

18) **Resolution of Necessity and Authorization to Commence Eminent Domain Proceedings to Acquire Easements in and to Real Property Necessary for the Murrieta Creek Regional Trail Project**

1. Conduct a public hearing on the proposed Resolution of Necessity; and
2. Adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, FINDING AND DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR ACQUIRING AND AUTHORIZING THE CONDEMNATION OF EASEMENTS IN AND TO CERTAIN REAL PROPERTY WITHIN THE CITY OF LAKE ELSINORE.



## REPORT TO CITY COUNCIL

**To:** Honorable Mayor and Members of the City Council

**From:** Jason Simpson, City Manager

**Prepared by:** Barbara Leibold, City Attorney

**Date:** July 9, 2024

**Subject:** Resolution of Necessity and Authorization to Commence Eminent Domain Proceedings to Acquire Easements in and to Real Property Necessary for the Murrieta Creek Regional Trail Project

### **Recommendation**

1. Conduct a public hearing on the proposed Resolution of Necessity; and
2. Adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, FINDING AND DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR ACQUIRING AND AUTHORIZING THE CONDEMNATION OF EASEMENTS IN AND TO CERTAIN REAL PROPERTY WITHIN THE CITY OF LAKE ELSINORE.

### **Background**

The City Council is being asked to consider the adoption of a Resolution of Necessity to acquire interests in and to real property by eminent domain for (1) a trail right of way easement, and (2) a temporary construction easement, for the Murrieta Creek Regional Trail Project ("Project").

When constructed, the proposed Project will provide an important link in the regional active transportation network consistent with the East Lake Specific Plan, the City's General Plan and the City's Active LE goals. The Project will connect the existing Lake Elsinore Levee Trail to the Palomar Trail and the trail system in our southeast neighboring communities.

A aerial vicinity map is attached as Attachment 1. A map of the trail alignment is attached as Attachment 2. The necessary easements are located on two separate parcels. Both properties are located in the East Lake Specific Plan.

## Resolution of Necessity

### APN 370-120-001 (hereinafter Parcel 001)

Parcel 001 is owned by NP Lake Elsinore Commerce, LLC and is located at the southeast corner of Stoneman Street and Como Street adjacent to the residential neighborhood (Tract 26142). The parcel is 116.69 acres. The owner, NP Lake Elsinore Commerce, LLC, also owns the adjacent parcel (APN 370-120-017). The easement area is unimproved with no site improvements.

The City has completed the appraisal and made an offer to the owner for a trail easement (111,078 SF) and temporary construction easement (28,314 SF) in the amount of \$59,600. However, the owner has not been willing to allow the City to acquire the easements. Currently, the owner has a development application for the development of three (3) industrial buildings totaling 742,544 SF on an approximately 123.3-acre site. The requested easements will not interfere with the proposed development.

The easements in and to a portion of Parcel 001 are described in the legal descriptions and depictions attached as Exhibit "A" (hereinafter the Parcel 001 Easements).

### APN 370-120-063 (hereinafter Parcel 063)

Parcel 063 is located at the northern terminus of Skylark Drive. The parcel is 130.06 acres (5,665,414 SF). The owner of record is The Paul Pribble and Patricia Lenore Pribble Family Trust. The easement area is unimproved with no site improvements. The City has completed the appraisal and made an offer to the owner for a trail easement (32,234 SF) and temporary construction easement (19,602 SF) in the amount of \$24,500. However, the owner has not been willing to allow the City to acquire the easements. City staff understands that the property is currently in escrow although there is no definitive date on the close of escrow on the property.

The easements in and to a portion of Parcel 063 are described in the legal descriptions and depictions attached as Exhibit "B" (hereinafter the Parcel 063 Easements).

The Parcel 001 Easements and the Parcel 063 Easements are collectively referred to as the "Project Easements."

### Negotiations

City staff presented written offers to acquire the Project Easements and has engaged in good faith negotiations with the property owners. The property owners have declined to negotiate with the City and, as a consequence, the parties have been unable to agree on the purchase price and terms of the proposed acquisition. Because the City has been unable to acquire the necessary easements for this component of the regional trail project, acquisition by eminent domain is recommended.

## **Discussion**

The City may exercise its power of eminent domain to acquire property necessary to carry out any of its powers or functions. The initiation of the eminent domain process is accomplished by the City Council's adoption of a Resolution of Necessity by a two-thirds majority vote, which Resolution may only be adopted after the City Council has given the property owners a reasonable opportunity to appear and be heard on the following matters:

- (1) the public interest and necessity require the proposed project;
- (2) 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;
- (3) the real property to be acquired is necessary for the project; and
- (4) the offer required by Government Code Section 7267.2 has been made to the owners of record.

Staff recommends the following:

Finding No. 1: Public Interest and Necessity Require the Project. The proposed Project Easements are necessary to serve the recreational needs and promote community health of the community consistent with the standards established in the East Lake Specific Plan, the City's General Plan and the City's Active LE goals. The proposed Project, which necessarily include the Project Easements, will provide an important link in the regional active transportation network. The Project Easements are a critical component of the Project necessary to connect the Project to existing Lake Elsinore Levee Trail to the Palomar Trail and the trail system in southeast neighboring communities.

Finding No. 2: The Project is Planned and Located in the Manner That Will be Most Compatible With the Greatest Pubic Good and the Least Private Injury. The Project Easements are located on property that is currently unimproved and lies along the boundary edges of both Parcel 001 and Parcel 063 away from the public right of way and would be well within the setback area should the parcels be developed at a later date. The Project Easements will not obstruct in any material way access to Parcel 001 and Parcel 063. No other properties are impacted and no new services will be required to complete the Project lying within the Project Easements.

Finding No. 3: The Property is Necessary for the Project. Acquisition of the Project Easements is necessary to complete the proposed regional trail. The Project Easements are located on the only properties available for trail connection taking into account surrounding uses and other restrictions.

Finding No. 4: The City Has Negotiated to Purchase the Property. Government Code Section 7267.2 requires the City to make a good faith offer of just compensation and to attempt to acquire the Project Easements through a negotiated purchase. The offer required by Section 7267.2 of the Government Code was made to the owners of record based on an approved appraisal conducted. The City's initial offers to the owners of record was for the full appraised value. The owners of record have declined to accept the City's initial offers and have further declined to engage in additional negotiations.

## Resolution of Necessity

Notice of this public hearing was mailed to the property owners of record informing them of their right to appear and be heard on these issues. After all of the testimony and other evidence have been presented by all interested parties, the City Council must make a determination whether to adopt the proposed Resolution of Necessity to acquire the required easements by eminent domain. In order to adopt the Resolution, the City Council must, based on all of the evidence before it, and by a vote of two-thirds of its members, make the findings and determinations stated above exist.

