

March 30, 2012

VIA FEDERAL EXPRESS

Chandra L. Wallar, Clerk of the Board
Board of Supervisors, County of Santa Barbara
County Administrative Offices
105 East Anapamu Street, Room 407
Santa Barbara, CA 93101

2012 APR - 2 PM 2:20
COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

Re: **Wal-Mart Stores, Inc., a Delaware corporation's Objections to Proposed Resolution of Necessity in April 3, 2012 Board of Supervisors' Agenda, Departmental Agenda [Planning Items and Public Hearings] Item 8, Listed as "GENERAL SERVICES, PUBLIC WORKS, HEARING - Consider recommendations regarding Union Valley Parkway Extension Phase 3 (Walmart Stores, Inc.) Acquisition, County Project No. 863011, Fourth District ..." and bearing identifier "12-00257"**

Dear Madam Clerk:

This firm represents WAL-MART STORES, INC., a Delaware corporation ("Walmart"), which is the owner of that certain real property in the unincorporated area of the County of Santa Barbara, State of California, located on the east side of Orcutt Road and State Highway 135, south of Foster Road and west of Hummel Drive, which is legally described as

Parcels "A," "B" and "C" of Parcel Map No. 11691, in the County of Santa Barbara, State of California, according to the map filed September 26, 1973 in Book 12, Page 57 of Parcel Maps, in the office of the Recorder of said County [of Santa Barbara]

and which are also identified as Santa Barbara County Assessor's Parcel Nos. 107-250-011, 107-250-012 and 107-250-013 (the "Walmart Properties").

Since 1910

RIVERSIDE 3750 University Avenue, Suite 250 · Riverside, California 92501
SAN BERNARDINO 550 East Hospitality Lane, Suite 300 · San Bernardino, California 92408
SAN DIEGO 501 W. Broadway, Suite 800 · San Diego, California 92101

GreshamSavage.com

W770-SANTA_MARIA_(UNION_VALLEY) -- 855186.1

Walmart submits this letter to you for inclusion in the official record of the April 3, 2012 Board of Supervisors proceedings, specifically with respect to the above-referenced agenda item, and requests that you present copies of this letter of objection to the Board of Supervisors' legal counsel, and to Board Chair Doreen Farr and each of the other members of the Board of Supervisors.

Preliminarily, let me state that Walmart does not object to the Union Valley Parkway Extension Phase III Project ("Project"). In fact, Walmart has spent the past two years working with County staff to facilitate implementing that Project, because it believes that the Project will help to accommodate the transportation needs of the County of Santa Barbara and of the public, at large.

In December of 2010, Walmart entered into a "Right of Entry Agreement" with the County of Santa Barbara, giving the County no-cost access to the Walmart Property so that it could make early preparations for the Project. As recently as March 16, 2012, Walmart's counsel communicated with Ronn Carlentine, Real Estate Manager for the County of Santa Barbara, proposing four final terms for its acceptance of the County's Offer to Purchase the interests in the Walmart Properties that it needs for the Project [see letter to Ronn Carlentine enclosed herewith].

What Walmart does object to, is that the Project, as planned and presented to the Board of Supervisors, was not proposed in the manner that will be the most compatible with the greatest public good and the least private injury; and that Walmart did not receive an offer that satisfies the requirements of Section 7267.2 of the *Government Code*.

Specifically, Walmart objects to the adoption of the proposed Resolution of Necessity ("Resolution") on the following grounds:

1. **The Project, as proposed and presented to the Board was not planned in a manner that will be the most compatible with the least private injury to Walmart as required by Section 1245.230 of the *Code of Civil Procedure*.**
 - a. The property interests sought, the description of the Project and the statement of purpose, as set forth in the proposed Resolution, are as follows:
 - i. The property interests expressly sought to be taken are "... easement interests..." (emphasis added) in the Walmart Properties [Resolution No. 1].

