpetual, permanent and exclusive public road and slope easement for the present and future construction, reconstruction, operation, repair and maintenance of a public road and appurtenances, and for such excavation and embankment of slopes for the lateral and subjacent support of the road, roadbed and appurtenances, in such number and size, and with such accessory parts and structures (hereafter referred to as "City Road Facilities"), as City, or its successors in interest, from time to time, deem necessary to install over, upon, under and across that certain real property situated in the City of Oxnard, County of Ventura, State of California, described as follows:

See attached legal description Exhibit "A" and depiction Exhibit "B",
each attached hereto and made a part hereof.

The easement granted herein also includes the right but not the obligation to plant and maintain grass, plants, trees or shrubs within the easement area(s), and to install, construct and maintain utilities, water and sewer pipelines, storm drains and culverts, fiber optics, and all associated appurtenances, bicycle paths, walking paths, sidewalks and related facilities.

The provisions hereof shall inure to the benefit of the City, its successors and assigns, and shall bind the heirs, executors, administrators, assigns and successors in interest of the respective parties hereto.

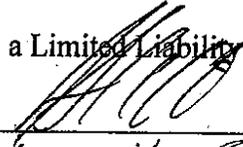
B. TEMPORARY CONSTRUCTION EASEMENT: A **Temporary Construction Easement** for the purposes of facilitating construction of City Road Facilities, including the right to place equipment and vehicles, pile earth thereon, and utilize said Temporary Construction Easement for all other related activities and purposes in, on, over, under, through, and across that certain portion of the Real Property which is described and depicted as in Exhibit "A" and depicted in Exhibit "B", attached hereto and incorporated by reference herein ("Temporary Construction Easement"). City shall maintain at least one

12 foot wide access point to Grantor's above-referenced property for Grantor's use at all times during construction. This Temporary Construction Easement shall commence thirty (30) days following the date of a Notice of Commencement of Construction sent by City to Grantor by US Mail or other reputable carrier, and shall automatically terminate one year following commencement; provided, however, that City shall have the right to extend the Temporary Construction Easement term in additional three (3) month increments if City determines that additional time beyond the one year period is necessary for construction completion. In such case, City shall have the unilateral right to extend the Temporary Construction Easement period through construction completion and agrees to compensate Grantor (\$800.00) Eight Hundred Dollars for each three month extension term exercised. Payment for any such extensions shall be paid by City to Grantor concurrent with City's written notice to Grantor of City's intent to exercise such extension provisions. In any event, this Temporary Construction Easement shall terminate on or before December 31, 2012. Upon completion of said construction, said Temporary Construction Easement area will be generally restored to the condition that existed prior to construction, to the extent reasonably practical, unless otherwise agreed to in writing between Grantor and City.

Executed this 18th day of December 2008.

GRANTOR:

A & J Oxnard, a Limited Liability Company in the state of California

By: 
Name: Antranil Sinanian
Title: Managing Member

By: _____
Name: _____
Title: _____

Order No.
Escrow No.

State of California
County of Los Angeles

On December 18, 2008 before me, Mary Kempfman, Notary Public, personally

appeared Antranik Sivanian, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature [Signature] (Seal)



State of California
County of _____

On _____ before me, _____, Notary Public, personally

appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature _____ (Seal)

Attachment 2
Page 3 of 6

CERTIFICATE OF ACCEPTANCE, GOVERNMENT CODE SECTION 27281

This is to certify that the City of Oxnard, a municipal corporation, hereby accepts for public purposes the real property, or interest therein, described in that easement deed dated December 18, 2008, from A & J Oxnard, a Limited Liability Company, grantor therein, to the City of Oxnard, grantee therein, and consents to the recordation thereof.

In Witness Whereof, I have hereunto set my hand this 10th day of March, 2009.

City of Oxnard

By: _____

Name: Dr. Thomas E. Holden

Title: Mayor

EXHIBIT A

HUENEME ROAD WIDENING

A portion of Lot 3, Subdivision No. 84 of Rancho el Rio de Santa Clara o' la Colonia in the City of Oxnard, County of Ventura, State of California, as per map recorded in Book 3, Page 14 of Miscellaneous Records (Maps) in the office of the County Recorder of said County, described as follows:

BEGINNING at the intersection of the southerly line of Hueneme Road, 50 feet wide, per partition of said Rancho recorded on March 6, 1878 in Book 6, Page 161 (Page 216) of Deeds, in the office of said County Recorder with the east line of land conveyed to Baldwin Builders, a California Corporation, by Grant Deed recorded July 28, 1993 as Document No. 93-135830 of Official Records in the office of said County Recorder; thence along said east line,

- 1st: South 9.75 feet; thence,
- 2nd: South 88°38'39" West 217.34 feet to the southerly prolongation of the easterly line of Hueneme Road widening (25 feet) to the State of California by Grant Deed recorded September 28, 1961 in Book 2052, Page 359 of Official Records in the office of the County Recorder of said County; thence along said southerly prolongation and said easterly line of Hueneme Road widening,
- 3rd: North 00°34'23" East 17.06 feet to said southerly line of Hueneme Road, 50 feet wide; thence along said southerly line,
- 4th: South 89°25'37" East 217.12 feet to the **POINT OF BEGINNING**.