### **Environmental Determination**

The City approved Mitigated Negative Declaration (SCH #2021120441) for the Project (therein identified as the “Murrieta Creek Multi-Use project”) and made findings in compliance with California Environmental Quality Act on February 8, 2022. In addition, the Project is consistent with the MSHCP as an identified Planned Regional Trail and MSHCP covered activity. A Joint Project Review and Determination of Biologically Equivalent or Superior Preservation have been completed for the project and approved by RCA and the wildlife agencies.

### **Fiscal Impact**

The funding for acquisition in the Project Easements is available and would be paid from Active Transportation Program Grant funds. In addition to the acquisition costs, the City will become obligated to pay litigation expenses to prosecute an eminent domain action. The litigation budget is extremely difficult to predict and will depend on a variety of factors. As included in the Resolution, the City Attorney’s Office requests authorization to engage special counsel services to represent the City in the proposed acquisition and to revise the existing Engagement Agreement with the law firm of Murphy & Evertz to an amount not to exceed \$50,000.

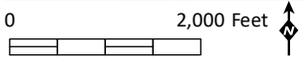
### **Attachments**

- Attachment 1 – Vicinity Map
- Attachment 2 – Alignment Map
- Attachment 3 – Resolution
- Exhibit “A” – Legal Descriptions/Depictions (APN 370-120-001)
- Exhibit “B” – Legal Descriptions/Depictions (APN 370-120-063)
- Attachment 4 – Notices

Attorney’s Office/Engineering



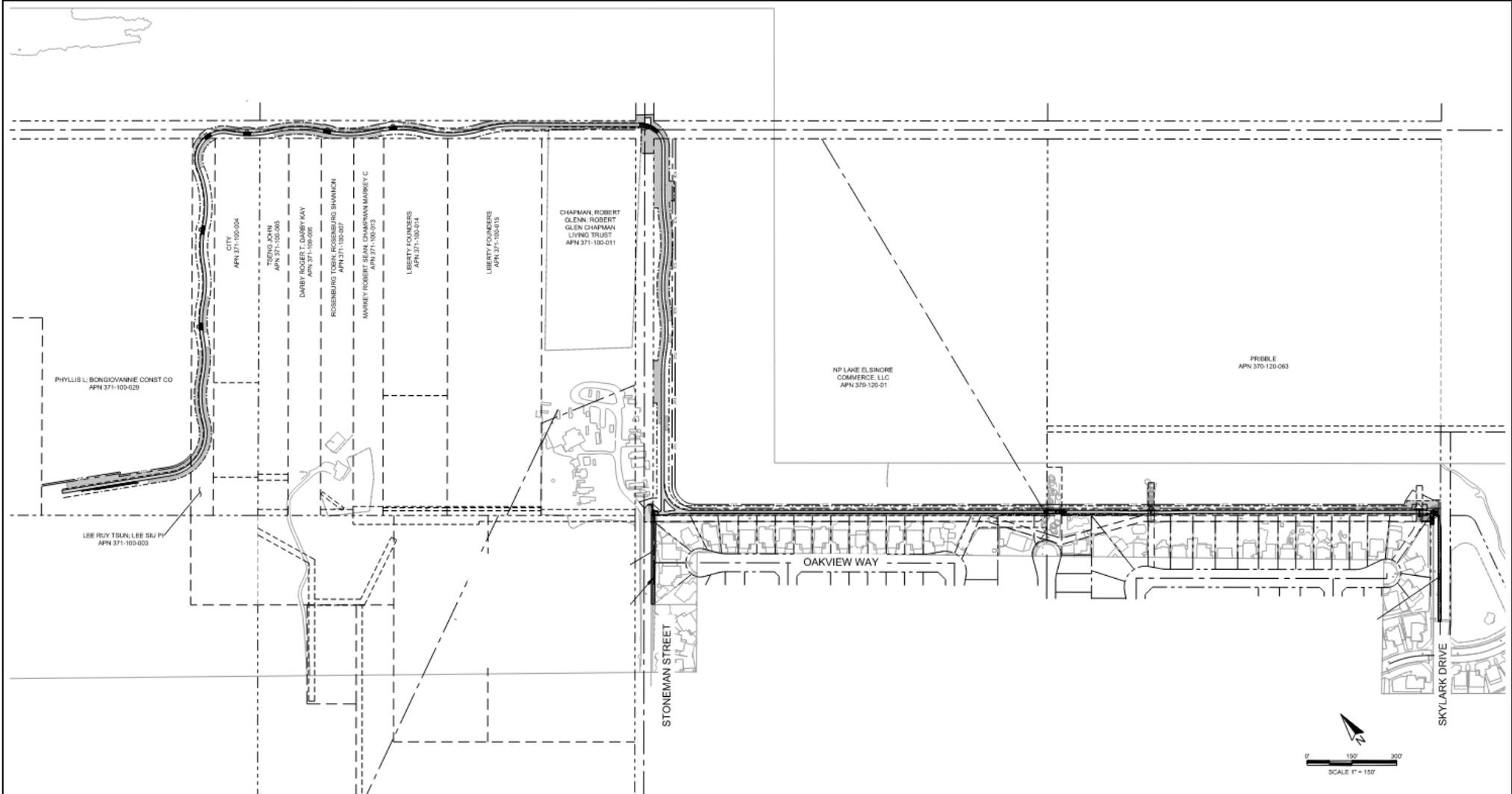
I:\PROJECTS\ChenRyanAssoc\_03243\CRY-01\_MurrietaCRA\Wor\MND\Fig2\_Aerial.mxd 03243.00001.001 10/16/2021 - SAB



Source: Aerial (Riverside County 2019)

Exhibit D - Project Vicinity

# MURRIETA CREEK MULTI-USE TRAIL ALIGNMENT



**RESOLUTION NO. 2024-\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE,  
CALIFORNIA, FINDING AND DETERMINING THE PUBLIC INTEREST AND  
NECESSITY FOR ACQUIRING AND AUTHORIZING THE CONDEMNATION  
OF EASEMENTS IN AND TO CERTAIN REAL PROPERTY WITHIN THE CITY  
OF LAKE ELSINORE**

**Whereas**, the City Council is being asked to consider the adoption of a Resolution of Necessity to acquire interests in and to real property by eminent domain for (1) a trail right of way easement, and (2) a temporary construction easement, for the Murrieta Creek Regional Trail Project ("Project").

**Whereas**, when constructed, the proposed Project will provide an important link in the regional active transportation network consistent with the East Lake Specific Plan, General Plan and the City's Active LE goals and will connect the existing Lake Elsinore Levee Trail to the Palomar Trail and the trail system in our southeast neighboring communities.

