



CITY OF
HAYWARD
HEART OF THE BAY

9

DATE: June 30, 2009

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Adoption of a Resolution of Necessity to Initiate Eminent Domain Proceedings to Acquire Real Property – APN 428-0066-078 through 081, owned by the Svend Hansen Trust

RECOMMENDATION

That Council adopts the attached Resolution of Necessity to Initiate Eminent Domain Proceedings to Acquire Real Property for the Route 238 Corridor Improvement Project at Mission Boulevard and Foothill Boulevard (Assessor's Parcel Numbers 428-0066-078 through 081), owned by the Svend Hansen Trust.

BACKGROUND

On November 27, 2007, Council approved the Route 238 Corridor Improvement Project and certified the Final Environmental Impact Report (FEIR). The project approved by Council is located along Foothill Boulevard and Mission Boulevard between the City limits to the north and Industrial Parkway to the south. It includes a downtown, one-way loop street system; peak hour travel lanes on Foothill Boulevard north of A Street and on Mission Boulevard from Foothill to Palisade Street; other roadway improvements in the downtown and along Foothill Boulevard and Mission Boulevard; and improvements at major intersections such as Foothill-Mission-Jackson and Mission Boulevard-Carlos Bee Boulevard. In addition, the project includes pedestrian and bicycle improvements, and landscaping enhancements along the entire Route 238 Corridor. The project as approved requires the acquisition of 30 parcels, including full acquisition of 19 parcels and partial acquisition of 11 parcels. These 30 parcels are owned by 26 property owners.

DISCUSSION

There are four parcels of property required to widen Mission Boulevard, replace parking that will be eliminated along Mission Boulevard, and to provide landscaping and an enhanced gateway to Downtown Hayward. These four parcels of property, consisting of 37,873 square feet of APNs 428-0066-078 through 081, are part of a triangular block located at the intersection of Mission Boulevard and Foothill Boulevard. There are two buildings located on the property. The Discount

Furniture Store is located at 22850 Mission Boulevard and Golden State Floor Covering was located at 22803 Foothill Boulevard. The City has entered into a relocation agreement with one of the property tenants, Golden State Floor Covering, who have vacated the site. Relocation negotiations with the Discount Furniture Store tenant are on-going. There are also three billboards, owned by CBS Outdoor Advertising, located on the property. Discussions for relocating these billboards are also on-going.

These parcels are located within the Alquist-Priolo Special Studies Zone, which follows the known location of the Hayward Fault. There are two known traces of the fault that cross the site, including one which is located under the Discount Furniture Store building. There was a known underground storage tank that was removed from this site. A Phase Two environmental assessment of the site is underway to see if there may be other underground storage tanks or other contaminants on the site.

The City has obtained an appraisal of this property by Dean Chapman and Associates and has offered, in writing, to purchase this property from the Svend Hansen Trust for its appraised value (refer to Exhibit A). Subsequently, the Trust rejected that offer and asked that they be reimbursed for an independent appraisal (refer to Exhibit B). The City has reimbursed the Trust for this appraisal. In addition, the City has provided the Svend Hansen Trust a copy of the appraisal prepared by Dean Chapman and Associates in exchange for a copy of the independent appraisal prepared for the Trust (refer to Exhibit C). Without this additional right-of-way, the City will not be able to widen Mission Boulevard as designed, construct the additional public parking spaces near the Mission Boulevard / D Street intersection, will have less landscaped area, will retain three large advertisement billboards and will have a less prominent gateway to the downtown core.

By adopting the attached Resolution of Necessity, the City Council will authorize the City to initiate a condemnation action so that it may acquire this necessary property from the Svend Hansen Trust for the property's fair market value. Although this action is being recommended at this time, it may be possible to settle this matter outside of court. To that end, staff will continue to communicate with the owner and attempt to reach agreement on the acquisition.

A two-thirds vote of the Council is required to approve this action, pursuant to the Code of Civil Procedure. While public testimony is not restricted at the hearing, only the following items are required to be considered:

- 1) Whether or not the public interest and necessity require the Route 238 Corridor Improvement Project;
- 2) Whether or not the proposed project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
- 3) Whether or not the property in question is necessary for the project; and
- 4) Whether or not a purchase offer complying with GC 7267.2 has been made but not accepted (refer to Exhibits A and B).

The City completed the environmental review for this action in November 2007, by approving the FEIR for the Route 238 Corridor Improvement Project. The Code of Civil Procedure requires written notice to the property's owner of the City's hearing on the proposed Resolution of Necessity. The City sent this notice to the Svend Hansen Trust by first-class mail on June 8, 2009 (refer to

Exhibit D). An attorney representing the Svend Hansen Trust has indicated its desire to speak at the hearing (see Exhibit E).

FISCAL AND ECONOMIC IMPACT

The cost estimate developed for the Final Environmental Impact Report for the Route 238 Corridor Improvement Project was \$111 million. ACTA has allocated \$38.4 million for the Final Design and Right-of-Way Acquisition Phase of this Project. The updated cost estimate continues to show the project to be within budget.

To date, the City has expended nearly \$16 million for this phase of the project. ACTA has reimbursed approximately \$15.1 million of those expenditures. Because all of this acquisition phase of the work will be funded by Measure B, there will be no impact to the City's General Fund from adopting the Resolution of Necessity as proposed.

PUBLIC CONTACT

Staff presented a report on the overall progress of the project at a Council Work Session on January 20, 2009.

SCHEDULE

Design and right-of-way acquisition are proceeding on schedule. The project's estimated schedule is as follows:

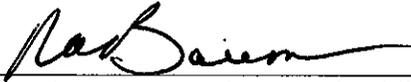
Final Design and Right-of-Way Acquisition Complete	January 2010
Approve Plans and Advertise for Bid	February 2010
Award Construction Contract	April 2010
Begin Construction	May 2010
Construction Complete	December 2012

Prepared by:



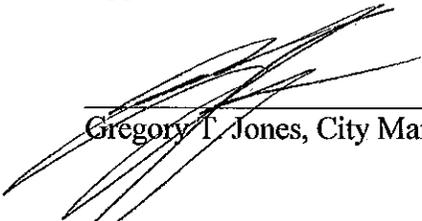
Morad Fakhrai, Deputy Director of Public Works

Recommended by:



Robert A. Bauman, Director of Public Works

Approved by:



Gregory T. Jones, City Manager

- Attachments:
- Exhibit A: Letter to Purchase Property (includes location map)
 - Exhibit B: Rejection of Offer
 - Exhibit C: Independent Appraisal – Dean Chapman & Associates
 - Exhibit D: Written Notice to Svend Hansen Trust of Hearing on Proposed Resolution of Necessity
 - Exhibit E: Letter from Svend Hansen Trust
 - Draft Resolution