- ii. The Project is the "... Union Valley Parkway Phase III Road Improvement Project ...[across]... to wit, County Assessor Parcel Nos. 107-250-011, 107-250-012 and 107-250-013 ..." [Finding A] which parcels have already been identified as the Walmart Properties.
 - iii. The stated purpose for which the property interests sought to be taken is for an "... east to west roadway connection from U.S. Highway 101 to State Route 135 ..." [Finding E, and similarly described in Resolution 5]. In other words, a public roadway.
- b. Notwithstanding that, by definition, a public roadway leaves absolutely no residual uses of the property to the owner / condemnee, the proposed Resolution calls for the County to take only "easement interests" in the Walmart Properties. The result will be to leave Walmart with the residual burdens and obligations of whatever ownership remains, and with remnant (remainder) pieces of some of the Walmart Properties.
- c. Referring, again, to the proposed Resolution, the interests proposed to be taken are of "... approximately 7.7 acres ...[out of]... County Assessor Parcel Nos. 107-250-011, 107-250-012 and 107-250-013 ..." [Resolution A], which collectively comprise approximately 51.5 acres. The proposed extension of Union Valley Parkway will take over 50' from the north end of Parcel A [APN 107-250-011] and over 50' feet from the south end of Parcel B [APN 107-250-012], significantly reducing the size of both parcels. The proposed realignment of Orcutt Road will bisect Parcel A in a southwest to northeast direction, and Parcel B in a northwest to southeast direction. A map depicting the afore-described is at page 9 (captioned "Exhibit B") of the proposed Resolution.
- i. By taking only "easement interests," the County will leave Walmart with four residual non-legal remnant parcels (the "Parcel Remnants"). The Parcel Remnants of Parcel A will be (1) a remnant internal to State Route 135 on the west, the proposed extension of Union Valley Parkway on the north, and realigned Orcutt Road on the southeast; and, (2) a remnant southeast of realigned Orcutt Road. The Parcel Remnants of Parcel B will be (1) a remnant internal to State Route 135 on the west, the

proposed extension of Union Valley Parkway on the south, and realigned Orcutt Road on the northeast; and, (2) a remnant northeast of realigned Orcutt Road.

- ii. The Parcel Remnants being non-legal, Walmart will be unable to use these Parcel Remnants for any purpose without incurring what will likely be substantial expense and difficulty in bringing these Parcel Remnants to legal status, if that is even possible. Further, Walmart is uncertain that these Parcel Remnants will even be commercially feasible or viable, should they become legal parcels.
 - d. The first two terms in the March 16, 2012 communication with Ronn Carlentine, Real Estate Manager for the County of Santa Barbara, specifically addressed the "easement" vs. "fee" issue and called for the creation of legal parcels out of the Parcel Remnants by the County.
2. **The County did not present Walmart with an offer that satisfies the requirements of Section 7267.2 of the *Government Code*.**
- a. Prior to the adoption of the Resolution or the commencement of negotiations to purchase in lieu of condemnation, the County was required to have offered to Walmart a fair amount of just compensation for the totality of the interests to be "taken" for the Project. *See Government Code § 7267.2(a)(1)*.
 - b. The offer was required to have been accompanied by a sufficiently detailed statement summarizing the basis for the amount of just compensation offered. *See Government Code § 7267.2(b)*.
 - c. Since the property interests that the County is seeking to acquire are part of a larger parcel, the County is also required to compensate Walmart for the injury to the remainder or Parcel Remnants. *See Code of Civil Procedure § 1263.410, et seq.*
 - d. Attached to the October 6, 2010 letter offer to Walmart, which purported to satisfy the requirements of *Government Code § 7267.2*, was a "Real Property Purchase Contract and Escrow Instructions" ("Purchase Contract"). Attached to the Purchase Contract as Exhibit 1 was a proposed "Easement Deed" that contained Exhibits A through C,

Board of Supervisors, County of Santa Barbara

Re: Wal-Mart Stores, Inc., a Delaware corporation's Objections to Proposed Resolution

April 3, 2012 Board of Supervisors' Agenda, Departmental Agenda Item 8

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depicting the portions of the Walmart Properties to which the "offer" applied. None of the Parcel Remnants were included in the "offer".

- e. Further, the Appraisal Summary Statement did not value the Parcel Remnants, and expressly gave ZERO DOLLARS (\$-0-) to "severance damages," which is the term for compensation for the "injury to the remainder."
- f. In short, the October 6, 2010 letter offer to Walmart **did not** satisfy the requirements of *Government Code* § 7267.2, in that it **offered no compensation** for injury to the remainder or Parcel Remnants.