**Whereas**, the necessary easements are located on two separate parcels.

**Whereas**, APN 370-120-001 (hereinafter Parcel 001) is owned by NP Lake Elsinore Commerce, LLC and is located at the southeast corner of Stoneman Street and Como Street adjacent to a residential neighborhood (Tract 26142). The parcel is 116.69 acres. The easement area is unimproved with no site improvements.

**Whereas**, the City has completed an appraisal and made an offer to the owner of Parcel 001 for a trail easement (111,078 SF) and temporary construction easement (28,314 SF) in the amount of \$59,600. The easements in and to a portion of Parcel 001 are described in the legal descriptions and depictions attached as Exhibit "A" to this Resolution (hereinafter the Parcel 001 Easements).

**Whereas**, APN 370-120-063 (hereinafter Parcel 063) is located at the northern terminus of Skylark Drive. The parcel is 130.06 acres. The owner of record is The Paul Pribble and Patricia Lenore Pribble Family Trust. The easement area is unimproved with no site improvements.

**Whereas**, The City has completed an appraisal and made an offer to the owner of Parcel 063 for a trail easement (32,234 SF) and temporary construction easement (19,602 SF) in the amount of \$24,500. The easements in and to a portion of Parcel 063 are described in the legal descriptions and depictions attached as Exhibit "B" to this Resolution (hereinafter the Parcel 063 Easements). The Parcel 001 Easements and the Parcel 063 Easements are collectively referred to as the "Project Easements."

**Whereas**, the City proposes to construct a trail utilizing the Project Easements for the Project.

**Whereas**, the City is authorized to acquire property for park and recreation purposes by statutes including, without limitation, Government Code Section 37350.5.

**Whereas**, the Project Easements described in Exhibit "A" and Exhibit "B" are necessary to complete the Project.

**Whereas**, the location, purpose, and extent of the proposed acquisition of the Project Easements conforms with the East Lake Specific Plan, the City's General Plan and the City's Active LE goals.

**Whereas**, all persons whose names and addresses appear on the last equalized assessment roll for the real property upon which the Project Easements are located were given notice of the intention of the City Council to adopt a Resolution of Necessity and to direct the institution of eminent domain proceedings, and informing them of their right to be heard on this matter pursuant to Code of Civil Procedure Section 1245.235.

**Whereas**, a public hearing was held by the City Council on July 9, 2024, 2024, at which the matters set forth above and in Code of Civil Procedure Section 1240.030 were discussed, including the following matters: (a) whether the public interest and necessity require the acquisition of the Project Easements; (b) whether the 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 the Project Easements are necessary for the Project; and (d) whether an offer of just compensation pursuant to Government Code Section 7267.2 has been made to the owners of record.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, BY A VOTE OF NOT LESS THAN TWO-THIRDS OF ITS MEMBERS, DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:**

**Section 1:** The above Recitals are true and correct and are incorporated herein.

**Section 2:** The Project Easements are located within the City of Lake Elsinore. The acquisition of the Project Easements is for the following public use: Murrieta Creek Regional Trail Project ("Project") which will also provide an important link in the regional active transportation network. The City is authorized to acquire the Project Easements pursuant to the Eminent Domain Law.

**Section 3:** On the basis of the information contained in that certain staff report to the Mayor and City Council dated July 9, 2024, which is incorporated herein by reference, and all other written and oral evidence and testimony presented to the City Council, the City Council declares, finds and determines that:

1. Public interest and necessity require the Project. The proposed Project Easements are necessary to serve the recreational needs and promote community health of the community consistent with the standards established in the East Lake Specific Plan, the City's General Plan and the City's Active LE goals. The proposed Project, which necessarily include the Project Easements, will provide an important link in the regional active transportation network. The Project Easements are a critical component of the Project necessary to connect the Project to existing Lake Elsinore Levee Trail to the Palomar Trail and the trail system in southeast neighboring communities.
2. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury. The Project Easements are located on property that is currently unimproved. No other properties are impacted

and no new services will be required to complete the Project lying within the Project Easements.

3. The Project Easements are necessary for the Project. Acquisition of the Project Easements is necessary to complete the proposed regional trail.
4. The offers required by Section 7267.2 of the Government Code were made and good faith efforts to acquire the Project Easements by negotiation have not resulted in a negotiated purchase.

**Section 4:** The City is hereby authorized and empowered to acquire by condemnation the title to the Project Easements.

**Section 5:** The City Attorney is hereby authorized to retain the law firm of Murphy & Evertz, as the City Attorney's designee and to represent the City in these matters, in an amount not to exceed \$50,000.

**Section 6:** The City Attorney or designee, is hereby authorized and directed to prepare and prosecute in the name of the City, such proceeding or proceedings in the proper court having jurisdiction thereof, as are necessary for such acquisitions; and to prepare and file all pleadings, documents, briefs, and other instruments, and to make such arguments and to take such actions as may be necessary in their opinion to acquire the interests in real property. The City Attorney and designee are specifically authorized to take whatever steps and/or procedures are available to under the Eminent Domain Law,

**Section 7:** The City Attorney or designee is further authorized and directed to make applications to the Court for an Order for Possession Before Judgment in these proceedings.

**Section 8:** With respect to Parcel 001, the City Manager or his designee are further authorized and directed to draw a warrant from the account containing the Active Transportation Program Grant in the amount of \$59,600, the warrant to be made payable to the Clerk of the Riverside Superior Court and deliver to the City Attorney or designee to be deposited with the payee as security for the Order for Possession Before Judgment authorized.

**Section 9:** With respect to Parcel 063, the City Manager or his designee are further authorized and directed to draw a warrant from the account containing the Active Transportation Program Grant in the amount of \$24,500, the warrant to be made payable to the Clerk of the Riverside Superior Court and deliver to the City Attorney or designee to be deposited with the payee as security for the Order for Possession Before Judgment authorized

**Section 10:** That the City Clerk shall certify to the passage and adoption of this Resolution.

**Passed and Adopted** at a meeting of the City Council of the City of Lake Elsinore, California, on the 9th day of July 2024.