CITY OF
HAYWARD
HEART OF THE BAY

February 11, 2009

Certified Mail

Svend Hansen, Trustee
c/o Lance Ratto
936 B Seventh Street, Suite # 342
Novato,, CA 94945

RE: City of Hayward – Route 238 Corridor Improvement Project
Sven Hansen Trust Property, 22850, 22861 Mission Blvd. & 22803 Foothill Blvd. Hayward CA
(APNs 428-0066-078, 079, 080 & 081)

First Written Offer to Purchase

Dear Mr. Hansen:

The City of Hayward is proceeding with a project to improve traffic conditions along Foothill Boulevard, the downtown loop, and Mission Boulevard between Interstate 580 (I-580) and Industrial Parkway. The project, known as the Route 238 Corridor Improvement Project, was approved by the City Council on November 27, 2007. Full acquisition of your property is required to construct the improvements, as approved. Enclosed with this offer is a copy of the project's Right of Way Take Exhibit for the referenced parcels. This exhibit illustrates the property acquisition of four parcels needed in order to complete the public improvements. These parcels have the following three street addresses: 22850 and 22861 Mission Boulevard and 22803 Foothill Boulevard in Hayward CA and the following four assigned APN's: 428-0066-078,079,080 and 081.

The City of Hayward has established the Just Compensation to be paid for property required to construct the project. The basis for the amount established as Just Compensation for your property is set forth on the enclosed "Summary of Basis for Amount Established as Just Compensation," which outlines the property valuation data. City staff has worked with a Property Agent, Owen Poole, from Real Estate Services and an Appraiser, Dean Chapman, from Dean Chapman & Associates, Inc., to establish the Just Compensation amount.

In consideration of the foregoing and pursuant to the requirements of Section 7267.2 of the Government Code of the State of California, the City of Hayward hereby offers to purchase the designated property in fee for public improvement purposes for the sum of \$ 1,748,000.00, under the terms and conditions set forth in the attached Real Property Purchase Contract.

Please review all documents enclosed: Real Property Purchase Contract (the original and two copies), the Summary of Basis for Amount Established as Just Compensation, a Summary Statement Relating to Purchase of Real Property of an Interest Therein and a Brochure explaining certain rights that you have related to this acquisition process.

When you receive this offer, please call Owen Poole at 925-980-6444. If the offer is acceptable, please so indicate by signing the enclosed Real Property Purchase Contract. North American Title Company will process the remaining documents, including the Grant Deed, necessary to complete the transfer of title through escrow.

DEPARTMENT OF PUBLIC WORKS
ENGINEERING & TRANSPORTATION DIVISION
777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4730 • FAX: 510/583-3620 • TDD: 510/247-3340

EXHIBIT A

Svend Hansen, Trustee
22850, 22861 Mission Blvd. and 22803 Foothill Blvd.
(APNs 428-0066-078, 079, 080, and 081)

February 11, 2009
Page 2

Your early consideration of the above offer will be appreciated, and I thank you for your cooperation in this matter. Should you have questions or concerns please do not hesitate to contact me at 510-583-4740.

Sincerely,



Morad Fakhrai
Deputy Director of Public Works

Enclosures

cc: Robert Bauman
Yaw Owusu
Norman Payne
Kevin Briggs

Hayward, California

Grantor(s): Svend Hansen Trust

Date: 11 February, 2009

REAL PROPERTY PURCHASE CONTRACT – CITY OF HAYWARD
Route 238 Corridor Improvement Project

22850, 22861 Mission Boulevard & 22803 Foothill Boulevard, Hayward, CA
Parcel Numbers: 428-0066-078, 428-066-079, 428-066-080 & 428-066-081.

Whereas, the CITY requires the Parcel, a property not now appropriated to a public use, for the construction of a public improvement described as the "Route 238 Corridor Improvement Project," ("PROJECT") a public use.

Whereas, because the CITY may exercise the power of eminent domain to acquire, Grantor is compelled to sell; and because the CITY requires the property for the PROJECT, it is compelled to buy. As such, the acquisition of the Parcel is an involuntary conversion of the Parcel from private to public use.

Whereas, both the CITY and Grantor recognize the expense, time, effort, and risk to both Grantor and the CITY, and risk to both in resolving a dispute over compensation for the Parcel by eminent domain litigation; and the compensation set forth herein is in compromise and settlement in lieu of such litigation.

In consideration of the delivery to Norman Payne, City Surveyor acting on behalf of the City of Hayward, of a document in the form of a Grant Deed covering the property particularly described therein, and the 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 documents and shall relieve the CITY of all further obligation or claims on this account. **No obligation other than those set forth herein will be recognized.**
2. The CITY shall:
 - A) Pay the undersigned Grantor(s) the sum of \$1,748,000.00 for the property or interest conveyed by above document upon the close of escrow when title to said property vests in the CITY, free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except:
 - a. Taxes for the fiscal year in which escrow closes which shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.
 - b. Covenants, conditions, restrictions and reservations of record, or contained in the above-referenced document.
 - c. Easements or rights of way in, over, under or across said land for public quasi-public utility or public street purposes, if any.

- B) Pay all escrows and recording fees incurred in this transaction and, if title insurance is desired by the CITY the premium charge therefore.
- C) Have the authority to deduct and pay from the amount shown in Clause 2(A) above, any amount necessary to satisfy any delinquent taxes due in any fiscal year except the fiscal year in which this escrow closes, together with penalties and interest thereon, and/or delinquent assessments or bonds except those which title is to be taken "subject to" in accordance with the terms of this contract.
3. Any and all monies payable under this contract, up to and including the total amount of unpaid principal and interest on 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 trust deed(s) or mortgage(s) shall upon demand(s) be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder; said mortgagee(s) or beneficiary(ies) to furnish grantor with good and sufficient receipt showing said monies credited against the indebtedness secured by said mortgage(s) or deed(s) of trust.
4. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the CITY, shall commence on December 31, 2009 or after the close of escrow controlling this transaction, whichever occurs first, and that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date of close of escrow. **The target date for the close of escrow is June 1, 2009.**
5. Grantor agrees to keep the premises in a neat and clean condition and the grantor agrees that no improvements other than those already on said property shall be placed thereon; and the planting of any trees or shrubs, or alterations, repairs, or additions to existing improvements which may hereafter be placed thereon are at grantors risk without expectation of damages in the event of removal by the CITY.
6. The City of Hayward will compensate Grantor's tenants for relocation through separate agreements and shall conclude a termination agreement for the CBS Outdoor Advertising lease. The target date for these agreements is on or before May 31, 2009.
- Grantor warrants that he has terminated any written or oral leases with his lessees. The City of Hayward shall cause lessees to vacate the property on or before May 31, 2009. Grantor also warrants that all utility services to the parcel in Grantor's name will be terminated on or before May 31, 2009.
7. The undersigned grantor hereby agrees and consents to the dismissal of any eminent domain action in the Superior Court wherein the herein described land is included and also waives any and all claims to any money that may now be on deposit in said action.
8. Grantor may keep any improvements within the structures and shall remove them prior to the close of escrow.
9. This transaction will be handled through an escrow opened with North American Title Company, 4255 Hopyard Road, Suite 1, Pleasanton CA 94588, telephone number 925-399-3000. North American Title will prepare the Grant Deed and provide the Grantor with documentation and an Exchange Account should Grantor choose to enter into a tax deferred real estate exchange.