Though Walmart asserts the foregoing objections to the proposed Resolution, it remains ready, willing and able to proceed with the County's offer on the terms and conditions set forth in the March 16, 2012 communication with Ronn Carlentine, Real Estate Manager for the County of Santa Barbara.

Sincerely,



Michael Duane Davis, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MDD:dms

Encl.

cc: Client

March 16, 2012

VIA E-MAIL [rcarlen@co.santa-barbara.ca.us]
AND GOLDEN STATE OVERNIGHT

Ronn Carlentine
Real Estate Manager
County of Santa Barbara
General Services Department
1105 Santa Barbara Street
Santa Barbara, CA 93101

Re: County of Santa Barbara – Response to Offer to Purchase Easement
Santa Maria, CA (Store No. 4576-00)

Dear Ronn:

Thank you for your letter dated March 5, 2012 offering to purchase certain property from Walmart for the extension of Union Valley Parkway, for a purchase price of \$1,350,000.00. The purpose of this letter is to memorialize Walmart's conditional acceptance of the offer, which is subject to the following conditions: (i) the County to acquire a fee interest in the property, rather than an easement interest; (ii) by virtue of the conveyance of the fee interest, four (4) separate legal parcels will be created (divided by the new roads to be constructed), upon which time the County would record a Certificate of Compliance to memorialize the fact that such four (4) parcels comply with the Subdivision Map Act; (iii) the County will cause the existing easement in favor of County Flood Control (2467 OR 1280), as shown on the attached Exhibit "A", to be abandoned and vacated; and (iv) in connection with the construction of Union Valley Parkway, the County will create the curb cuts and turn lanes depicted on the map attached as Exhibit "B".

Please note that the foregoing is subject to negotiation of a mutually agreeable purchase agreement.

Since 1910

RIVERSIDE 3750 University Avenue, Suite 250 · Riverside, California 92501
SAN BERNARDINO 550 East Hospitality Lane, Suite 300 · San Bernardino, California 92408
SAN DIEGO 501 W. Broadway, Suite 800 · San Diego, California 92101

GreshamSavage.com

Ronn Carlentine
Real Estate Manager
March 16, 2012
Page 2

We look forward to consummating this transaction with the County. Please give me a call to discuss the logistics of moving forward.