---

Steve Manos  
Mayor

Attest:

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Candice Alvarez, MMC  
City Clerk

STATE OF CALIFORNIA            )  
COUNTY OF RIVERSIDE        )ss.  
CITY OF LAKE ELSINORE        )

I, Candice Alvarez, MMC, City Clerk of the City of Lake Elsinore, California, hereby certify that Resolution No. 2024-\_\_\_ was adopted by the City Council of the City of Lake Elsinore, California, at a regular meeting held on the 9th day of July 2024 and that the same was adopted by the following vote:

AYES: NOES:  
ABSENT:  
ABSTAIN:

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Candice Alvarez, MMC  
City Clerk

EXHIBIT "A"  
TO RESOLUTION

**EXHIBIT 'A'**  
LEGAL DESCRIPTION  
MURRIETA CREEK REGIONAL TRAIL  
TRAIL RIGHT OF WAY  
APN 370-120-001

**BEING** A PORTION OF LOT 11, IN BLOCK "E" OF ELSINORE, IN THE CITY OF LAKE ELSINORE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 6, PAGE 296 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE MOST SOUTHERLY CORNER OF SAID LOT 11;

**THENCE** ALONG THE THE SOUTHWESTERLY LINE OF SAID LOT 11 NORTH 52°54'12" WEST, 1319.09 TO THE MOST WESTERLY CORNER OF SAID LOT 11;

**THENCE** ALONG THE NORTHWESTERLY LINE OF SAID LOT 11, NORTH 37°12'28" EAST, 1263.48 FEET TO THE MOST NORTHERLY CORNER OF SAID LOT 11;

**THENCE** ALONG THE NORTHEASTERLY LINE OF SAID LOT 11, SOUTH 52°51'53" EAST, 63.00 FEET TO THE INTERSECTION WITH A LINE 63.00 FEET SOUTHEASTERLY OF AND PARALLEL WITH SAID NORTHEASTERLY LINE;

**THENCE** LEAVING SAID NORTHEASTERLY LINE ALONG SAID PARALLEL LINE SOUTH 37°12'28" WEST, 1161.28 FEET; TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 78.00 FEET, SAID CURVE BEING TANGENT TO A LINE 24.00 FEET NORTHEASTERLY OF AND PARALLEL WITH SAID SOUTHWESTERLY LINE;

**THENCE** ALONG THE ARC OF SAID CURVE, 122.67 FEET THROUGH A CENTRAL ANGLE OF 90°06'40";

**THENCE** ALONG SAID PARALLEL LINE, SOUTH 52°54'12" EAST, 1177.95 FEET TO THE INTERSECTION WITH THE SOUTHEASTERLY LINE OF SAID LOT 11;

**THENCE** ALONG SAID SOUTHEASTERLY LINE, SOUTH 37°13'25" WEST, 24.00 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 2.55 ACRES MORE OR LESS.

SEE **EXHIBIT 'B'** ATTACHED HERETO AND MADE A PART HEREOF, BY THIS REFERENCE.



LORNE L. DaPRON P.L.S.

3/29/2023

DATE

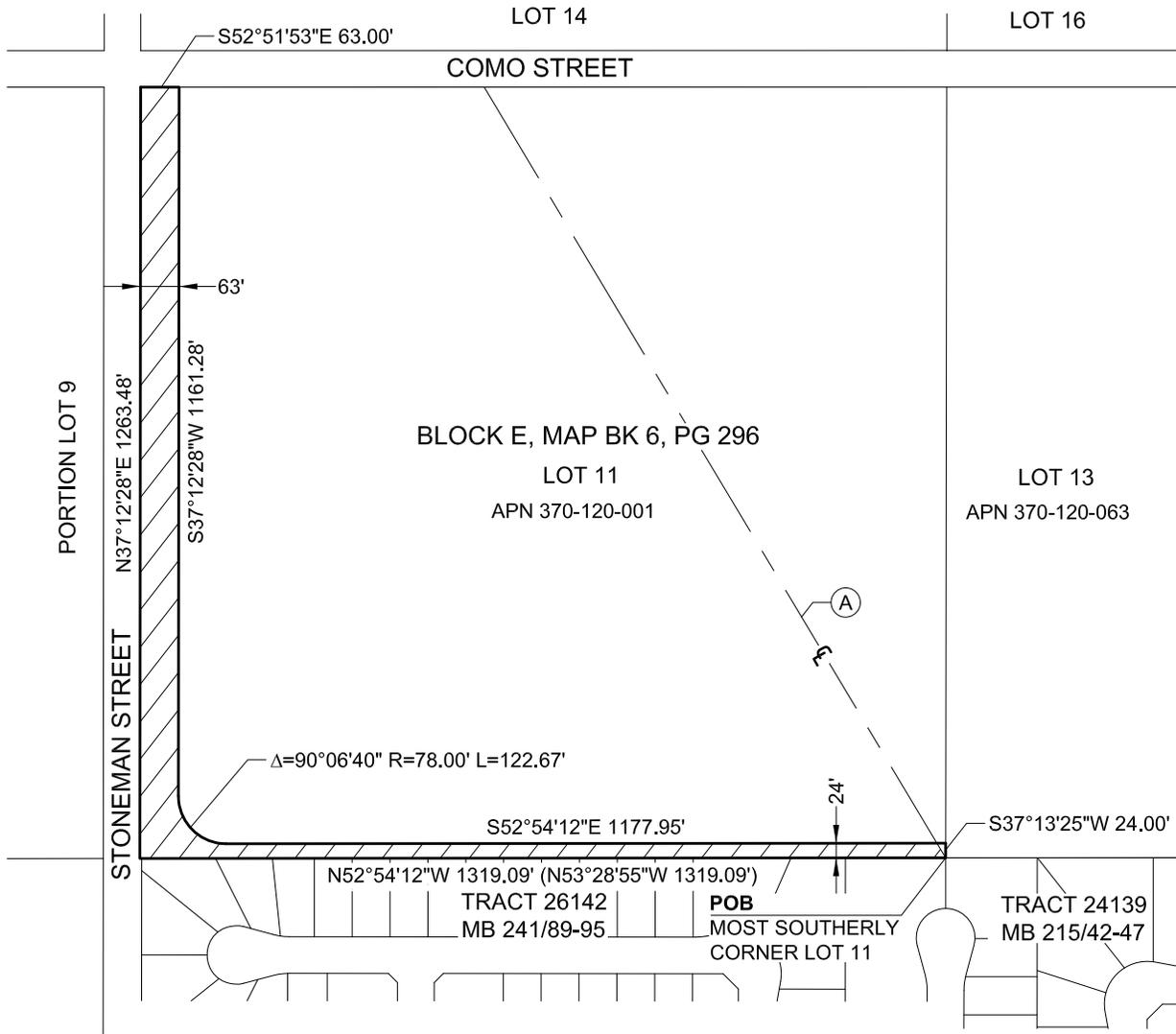


EXHIBIT 'B'  
MURRIETA CREEK REGIONAL TRAIL  
TRAIL RIGHT OF WAY  
APN 370-120-001



SCALE 1" = 300'

BLOCK F, MAP BK 6, PG 296



LEGEND:

- ( ) RECORD DATA PER MAP BOOK 241/89-95
- (A) EASEMENT TO CALIFORNIA ELECTRIC POWER COMPANY OR PUBLIC UTILITIES, INGRESS AND EGRESS RECORDED APRIL 19, 1949, BOOK 1069, PAGE 320, O.R.
- RIGHT OF WAY AREA 2.55 ACRES +/-