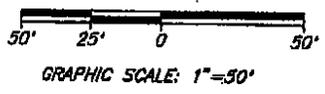
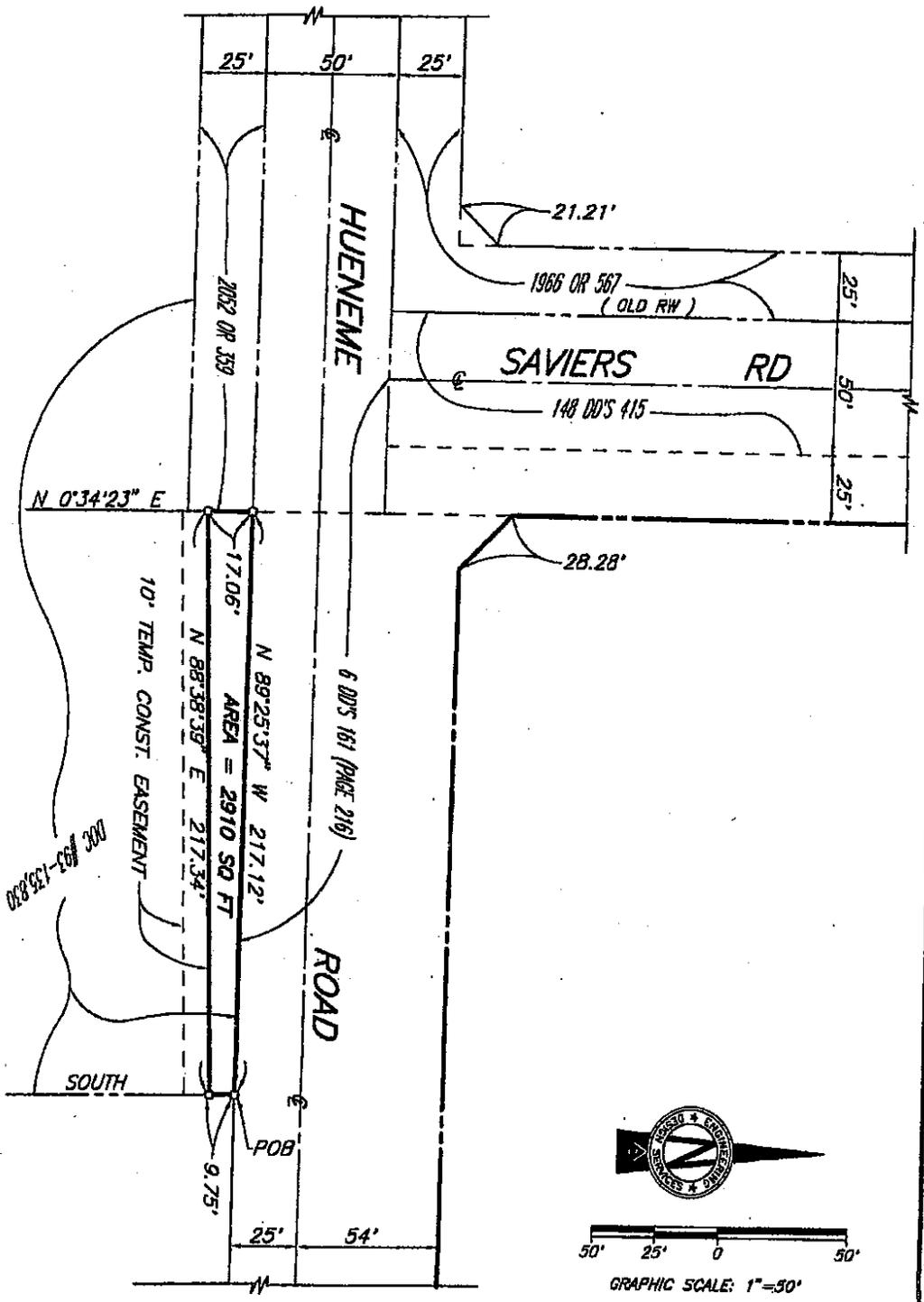
TOGETHER WITH a Temporary Construction Easement, 10.00 feet wide, lying adjacent southerly to the above described parcel of land.

97-54e-r41

Attachment 2
Page 5 of 6

EXHIBIT B

Q:\AutoCAD PROJECT Files\Streets-Transportation-Traffic\Hueneeme Road Bridge Widening\Drawing\R-O-W 97-82E.dwg, 11/22/2006 10:03:31 AM



A PORTION OF LOT 3, SUBDIVISION #84 OF RANCHO EL RIO DE SANTA CLARA O' LA COLONIA PER BOOK 3, PAGE 14 OF MAPS, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA.

CITY OF OXNARD, CALIFORNIA			
DEPARTMENT OF PUBLIC WORKS			
ROAD RIGHT OF WAY			
HUENEME ROAD EAST OF SAVIERS ROAD			
APPROVED BY: _____			
CITY SURVEYOR	LS. 4842	EXP. 9-30-2008	DATE
SCALE: HORIZ.	1" = 50'		
VERT.	N/A		
DRAWN BY: J. CALIMLIM		SHEET NO. 1 OF 1	
CHECKED BY: HUNG LE		DRAWING NUMBER 97-82ER	