Very truly yours,

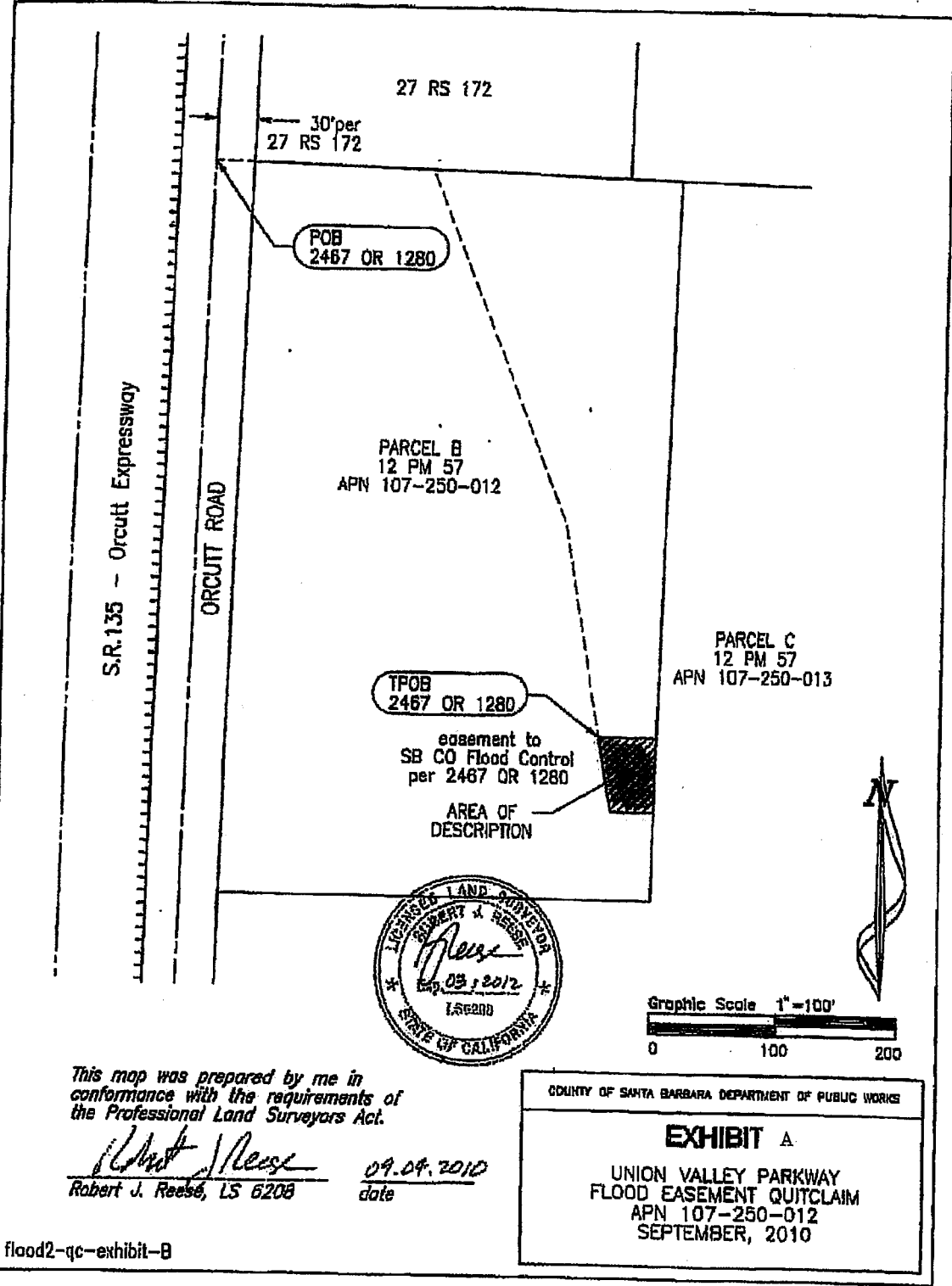


J. Matthew Wilcox, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

JMW:sac

cc: George J. Bacso, Esq. (via email only)
Ray Glover (via email only)
Pat Palangi (via email only)

EXHIBIT "A"
FLOOD CONTROL EASEMENT TO BE VACATED



This map was prepared by me in conformance with the requirements of the Professional Land Surveyors Act.