BASIS OF BEARINGS AND COORDINATES:  
CALIFORNIA COORDINATE SYSTEM OF 1983,  
CCS83, ZONE 6, 2017.50, BASED LOCALLY UPON  
CORS STATIONS "CASE", :DLUZ" AND "ECFS" CSRS



*L. DaPrun*

LORNE L. DaPRON 3/29/2023  
L.S. 7824 DATE

**EXHIBIT 'A'**  
LEGAL DESCRIPTION  
MURRIETA CREEK REGIONAL TRAIL  
TEMPORARY CONSTRUCTION EASEMENT  
APN 370-120-001

**BEING** A PORTION OF LOT 11, IN BLOCK "E" OF ELSINORE, IN THE CITY OF LAKE ELSINORE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 6, PAGE 296 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE MOST SOUTHERLY CORNER OF SAID LOT 11;

**THENCE** ALONG THE THE SOUTHWESTERLY LINE OF SAID LOT 11 NORTH 52°54'12" WEST, 1319.09 TO THE MOST WESTERLY CORNER OF SAID LOT 11;

**THENCE** ALONG THE NORTHWESTERLY LINE OF SAID LOT 11, NORTH 37°12'28" EAST, 1263.48 FEET TO THE MOST NORTHERLY CORNER OF SAID LOT 11;

**THENCE** ALONG THE NORTHEASTERLY LINE OF SAID LOT 11, SOUTH 52°51'53" EAST, 63.00 FEET TO THE INTERSECTION WITH A LINE 63.00 FEET SOUTHEASTERLY OF AND PARALLEL WITH SAID NORTHEASTERLY LINE TO THE **TRUE POINT OF BEGINNING**;

**THENCE** LEAVING SAID NORTHEASTERLY LINE ALONG SAID PARALLEL LINE SOUTH 37°12'28" WEST, 1161.28 FEET; TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 78.00 FEET, SAID CURVE BEING TANGENT TO A LINE 24.00 FEET NORTHEASTERLY OF AND PARALLEL WITH SAID SOUTHWESTERLY LINE;

**THENCE** ALONG THE ARC OF SAID CURVE, 122.67 FEET THROUGH A CENTRAL ANGLE OF 90°06'40";

**THENCE** ALONG SAID PARALLEL LINE, SOUTH 52°54'12" EAST, 1177.95 FEET TO THE INTERSECTION WITH THE SOUTHEASTERLY LINE OF SAID LOT 11;

**THENCE** ALONG SAID SOUTHEASTERLY LINE, NORTH 37°13'25" EAST, 13.00 FEET TO THE INTERSECTION WITH A LINE 37.00 FEET NORTHEASTERLY OF AND PARALLEL WITH SAID SOUTHWESTERLY LINE;

**THENCE** ALONG SAID PARALLEL LINE, NORTH 52°54'12" WEST, 1177.97 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 68.00 FEET, SAID CURVE BEING TANGENT TO A LINE 73.00 FEET NORTHWESTERLY AND PARALLEL WITH SAID NORTHWESTERLY LINE;

**THENCE** ALONG THE ARC OF SAID CURVE, 106.95 FEET THROUGH A CENTRAL ANGLE OF 90°06'40";

**THENCE** ALONG SAID PARALLEL LINE, NORTH 37°12'28" EAST, 1158.30 FEET TO THE SAID NORTHEASTERLY LINE;

**THENCE** ALONG SAID NORTHEASTERLY LINE NORTH 52°51'53" WEST, 10.00 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 0.65 ACRES MORE OR LESS.

SEE **EXHIBIT 'B'** ATTACHED HERETO AND MADE A PART HEREOF, BY THIS REFERENCE.

*L. DaPrin*

3/29/2023

LORNE L. DaPRON P.L.S.

DATE

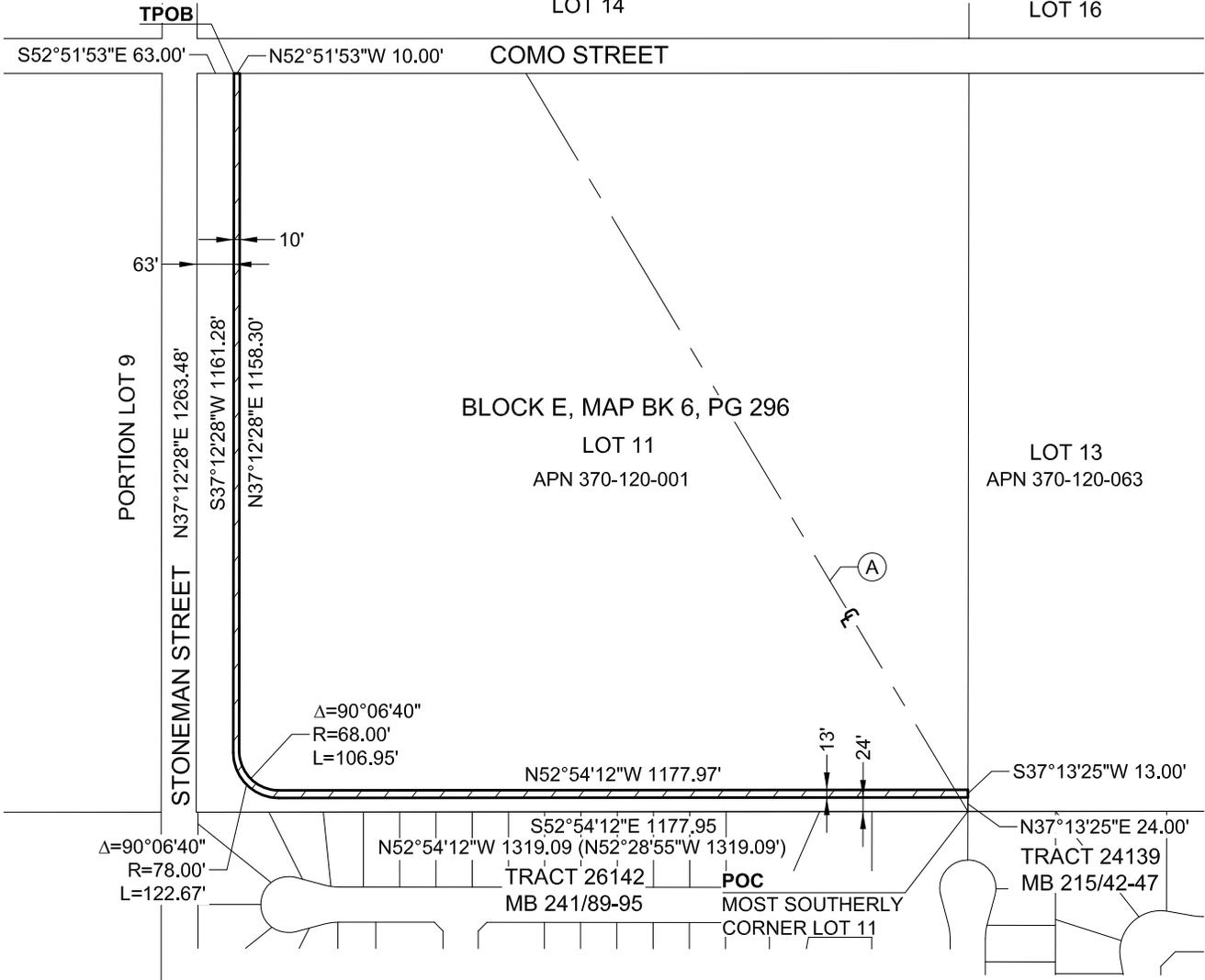


EXHIBIT 'B'  
MURRIETA CREEK REGIONAL TRAIL  
TEMPORARY CONSTRUCTION EASEMENT  
APN 370-120-001



SCALE 1" = 300'