10. Grantor agrees that the amount established as Just Compensation includes consideration for damages, loss of goodwill and all necessary relocation assistance.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed, and the City of Hayward by and through its City Manager, duly authorized so to act, has caused these presents to be executed the day and year first above written.

APPROVED:

Robert A. Bauman
Director of Public Works

Svend Hansen, Trustee, Grantor

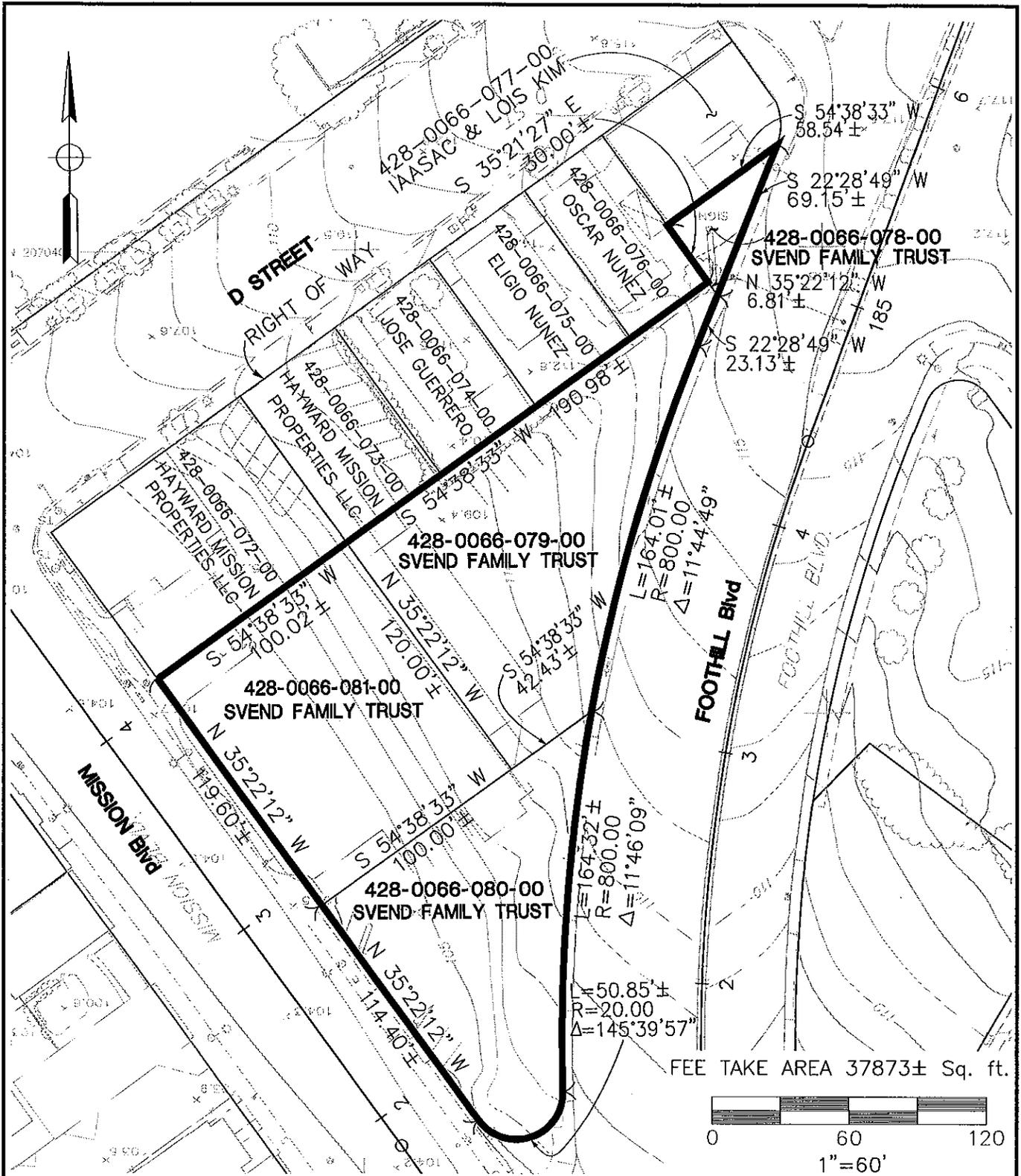
CITY OF HAYWARD, a municipal corporation

By: _____
Gregory T. Jones, City Manager

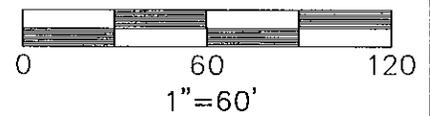
Attest: _____
Angelina Reyes, City Clerk

Approved as to form:

City Attorney



FEE TAKE AREA 37873± Sq. ft.



 <p>Mark Thomas & Company, Inc.</p>	<p>ROUTE 238 IMPROVEMENT HAYWARD 22803 FOOTHILL BLVD 22861 MISSION BLVD 22850 MISSION BLVD</p>	<p>In Alameda County, California</p>
<p>Scale 1" = 60' Date 2-18-2009 Drawn By TL Checked By DM</p>	<p>RIGHT OF WAY TAKE EXHIBIT APN 428-0066-078-00 APN 428-0066-079-00 APN 428-0066-080-00 APN 428-0066-081-00</p>	<p>2/18/2009</p>

SUMMARY OF BASIS FOR AMOUNT ESTABLISHED AS JUST COMPENSATION
(Government Code Section 7267.2)

OWNER(s): Svend Hansen Trust
PROJECT: Route 238 Corridor Improvement Project

PROPERTY TO BE ACQUIRED: ALL
INCLUDE ACCESS RIGHT: YES

ADDRESS/ LOCATION: 22850, 22861 Mission Blvd, and 22803 Foothill Blvd., Hayward
PARCEL NUMBERS: 428-0066-078,079,080 & 081 MAP: Right of Way plat
PRESENT USE: Retail / Office BEST USE: Present Use
ZONING: CC-C VALUATION DATE: September 1, 2008

BASIS FOR AMOUNT OF JUST COMPENSATION

The Just Compensation for the real property proposed to be acquired by the City of Hayward is based on an appraisal of property employing, the Sales Comparison and Income Approaches.