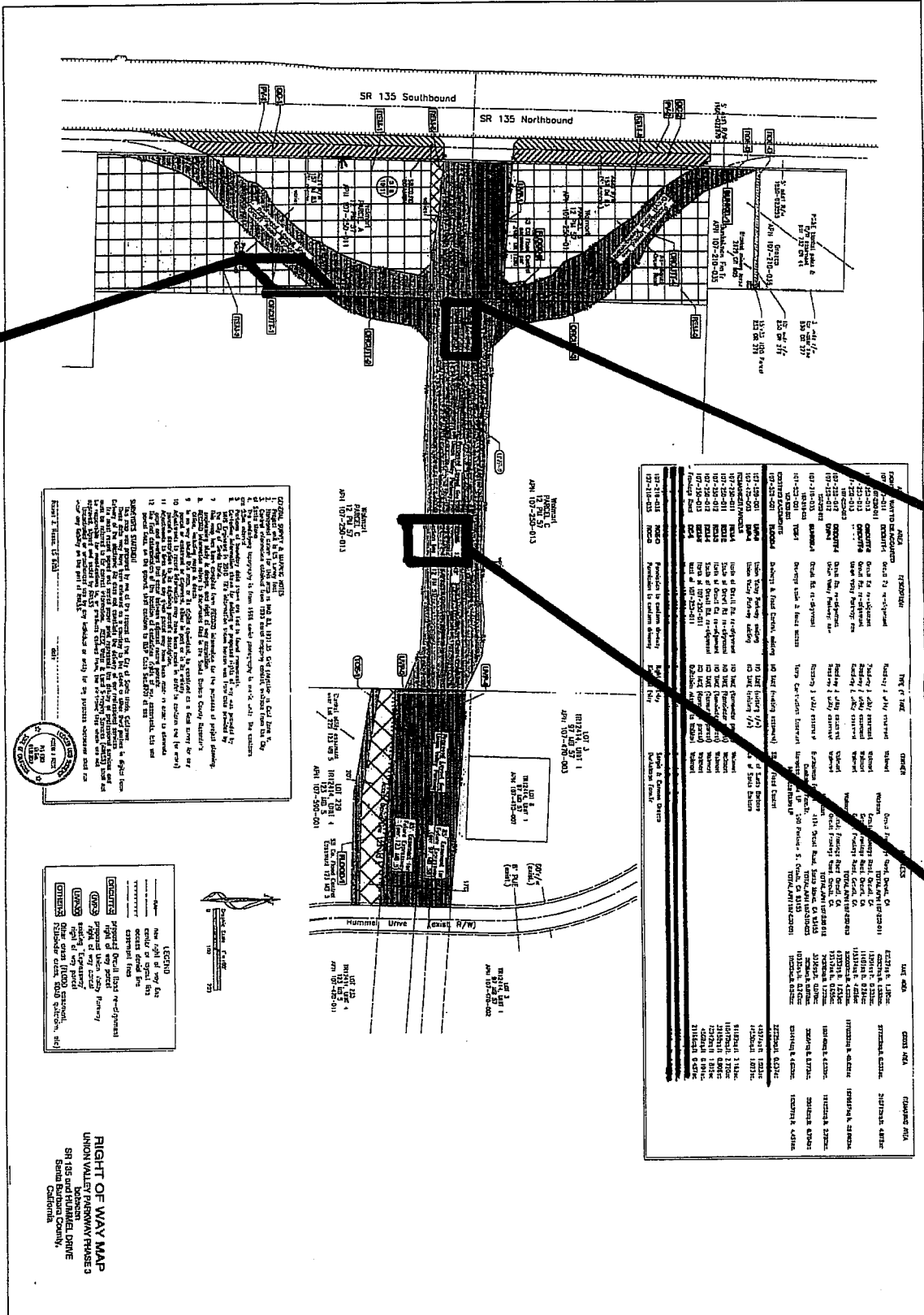
Robert J. Reese
Robert J. Reese, LS 6208
09.09.2010
date

flood2-qc-exhibit-B

EXHIBIT "A"
CURB CUTS AND TURN LANES

Left Turn Lane

Curb cut, left turn lane and right turn decel lane



NO.	DESCRIPTION	DATE	BY	CHKD.	APP'D.
1	PREPARED BY	10/15/03	J. M. [Signature]		
2	CHECKED BY	10/15/03	[Signature]		
3	DATE	10/15/03			
4	SCALE	AS SHOWN			
5	PROJECT	UNION VALLEY PARKWAY PHASE 3			
6	LOCATION	BETWEEN SR 135 & HUMMEL DRIVE			
7	CITY	SANTA MARIA, CALIFORNIA			
8	CONTRACT NO.	SR 135-013			
9	CONTRACT DESCRIPTION	CONSTRUCTION OF A NEW 20' WIDE			
10	CONTRACT DATE	10/15/03			
11	CONTRACT VALUE	\$1,200,000.00			
12	CONTRACT OWNER	CITY OF SANTA MARIA			
13	CONTRACT ENGINEER	RESE WATER & LAND SURVYING SERVICES			
14	CONTRACT ADDRESS	1475 PARKWAY DRIVE, SANTA MARIA, CA 93458			
15	CONTRACT PHONE	(805) 925-0951			
16	CONTRACT FAX	(805) 925-0951			
17	CONTRACT E-MAIL	RESE@RESE.COM			
18	CONTRACT WEBSITE	WWW.RESE.COM			
19	CONTRACT NOTES	SEE CONTRACT SPECIFICATIONS AND CONDITIONS OF CONTRACT			
20	CONTRACT COMMENTS				

NOTICE TO CONTRACTOR

1. The City of Santa Maria is the owner of the project and is responsible for the design and construction of the project.

2. The contractor shall be responsible for the construction of the project in accordance with the plans and specifications.