BLOCK F, MAP BK 6, PG 296



LEGEND:

- ( ) RECORD DATA PER MAP BOOK 241/89-95
- (A) EASEMENT TO CALIFORNIA ELECTRIC POWER COMPANY OR PUBLIC UTILITIES, INGRESS AND EGRESS RECORDED APRIL 19, 1949, BOOK 1069, PAGE 320, O.R.
- EASEMENT AREA 0.65 ACRES +/-

BASIS OF BEARINGS AND COORDINATES:  
CALIFORNIA COORDINATE SYSTEM OF 1983,  
CCS83, ZONE 6, 2017.50, BASED LOCALLY UPON  
CORS STATIONS "CASE", :DLUZ" AND "ECFS" CSRS



*L. DaPrun*  
LORNE L. DaPRON  
L.S. 7824

3/29/2023

DATE

SHEET 1 OF 1

EXHIBIT "B"  
TO RESOLUTION

**EXHIBIT 'A'**  
LEGAL DESCRIPTION  
MURRIETA CREEK REGIONAL TRAIL  
TRAIL RIGHT OF WAY  
APN 370-120-063

**BEING** A PORTION OF LOT 13, IN BLOCK "E" OF ELSINORE, IN THE CITY OF LAKE ELSINORE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 6, PAGE 296 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE MOST WESTERLY CORNER OF SAID LOT 13;

**THENCE** ALONG THE THE NORTHWESTERLY LINE OF SAID LOT 13 NORTH 37°13'25" EAST, 24.00 TO THE INTERSECTION WITH A LINE 24.00 FEET SOUTHEASTERLY OF AND PARALLEL WITH SAID SOUTHWESTERLY LINE OF SAID LOT 13;

**THENCE** LEAVING SAID NORTHWESTERLY ALONG SAID PARALLEL LINE, SOUTH 52°54'12" EAST, 1224.48 FEET;

**THENCE** NORTH 37°05'48" EAST, 13.38 FEET;

**THENCE** SOUTH 52°54'12" EAST, 49.00 FEET;

**THENCE** SOUTH 37°05'48" WEST, 13.38 FEET;

**THENCE** SOUTH 52°54'12" EAST, 45.47 FEET TO THE INTERSECTION WITH THE SOUTHEASTERLY LINE OF SAID LOT 13;

**THENCE** ALONG THE SOUTHEASTERLY LINE OF SAID LOT 13, SOUTH 37°05'48" WEST, 24.00 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOT 13;

**THENCE** ALONG THE SOUTHWESTERLY LINE OF SAID 13, NORTH 52°54'12" WEST, 1318.94 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 0.74 ACRES MORE OR LESS.

SEE **EXHIBIT 'B'** ATTACHED HERETO AND MADE A PART HEREOF, BY THIS REFERENCE.



LORNE L. DaPRON P.L.S.

3/29/2023

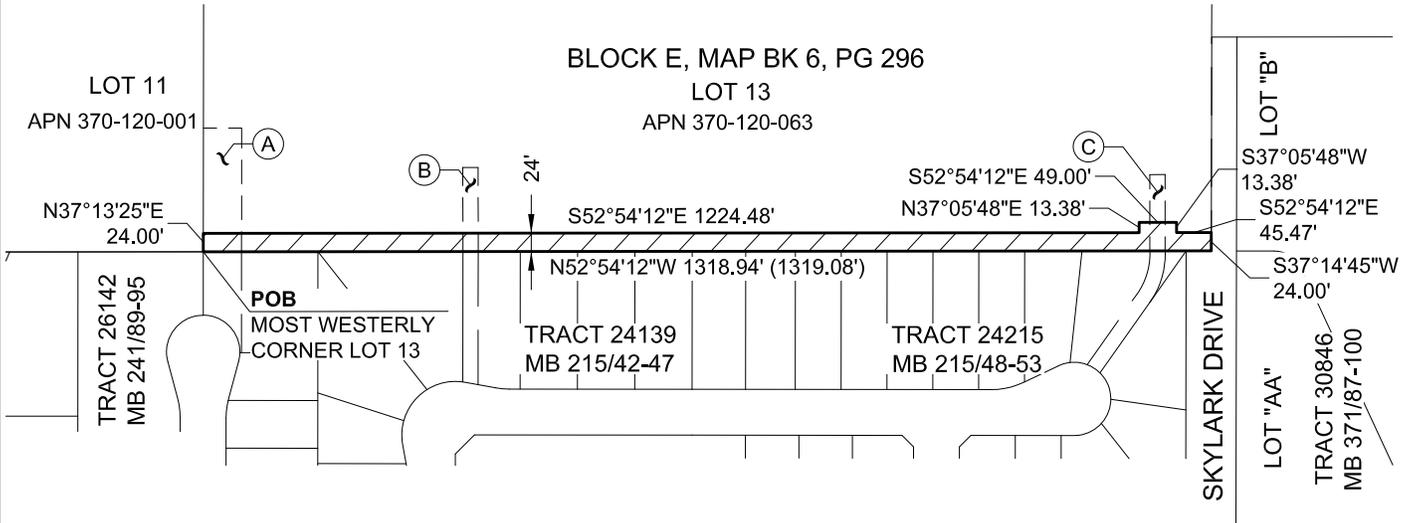
DATE



EXHIBIT 'B'  
MURRIETA CREEK REGIONAL TRAIL  
TRAIL RIGHT OF WAY  
APN 370-120-063



SCALE 1" = 250'



LEGEND:

- ( ) SUMMATION OF RECORD DATA PER MAP BOOK 215/42-475 AND MAP BOOK 215/48-53
- (A) EASEMENT TO CITY OF LAKE ELSINORE FOR SLOPE, DRAINAGE AND INCIDENTAL PURPOSES  
RECORDED MARCH 28, 1990, INSTRUMENT NO. 110933, O.R.
- (B) EASEMENT TO CITY OF LAKE ELSINORE FOR SLOPE, DRAINAGE AND INCIDENTAL PURPOSES  
RECORDED MARCH 28, 1990, INSTRUMENT NO. 110934, O.R.
- (C) EASEMENT TO CITY OF LAKE ELSINORE FOR SLOPE, DRAINAGE AND INCIDENTAL PURPOSES  
RECORDED MARCH 28, 1990, INSTRUMENT NO. 110936, O.R.
- RIGHT OF WAY AREA 0.74 ACRES +/-

BASIS OF BEARINGS AND COORDINATES:

CALIFORNIA COORDINATE SYSTEM OF 1983, CCS83, ZONE 6, 2017.50, BASED LOCALLY UPON CORS STATIONS "CASE", :DLUZ" AND "ECFS" CSRS



*L. DaPrón*

3/29/2023  
LORNE L. DaPRON DATE  
L.S. 7824

**EXHIBIT 'A'**  
LEGAL DESCRIPTION  
MURRIETA CREEK REGIONAL TRAIL  
TEMPORARY CONSTRUCTION EASEMENT  
APN 370-120-063

**BEING** A PORTION OF LOT 13, IN BLOCK "E" OF ELSINORE, IN THE CITY OF LAKE ELSINORE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 6, PAGE 296 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE MOST WESTERLY CORNER OF SAID LOT 13;

**THENCE** ALONG THE THE NORTHWESTERLY LINE OF SAID LOT 13 NORTH 37°13'25" EAST, 24.00 TO THE INTERSECTION WITH A LINE 24.00 FEET SOUTHEASTERLY OF AND PARALLEL WITH SAID SOUTHWESTERLY LINE OF SAID LOT 13 TO THE **TRUE POINT OF BEGINNING**;

**THENCE** LEAVING SAID NORTHWESTERLY ALONG SAID PARALLEL LINE, SOUTH 52°54'12" EAST, 1224.48 FEET;

**THENCE** NORTH 37°05'48" EAST, 13.38 FEET;

**THENCE** SOUTH 52°54'12" EAST, 49.00 FEET;

**THENCE** SOUTH 37°05'48" WEST, 13.38 FEET;

**THENCE** SOUTH 52°54'12" EAST, 45.47 FEET TO THE INTERSECTION WITH THE SOUTHEASTERLY LINE OF SAID LOT 13;

**THENCE** ALONG THE SOUTHEASTERLY LINE OF SAID LOT 13, NORTH 37°05'48" WEST, 27.89 FEET;

**THENCE** LEAVING SAID SOUTHWESTERLY LINE, NORTH 52°54'11" WEST, 24.32 FEET;

**THENCE** NORTH 27°26'01" WEST, 76.75 FEET;

**THENCE** SOUTH 71°14'13" WEST, 45.38 FEET;

**THENCE** SOUTH 37°05'48" WEST, 10.33 FEET TO THE INTERSECTION WITH A LINE 37.00 FEET SOUTHEASTERLY OF AND PARALLEL WITH SAID SOUTHWESTERLY LINE;

**THENCE** ALONG SAID PARALLEL LINE NORTH 52°54'12" WEST, 1199.92 FEET TO THE INTERSECTION WITH SAID NORTHWESTERLY LINE;

**THENCE** ALONG SAID NORTHWESTERLY LINE SOUTH 37°13'25" WEST, 13.00 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 0.45 ACRES MORE OR LESS.

SEE **EXHIBIT 'B'** ATTACHED HERETO AND MADE A PART HEREOF, BY THIS REFERENCE.

*L. DaPron*

3/29/2023

LORNE L. DaPRON P.L.S.

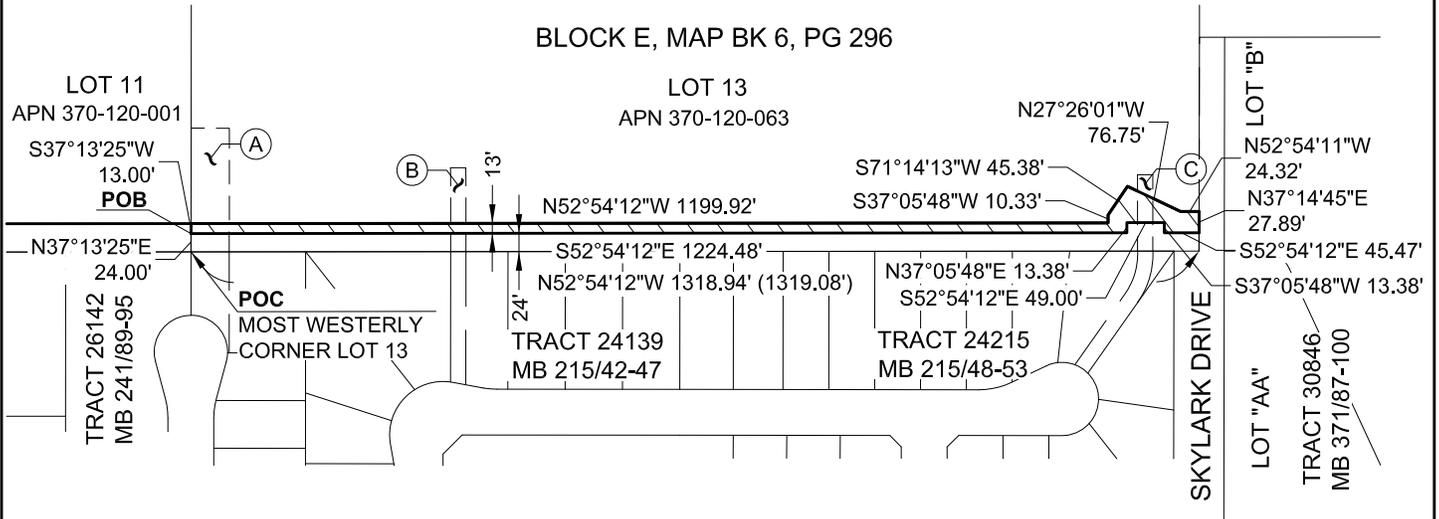
DATE



**EXHIBIT 'B'**  
**MURRIETA CREEK REGIONAL TRAIL**  
**TEMPORARY CONSTRUCTION EASEMENT**  
**APN 370-120-063**



SCALE 1" = 250'



**LEGEND:**

- ( ) SUMMATION OF RECORD DATA PER MAP BOOK 215/42-475 AND MAP BOOK 215/48-53
- (A) EASEMENT TO CITY OF LAKE ELSINORE FOR SLOPE, DRAINAGE AND INCIDENTAL PURPOSES RECORDED MARCH 28, 1990, INSTRUMENT NO. 110933, O.R.
- (B) EASEMENT TO CITY OF LAKE ELSINORE FOR SLOPE, DRAINAGE AND INCIDENTAL PURPOSES RECORDED MARCH 28, 1990, INSTRUMENT NO. 110934, O.R.
- (C) EASEMENT TO CITY OF LAKE ELSINORE FOR SLOPE, DRAINAGE AND INCIDENTAL PURPOSES RECORDED MARCH 28, 1990, INSTRUMENT NO. 110936, O.R.
- RIGHT OF WAY AREA 0.45 ACRES +/-