The Cost Approach was not used because of the difficulty in accurately estimating the depreciation for two older buildings with functional inadequacies. Furthermore the value of the land as vacant would be difficult to determine given the lack of buildable potential due to the on site location of the Hayward Fault.

The Sales Comparison Approach utilized a comparison of market value for over 30 confirmed sales of which the 7 with the closest attributes to the subject property were used to determine value.

The Income approach used the current market rent as adjusted upward after discussions with Lance Ratto, the advisor to the Svend Hansen Trust. The rental rate for the billboards increased to \$1,500.00 per month while the tenant rents and parking income increased to \$10,192.00 per month. Expense calculations were ignored since the owner represented that all expenses were paid by the tenants.

The amount of Just Compensation exceeds the upward adjusted appraised market value of \$1,607,618.00. Since the property owner states that he has a higher appraised value, the downward affect that the direct sales approach has on the Chapman appraisal have been ignored in the just compensation. Relocation allowances for the tenants and for CBS Outdoor Advertising will be paid under separate compensation directly from the City of Hayward to the affected parties. The just compensation is therefore set at \$1,748,000.00.

Any increase or decrease in the fair market value before the date of valuation caused by the public improvement or project for which the property is to be acquired or by the likelihood that the property would be acquired for such improvement or project, other than due to physical deterioration within the reasonable control of the owner, has been disregarded in making the determination of just compensation.

JUST COMPENSATION

LAND and STRUCTURES per adjusted Appraisal:	1,607,618.00
Increase in value by only using the Income Approach:	69,744.00
Six months loss of lease income:	70,152.00
Remove and Relocate Tenants:	0.00

TOTAL VALUE OF REQUIRED PROPERTY: 1,747,514.00

ROUNDED TO: \$1,748,000.00

CITY OF HAYWARD

BY: *Norman Payne*
Norman Payne
Survey Engineer

DATE: 11 February, 2009

**City of Hayward
Route 238 Corridor Improvement Project**

**SUMMARY STATEMENT RELATING TO PURCHASE OF
REAL PROPERTY OR AN INTEREST THEREIN
CITY OF HAYWARD**

The City of Hayward approved a project to improve traffic conditions along Foothill Boulevard, a downtown loop and Mission Boulevard between Interstate 580 (I-580) and Industrial Parkway. This project requires a full acquisition of your property, which is within the project area and is located at 22850, 22861 Mission Blvd. & 22803 Foothill Blvd., in Hayward, and is also identified by your County Assessor as Parcel Numbers 428-0066-078, 079, 080 & 081.

Title III of the Uniform Relocation Assistance and Real Property Acquisition Guidelines requires that each owner from whom the City of Hayward purchases real property or an interest therein or each tenant owning improvements on said property be provided with a summary of the appraisal of the real property or interest therein, as well as the following information:

1. You are entitled to receive full payment prior to vacating the real property being purchased unless you have heretofore waived such entitlement. You are not required to pay recording fees, transfer taxes, or the pro rata portion of real property taxes which are allocable to any period subsequent to the passage of title or possession.
2. The City of Hayward will offer to purchase any remnant(s) considered by the City to be an uneconomic unit(s) which is/are owned by you or, if applicable, occupied by you as a tenant and which is/are contiguous to the land being conveyed.
3. All building structures and other improvements affixed to the land described in the referenced document(s) covering this transaction and owned by the grantor(s) herein or, if applicable, owned by you as a tenant are being conveyed unless other disposition of these improvements has been made. The interest acquired is in fee. The property being purchased comprises 37,700 square feet (+/-) of land and is described in the attached legal description and outlined on the attached map.
4. The market value of the property being purchased is based upon a market value appraisal which is summarized on the attached Appraisal Summary Statement and such amount:
 - a. Represents the full amount of the appraisal of just compensation for the property to be purchased; (using the income approach adjusted for actual rents)
 - b. Is not less than the approved appraisal of the fair market value of the property as improved.
 - c. Disregards any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired or by the likelihood that the property would be acquired for

such public improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant; and

- d. Reflects consideration or allowance for relocation assistance and payments or other benefits that the owner is entitled to receive under an agreement with the City.



Ragghianti|Freitas LLP

ATTORNEYS AT LAW
274 FOURTH STREET, SUITE D, SAN RAFAEL, CA 94901-3246
TELEPHONE 415.453.9433 FACSIMILE 415.453.8269
WWW.RFLAWLLP.COM

March 9, 2009

Via Facsimile (510) 583-3620
Morad Fakhrai
City of Hayward
Department of Public Works
Engineering & Transportation Division
777 B Street
Hayward, CA 94541-5007

**Re: City of Hayward - Route 238 Corridor Improvement Project
Svend Hansen Trust Property
22850, 22861 Mission Blvd. & 22803 Foothill Blvd., Hayward, CA
APNs 428-0066-078, 079,080, 081**

Dear Mr. Fakhrai:

I write on behalf of Svend Hansen, Trustee, the owner of the above referenced parcels, and in response to your First Written Offer to Purchase dated February 11, 2009. My office will be assisting the property owner and his representatives in this matter.

While we are hopeful that the issue of just compensation can be resolved through the negotiation process, there is a very large gap between the City's offer and the actual fair market value of the property. Accordingly, the First Offer to Purchase is rejected.

We request that the City confirm that it will pay the reasonable costs, not to exceed \$5,000, for an independent appraisal ordered by the owner. Upon such confirmation, we can discuss whether we will be able to close the gap without the need for eminent domain litigation.

In addition, please provide this office with notice of any public City Council and/or Redevelopment Agency meetings at which the Route 238 Corridor Improvement Project will be discussed.

RODRIGO D. DIAS	DAVID F. FEINGOLD	
RILEY F. HURD III	ROBERT F. EPSTEIN	
SARAH N. LÉGER	PATRICK M. MACIAK	OF COUNSEL:
ERIC STERNBERGER	HERBERT M. ROWLAND	JOHN RALPH THOMAS, JR.
RICHARD T. FRANCESCINI	GARY T. RAGGHIANI, INC.	DAVID P. FREITAS (RET.)

March 9, 2009
Page 2

RAGGHIANI FREITAS LLP

Please call to discuss at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David F. Feingold', with a stylized, wavy flourish extending to the right.