3. The contractor shall be responsible for obtaining all necessary permits and licenses.

4. The contractor shall be responsible for maintaining traffic control during the construction of the project.

5. The contractor shall be responsible for the safety of all workers and the public during the construction of the project.

6. The contractor shall be responsible for the quality of the work and materials used in the project.

7. The contractor shall be responsible for the completion of the project within the specified time frame.

8. The contractor shall be responsible for the payment of all bills and taxes.

9. The contractor shall be responsible for the maintenance of the project until it is accepted by the City.

10. The contractor shall be responsible for the removal of all construction materials and equipment from the project site.

11. The contractor shall be responsible for the cleanup of the project site.

12. The contractor shall be responsible for the protection of all existing utilities and structures.

13. The contractor shall be responsible for the protection of all trees and landscaping.

14. The contractor shall be responsible for the protection of all cultural resources.

15. The contractor shall be responsible for the protection of all historic resources.

16. The contractor shall be responsible for the protection of all archaeological resources.

17. The contractor shall be responsible for the protection of all paleontological resources.

18. The contractor shall be responsible for the protection of all biological resources.

19. The contractor shall be responsible for the protection of all geological resources.

20. The contractor shall be responsible for the protection of all mineral resources.

LEGEND

--- New right of way line

--- Existing right of way line

--- Center line

--- Edge of pavement

--- Edge of shoulder

--- Edge of sidewalk

--- Edge of curb

--- Edge of gutter

--- Edge of drainage ditch

--- Edge of utility trench

--- Edge of easement

--- Edge of fence

--- Edge of building

--- Edge of parking lot

--- Edge of driveway

--- Edge of street

--- Edge of alley

--- Edge of railroad

--- Edge of canal

--- Edge of river

--- Edge of lake

--- Edge of pond

--- Edge of wetland

--- Edge of forest

--- Edge of field

--- Edge of pasture

--- Edge of meadow

--- Edge of marsh

--- Edge of swamp

--- Edge of bog

--- Edge of fen

--- Edge of tundra

--- Edge of prairie

--- Edge of savanna

--- Edge of woodland

--- Edge of scrubland

--- Edge of steppe

--- Edge of desert

--- Edge of tundra

--- Edge of prairie

--- Edge of savanna

--- Edge of woodland

--- Edge of scrubland

--- Edge of steppe

--- Edge of desert

RIGHT OF WAY MAP

UNION VALLEY PARKWAY PHASE 3

BETWEEN SR 135 and HUMMEL DRIVE

Santa Barbara County, California

DATE: 10/15/03

BY: J. M. [Signature]

CHECKED BY: [Signature]

SCALE: AS SHOWN

PROJECT: UNION VALLEY PARKWAY PHASE 3

LOCATION: BETWEEN SR 135 & HUMMEL DRIVE

CITY: SANTA MARIA, CALIFORNIA

CONTRACT NO.: SR 135-013

CONTRACT DESCRIPTION: CONSTRUCTION OF A NEW 20' WIDE

CONTRACT DATE: 10/15/03

CONTRACT VALUE: \$1,200,000.00

CONTRACT OWNER: CITY OF SANTA MARIA

CONTRACT ENGINEER: RESE WATER & LAND SURVYING SERVICES

CONTRACT ADDRESS: 1475 PARKWAY DRIVE, SANTA MARIA, CA 93458

CONTRACT PHONE: (805) 925-0951

CONTRACT FAX: (805) 925-0951

CONTRACT E-MAIL: RESE@RESE.COM

CONTRACT WEBSITE: WWW.RESE.COM

CONTRACT NOTES: SEE CONTRACT SPECIFICATIONS AND CONDITIONS OF CONTRACT

CONTRACT COMMENTS:

RIGHT OF WAY MAP

UNION VALLEY PARKWAY PHASE 3

BETWEEN SR 135 & HUMMEL DRIVE

Santa Barbara County, California

City of Santa Maria

Public Works Department

110 South Pine Street

Suite 101

Santa Maria, CA 93458

805.925.0951 x225

RESE Water & Land SURVYING SERVICES

1475 Parkway Drive

Santa Maria, CA 93458

805.925.0951

Curb cut and left turn lane