David F. Feingold

cc: Lance Ratto
Owen Poole

goldfarb
lipman
attorneys

1300 Clay Street, Ninth Floor
Oakland, California 94612
510 836-6336

YAW / Kevin

RECEIVED

MAY 01 2009

DEPT. OF PUBLIC WORKS
ENGINEERING AND
TRANSPORTATION DIVISION

- M David Kroot
- John T. Nagle
- Polly V. Marshall
- Lynn Hutchins
- Karen M. Tiedemann
- Thomas H. Webber
- John T. Haygood
- Dianne Jackson McLean
- Michelle D. Brewer
- Jennifer K. Bell
- Robert C. Mills
- Isabel L. Brown
- James T. Diamond, Jr.
- Margaret F. Jung
- Heather J. Gould
- William F. DiCamillo
- Juliet E. Cox
- Erica Williams Orcharton
- Amy DeVaudreuil
- Barbara E. Kautz
- Luis A. Rodriguez
- Xochitl Marquez
- Rafael Yaquian
- Josh Mukhopadhyay

April 30, 2009

Mr. David F. Feingold
Ragghianti Freitas LLP
874 Fourth Street, Suite D
San Rafael, California 94901

Re: *Appraisal of 22850 Mission Boulevard, Hayward*

Dear Mr. Feingold:

Thank you for your offer to share with the City of Hayward the appraisal your clients, the Svend Hansen Trust, have received for their property at 22850 Mission Boulevard and 22803 Foothill Boulevard in Hayward. For your and their use, a copy of the City's December 2008 appraisal of that same property is enclosed. Please let me know right away if you have any difficulty opening or using the Adobe Acrobat file on the enclosed CD.

Once you and your clients have reviewed the appraisal, please contact me again if you would like to meet with City representatives about the City's offer to buy your clients' property.

Very truly yours,



JULIET E. COX

JEC:jec

Enclosure

Appraisal (on CD)

Facsimile

510 836-1035

San Francisco

415 788-6336

Los Angeles

213 627-6336

San Diego

619 239-6336

Goldfarb & Lipman LLP

- cc: Morad Fakhrai, City of Hayward (w/o enclosure) ✓
- Nancy Hart, City of Hayward (w/o enclosure)
- Owen Poole, Real Estate Services (w/o enclosure)



CITY OF
HAYWARD
HEART OF THE BAY

June 8, 2009

Svend Hansen Trust
Svend Hansen Trustee
c/o Lance Ratto
936 B Seventh Street, Suite # 342
Novato, CA 94945

Cc: Ragghianti/Freitas LLP
874 Fourth Street, Suite D
San Rafael, CA 94901
Attention: David F. Feingold, Attorney-at-Law

Subject: Notice of Hearing on June 30, 2009 at 8:00 p.m. on Resolution of Necessity to Initiate Eminent Domain Proceeding to Acquire Real Property located in the City of Hayward at Mission Blvd. and Foothill Blvd.

Dear Mr. Hansen:

The City of Hayward will consider at a public hearing whether or not to adopt a proposed Resolution of Necessity to acquire four parcels of real property located at the intersection of Mission Boulevard and Foothill Boulevard in the City of Hayward through the process of eminent domain. Acquisition of this real property (the "Property") by eminent domain may be necessary for the Route 238 Corridor Improvement Project, which will consist of roadway improvements to improve traffic conditions along Foothill Boulevard, the downtown loop and Mission Boulevard between Interstate 580 and Industrial Parkway. The City will consider acquiring these necessary areas of the Property in fee simple. The attached map shows the location of the Property and Route 238 Corridor Improvement Project.

The Property consists of four parcels identified by the Alameda County assessor as Assessor's Parcel Numbers 428-0066-078, 428-0066-079, 428-0066-080, and 428-0066-081. You have received this notice because you are the owner of record of the real property of which the Property is a portion, or because the City understands that you are a tenant on that property. If you are no longer the owner or tenant of the Property, or if you know of other persons who may claim interests in the Property but whose names do not appear in public records, please share this notice with those interested persons.

DEPARTMENT OF PUBLIC WORKS
ENGINEERING & TRANSPORTATION DIVISION

777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4730 • FAX: 510/583-3620 • TDD: 510/247-3340

EXHIBIT D

In accordance with the provisions of the Government Code Section 1245.235, the City will conduct a hearing on the proposed Resolution. **The hearing will occur on June 30, 2009, beginning at 8:00 p.m., or as soon thereafter as it can be heard, in the Council Chambers at the Hayward City Hall, located at 777 B Street.** The purpose of the hearing is to receive information pertaining to the proposed Resolution, and to consider whether or not to adopt that Resolution.

You and/or your representatives have the right to appear at the City's June 30 2009 meeting and to be heard on the matters specified in section 1240.030 of the Code of Civil Procedure and on any other matter material to the City's decision on the proposed Resolution. These matters include:

- whether the public interest and necessity require the proposed project;
- whether the proposed project is planned or located in the matter that will be most compatible with the greatest public good and the least private injury;
- whether the Property is necessary for the proposed project; and
- whether the purchase offer required by section 7267.2 of the Government Code has been made.

If you wish to speak at the City's hearing, please file a written request within fifteen (15) days from the date of this Notice. Failure to notify the City in writing of your desire to be heard at the City's June 30, 2009 meeting may result in a waiver of your right to be heard at the meeting concerning the Resolution. You may submit your written request to:

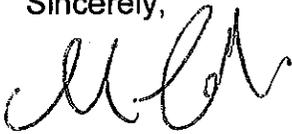
City Clerk's Office
City of Hayward
777 B Street
Hayward, CA 64541-5007

With a copy to: Nancy Hart, Assistant City Attorney
City Attorney's Office
City of Hayward
777 B Street
Hayward, CA 64541-5007

If the City approves the proposed Resolution of Necessity, the timeline for commencement of eminent domain proceedings will begin. The City will take prompt steps to commence an eminent domain action and to obtain possession of the Property. Property negotiations will continue, however, in hopes of resolving any disputes over the terms of the City's acquisition as quickly and fairly as possible.

If you have any questions or concerns about this notice, please call me at:
(510) 583-4740.

Sincerely,



Morad Fakhrai
Deputy Director of Public Works

Enclosures

Cc: Robert Bauman
Yaw Owusu
Norman Payne
Kevin Briggs

Eric Nguyen (Tenant)
Discount Home Furniture
22850 Mission Boulevard
Hayward, CA 94541

CBS Outdoor Advertising (Tenant)
Director of Special Projects – Western Region
1695 Eastshore Highway
Berkeley, CA 94710
Attention: Robert H. (Red) Harbin III



D STREET

428-0066-078-00
SVEND FAMILY TRUST

428-0066-079-00
SVEND FAMILY TRUST

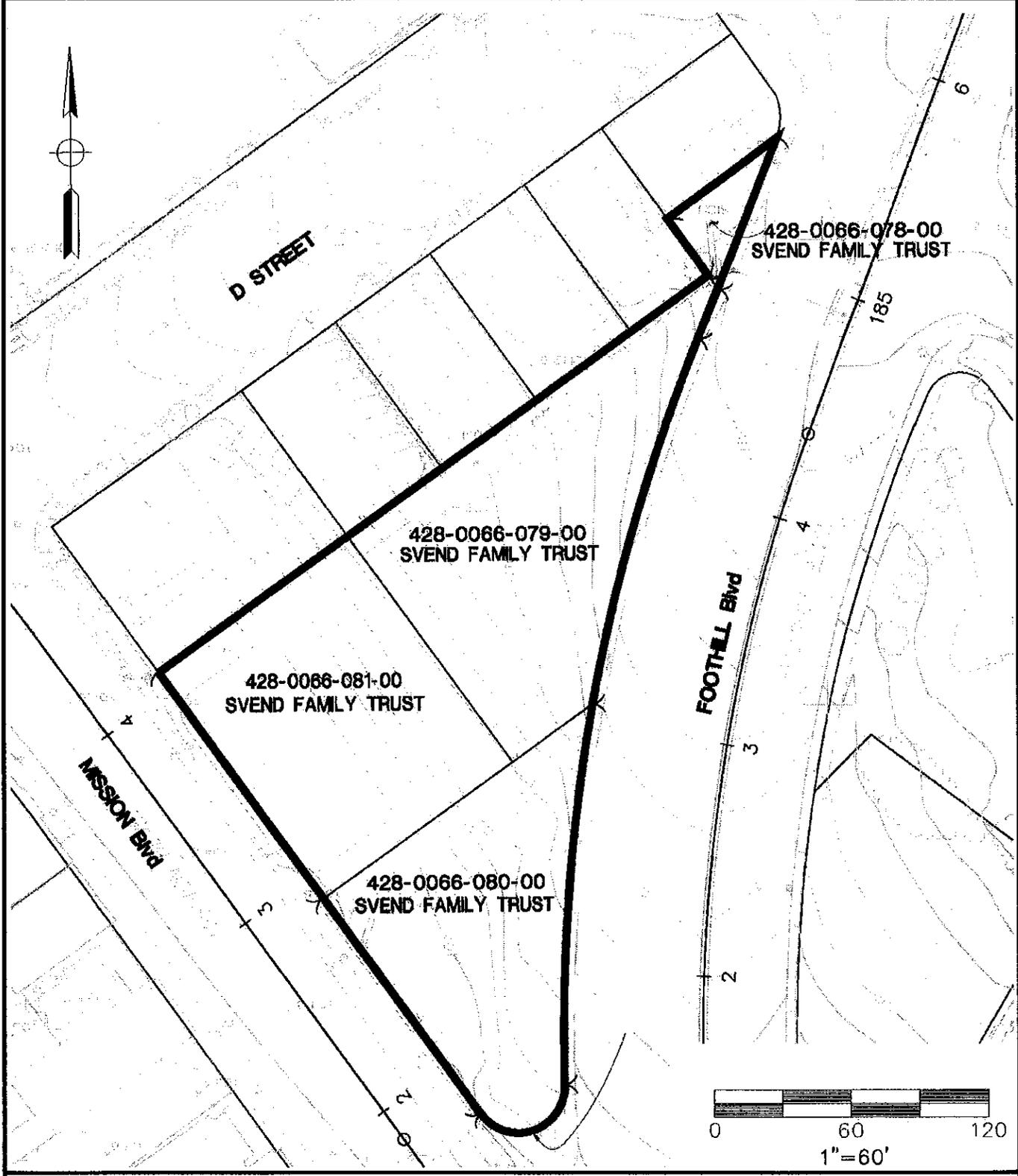
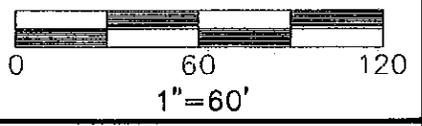
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SVEND FAMILY TRUST

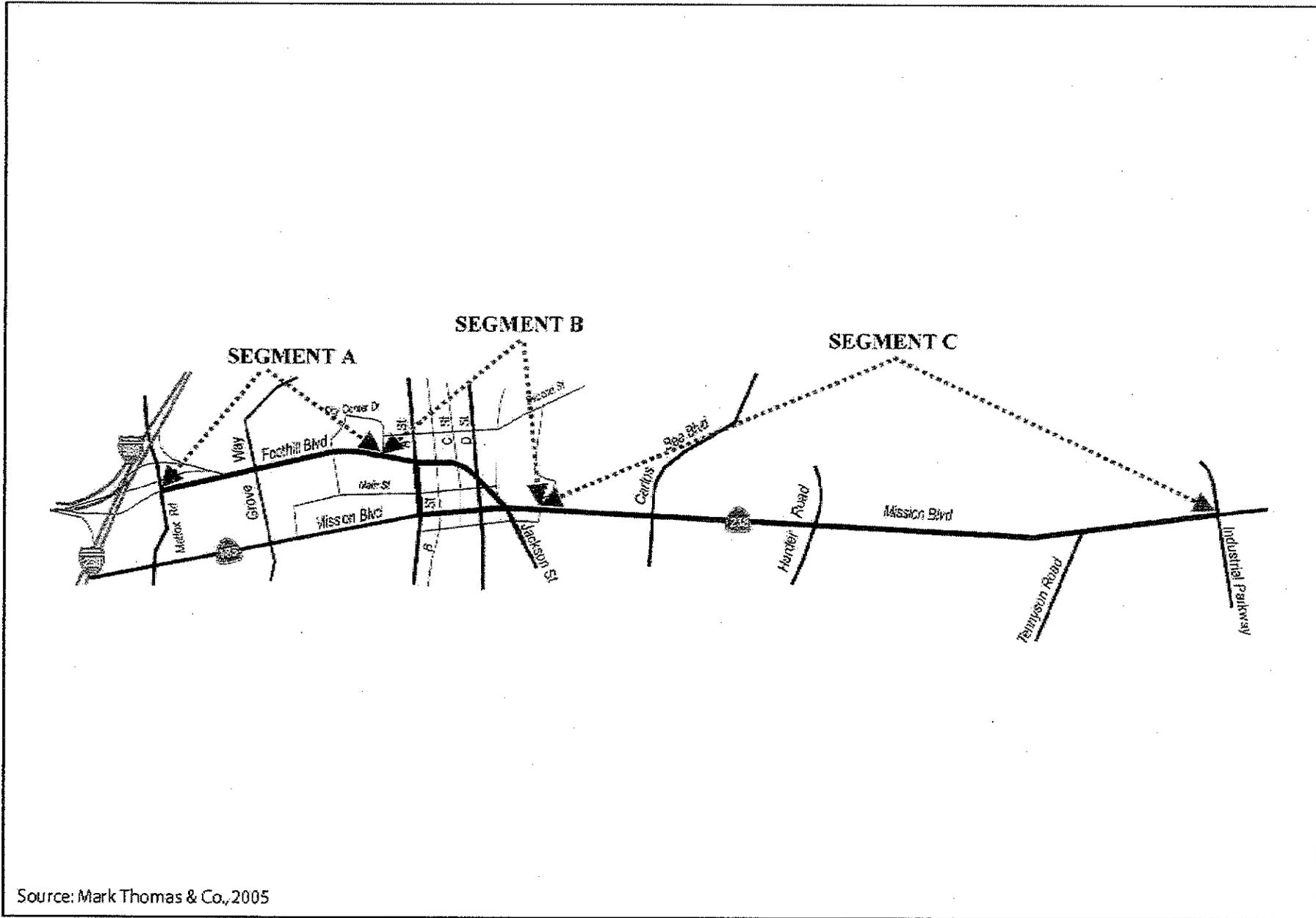
428-0066-080-00
SVEND FAMILY TRUST

MISSION Blvd

FOOTHILL Blvd

185





06029.05-ES/EIR.11.7.06

Source: Mark Thomas & Co., 2005

Figure 2-3
Project Segments



Ragghianti|Freitas LLP

ATTORNEYS AT LAW
874 FOURTH STREET, SUITE D, SAN RAFAEL, CA 94901-3246
TELEPHONE 415.453.9433 FACSIMILE 415.453.8269
WWW.RFLAWLLP.COM

June 22, 2009

Via Facsimile (510)583-3636 and First Class Mail
City Clerk's Office
City of Hayward
777 B Street
Hayward, CA 94541-5007

Re: June 30, 2009 Public Hearing, 8:00PM
Route 238 Corridor Improvement Project
Svend Hansen Trust Property
22850, 22861 Mission Blvd. & 22803 Foothill Blvd., Hayward, CA

Dear Clerk:

Please be advised that the owner's representatives desire to be heard at the June 30, 2009 hearing. Thank you.

Very truly yours,

Nancy Nicolai
Assistant to David F. Feingold

cc: Nancy Hart, Assistant City Attorney (via fax and mail)
Lance Ratto
Craig Knowlton

RODRIGO O. DIAS	DAVID F. FEINGOLD	
RILEY F. MURD III	ROBERT F. EPSTEIN	
SARAH N. LÉGER	PATRICK M. MACIAS	OF COUNSEL
ERIC STERNBERGER	HERBERT M. ROWLAND	JOHN RALPH THOMAS, JR.
RICHARD T. FRANCESCINI	GARY T. RAGGHIANI, INC.	DAVID P. FREITAS (REG)

11/16/09

DRAFT

6/24

HAYWARD CITY COUNCIL

RESOLUTION NO. 09-

Introduced by Council Member _____

**RESOLUTION OF NECESSITY DECLARING A PUBLIC
NEED FOR AND AUTHORIZING THE ACQUISITION AND
IMMEDIATE POSSESSION BY EMINENT DOMAIN
PROCEEDINGS OR OTHERWISE OF REAL PROPERTY FOR
THE ROUTE 238 CORRIDOR IMPROVEMENT PROJECT AT
MISSION BOULEVARD AND FOOTHILL BOULEVARD
(APN 428-0066-078 THROUGH 081) OWNED BY THE
SVEND HANSEN TRUST**

WHEREAS, the City of Hayward is pursuing acquisition of four parcels of property located at the intersection of Mission Boulevard and Foothill Boulevard (Assessor's Parcel Numbers 428-0066-078 through 081; hereinafter the "Property"), owned by the Svend Hansen Trust, for purposes of widening Mission Boulevard, replacing parking that will be eliminated along Mission Boulevard, and to provide landscaping and an enhanced gateway to Downtown Hayward pursuant to the Route 238 Corridor Improvement Project; and

WHEREAS, the Property consists of 37,873 square feet, part of a triangular block, with two buildings located on the property at 22850 Mission Boulevard (currently rented to Discount Furniture Store) and 22803 Foothill Boulevard (currently vacant), as well as three billboards owned by CBS Outdoor Advertising; and

WHEREAS, the Property is described more specifically on Exhibit A to this Resolution and is depicted generally on Exhibit B to this Resolution; and

WHEREAS, on November 27, 2007, the City Council of the City of Hayward considered the environmental impacts of the Route 238 Corridor Improvement Project and certified the Final Environmental Impact Report (FEIR), which included the proposed acquisition of the Property which is required for the widening of Mission Boulevard, replacement of parking that will be eliminated along Mission Boulevard, and providing landscaping and an enhanced gateway to Downtown Hayward; and

WHEREAS, staff commissioned an appraisal of the property on September 1, 2008, and made an offer to the owner to purchase the parcels for \$1,748,000 on February 11, 2009, which the owner rejected; and

WHEREAS, after providing notice in the manner specified in Code of Civil Procedure Section 1245.235, the City held a public hearing at which the persons whose property

interests are to be acquired pursuant to this resolution, and whose names and addresses appear on the last equalized county assessment roll for the Property, as well as tenants of the Property, had an opportunity to appear and be heard on the following matters referred to in Code of Civil Procedure Section 1240.030:

- a) Whether the public interest and necessity require the project;
- b) Whether the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c) Whether acquisition of the property is necessary for the project; and
- d) Whether the offer required by Section 7267.2 of the Government Code has been made to the Property's owner; and

WHEREAS, the Property's owners and tenants had an opportunity to appear at the hearing during which the adoption of this resolution was considered; and

WHEREAS, the City of Hayward is authorized by the Constitution and statutes of the State of California, including, but not limited to, Government Code Sections 37350.5 and 40404, to acquire real property by eminent domain for the Route 238 Corridor Improvement Project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that it hereby finds, determines, and declares as follows, on the basis of the evidence presented orally and in writing at the hearing at which the adoption of this resolution was considered:

1. That the public interest and necessity require the Route 238 Corridor Improvement Project;
2. That the Route 238 Corridor Improvement Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury;
3. That the acquisition by the City of Hayward of the property described in Exhibit "A" attached to this Resolution, for the widening of Mission Boulevard, replacement of parking that will be eliminated along Mission Boulevard, and providing landscaping and an enhanced gateway to Downtown Hayward, is necessary for the Project;
4. That staff has made the offer required by Section 7267.2 of the Government Code of the State of California to Svend Hansen Trust, owner of the subject Property, prior to the public hearing held on June 30, 2009, regarding the adoption of this resolution of necessity.

BE IT FURTHER RESOLVED that the City of Hayward shall acquire the Property for the widening of Mission Boulevard, replacement of parking that will be eliminated along Mission Boulevard, and providing landscaping and an enhanced gateway to Downtown Hayward.

BE IT FINALLY RESOLVED that the City Attorney for the City of Hayward is authorized and directed to take any and all lawful actions which are convenient or necessary to acquire immediate possession of and title to the Property by eminent domain proceedings or otherwise.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2009

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney

□
□

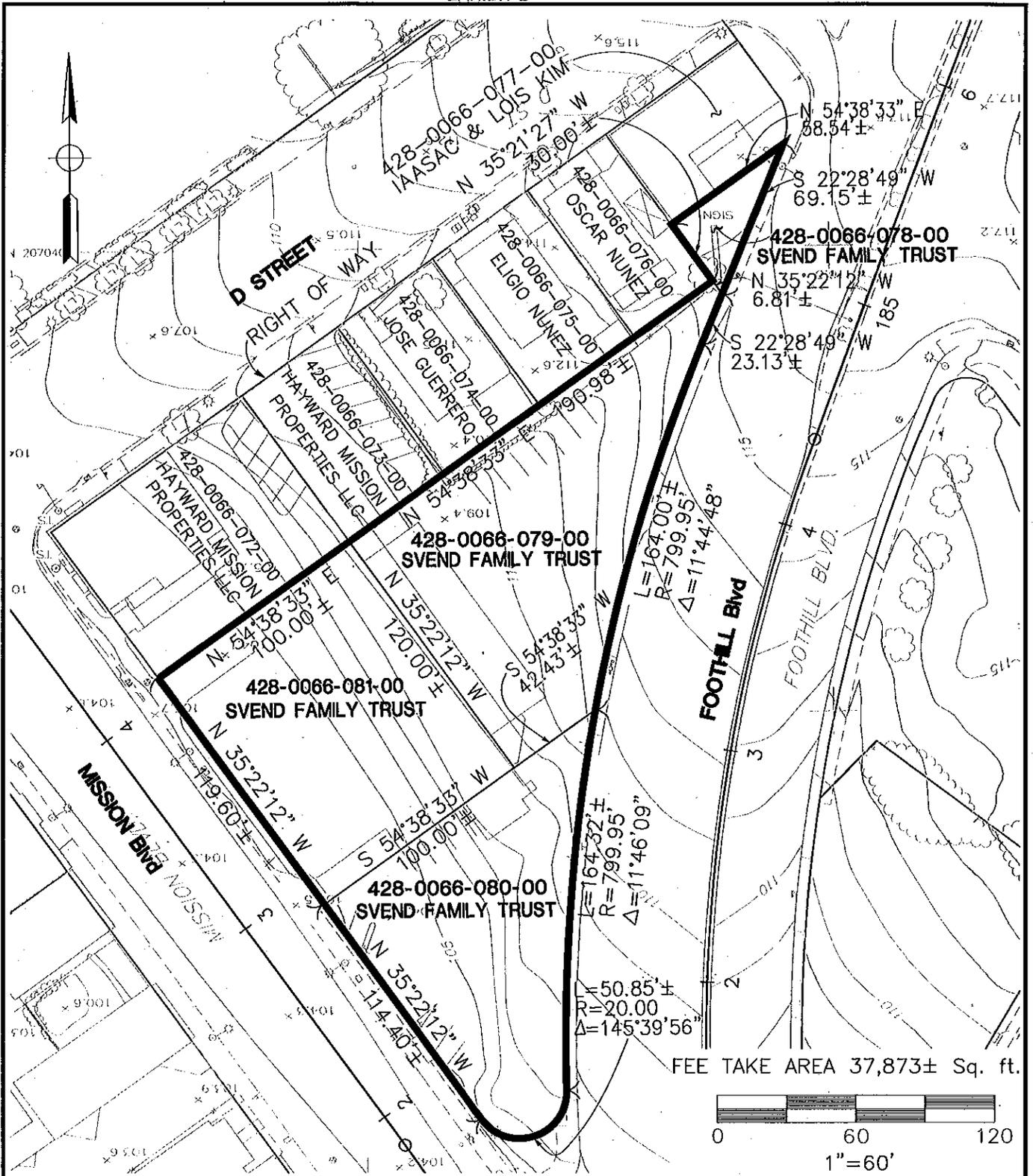
Parcel name: RW SVEND APN 428-0066□

North: 2070216.791 East : 6103913.427 □
Line Course: N 54-38-33 E Length: 290.98 □
North: 2070385.174 East : 6104150.738 □
Line Course: N 35-21-27 W Length: 30.00 □
North: 2070409.641 East : 6104133.378 □
Line Course: N 54-38-33 E Length: 58.54 □
North: 2070443.516 East : 6104181.121 □
Line Course: S 22-28-49 W Length: 92.28 □
North: 2070358.248 East : 6104145.836 □
Curve Length: 328.32 Radius: 799.95 □
Delta: 23-30-57 Tangent: 166.51 □
Chord: 326.03 Course: S 10-43-20 W□
Course In: S 67-31-11 E Course Out: S 88-57-52 W□
RP North: 2070052.375 East : 6104884.999 □
End North: 2070037.918 East : 6104085.179 □
Curve Length: 50.85 Radius: 20.00 □
Delta: 145-39-56 Tangent: 64.74 □
Chord: 38.22 Course: S 71-47-50 W□
Course In: S 88-57-52 W Course Out: S 54-37-48 W□
RP North: 2070037.556 East : 6104065.183 □
End North: 2070025.979 East : 6104048.874 □
Line Course: N 35-22-12 W Length: 234.00 □
North: 2070216.790 East : 6103913.422 □

Perimeter: 1084.98 Area: 37,873 Sq Ft 0.87 Ac.□

Mapcheck Closure - (Uses listed courses, radii, and deltas)□
Error Closure: 0.005 Course: S 86-12-11 W□
Error North: -0.0003 East : -0.0052 □
Precision 1: 216,994.00 □

EXHIBIT B



 <p>Mark Thomas & Company, Inc.</p>	<p>ROUTE 238 IMPROVEMENT HAYWARD 22803 FOOTHILL BLVD 22861 MISSION BLVD 22850 MISSION BLVD</p>	<p>In Alameda County, California</p>
<p>Scale 1" = 60' Date 2-18-2009 Drawn By TL Checked By DM</p>	<p>RIGHT OF WAY TAKE EXHIBIT APN 428-0066-078-00 APN 428-0066-079-00 APN 428-0066-080-00 APN 428-0066-081-00</p>	<p>2/18/2009</p>