**BASIS OF BEARINGS AND COORDINATES:**

CALIFORNIA COORDINATE SYSTEM OF 1983, CCS83, ZONE 6, 2017.50, BASED LOCALLY UPON CORS STATIONS "CASE", "DLUZ" AND "ECFS" CSRS



*L. DaPrun*

LORNE L. DaPRON  
 L.S. 7824

3/29/2023  
 DATE



**NOTICE OF INTENTION TO ADOPT RESOLUTION OF NECESSITY  
(California Code of Civil Procedure Section 1245.235)**

Re: Acquisition of Trail Right of Way Easement and Temporary Construction Easement –  
Portion of Assessor Parcel Numbers 370-120-063

**NOTICE IS HEREBY GIVEN** that the City Council of the City of Lake Elsinore intends to hold a hearing on Tuesday, July 9, 2024 at 7:00 p.m., or as soon thereafter as the matter may be heard, at the Lake Elsinore Cultural Center, 183 North Main Street, Lake Elsinore, California 92530, to consider the adoption of a Resolution of Necessity. The adopted Resolution will authorize the City to acquire interests in and to real property by eminent domain for (1) a trail right of way easement, and (2) a temporary construction easement, for the Murrieta Creek Regional Trail Project ("Project"). The easements in and to a portion of Riverside County Assessor Parcel Number 370-120-063 are described in the legal descriptions and depictions attached to this Notice as Attachment No. 1. You are being sent this notice as your name appears on the last equalized County of Riverside assessment roll.

**NOTICE IS FURTHER GIVEN** that you have the right to appear and be heard before the City Council at the above scheduled hearing on the following matters and issues, and to have the City Council give consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity:

- a. Whether the public interest and necessity require the Project;
- b. Whether the 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 the property sought to be acquired is necessary for the Project; and
- d. Whether the offer required by Government Code Section 7267.2 was made to the owner of record.

The City is authorized to acquire property, or an interest in property, by eminent domain for the Project in accordance with Government Code Section 37350.5 and Code of Civil Procedure Section 1230.010 et seq.

**NOTICE IS FURTHER GIVEN** that you must file a written request to be heard within 15 days after this Notice was mailed. California Code of Civil Procedure section 1245.235(b)(3) provides that "failure to file a written request to appear and be heard within 15 days after the notice was mailed will result in waiver of the right to appear and be heard" on the above matters and issues which are the subject of the hearing. If you desire to be heard, you may file a written request with the City Clerk, City of Lake Elsinore, 130 S. Main Street, Lake Elsinore, California 92530 at any time prior to the hearing or, alternatively, you may submit a request to speak to the City Clerk at the hearing.

PLEASE BE AWARE THE PRICE TO BE PAID FOR THE PROPERTY, OR INTEREST IN PROPERTY, WILL NOT BE CONSIDERED BY THE CITY COUNCIL AT THIS HEARING, AND IF YOU ELECT NOT TO APPEAR AND BE HEARD, YOUR NON-APPEARANCE WILL NOT BE A WAIVER OF YOUR RIGHT TO CLAIM GREATER COMPENSATION IN A COURT OF LAW.

If the City Council elects to adopt the Resolution of Necessity, then within six months of the adoption of the Resolution, the City will commence eminent domain proceedings in Superior Court. In that proceeding, the Superior Court will determine the amount of compensation to which you are entitled.

In accordance with Code of Civil Procedure Section 1263.615, the use of the interest in property for the Project is scheduled to commence within two years of acquisition (or upon acquisition of interest in property necessary for the Project, whichever is sooner), thus the City is not offering a leaseback agreement.



**NOTICE OF INTENTION TO ADOPT RESOLUTION OF NECESSITY  
(California Code of Civil Procedure Section 1245.235)**

Re: Acquisition of Trail Right of Way Easement and Temporary Construction Easement –  
Portion of Assessor Parcel Numbers 370-120-001

**NOTICE IS HEREBY GIVEN** that the City Council of the City of Lake Elsinore intends to hold a hearing on Tuesday, July 9, 2024 at 7:00 p.m., or as soon thereafter as the matter may be heard, at the Lake Elsinore Cultural Center, 183 North Main Street, Lake Elsinore, California 92530, to consider the adoption of a Resolution of Necessity. The adopted Resolution will authorize the City to acquire interests in and to real property by eminent domain for (1) a trail right of way easement, and (2) a temporary construction easement, for the Murrieta Creek Regional Trail Project ("Project"). The easements in and to a portion of Riverside County Assessor Parcel Number 370-120-001 are described in the legal descriptions and depictions attached to this Notice as Attachment No. 1. You are being sent this notice as your name appears on the last equalized County of Riverside assessment roll.

**NOTICE IS FURTHER GIVEN** that you have the right to appear and be heard before the City Council at the above scheduled hearing on the following matters and issues, and to have the City Council give consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity:

- a. Whether the public interest and necessity require the Project;
- b. Whether the 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 the property sought to be acquired is necessary for the Project; and
- d. Whether the offer required by Government Code Section 7267.2 was made to the owner of record.

The City is authorized to acquire property, or an interest in property, by eminent domain for the Project in accordance with Government Code Section 37350.5 and Code of Civil Procedure Section 1230.010 et seq.

**NOTICE IS FURTHER GIVEN** that you must file a written request to be heard within 15 days after this Notice was mailed. California Code of Civil Procedure section 1245.235(b)(3) provides that "failure to file a written request to appear and be heard within 15 days after the notice was mailed will result in waiver of the right to appear and be heard" on the above matters and issues which are the subject of the hearing. If you desire to be heard, you may file a written request with the City Clerk, City of Lake Elsinore, 130 S. Main Street, Lake Elsinore, California 92530 at any time prior to the hearing or, alternatively, you may submit a request to speak to the City Clerk at the hearing.

PLEASE BE AWARE THE PRICE TO BE PAID FOR THE PROPERTY, OR INTEREST IN PROPERTY, WILL NOT BE CONSIDERED BY THE CITY COUNCIL AT THIS HEARING, AND IF YOU ELECT NOT TO APPEAR AND BE HEARD, YOUR NON-APPEARANCE WILL NOT BE A WAIVER OF YOUR RIGHT TO CLAIM GREATER COMPENSATION IN A COURT OF LAW.

If the City Council elects to adopt the Resolution of Necessity, then within six months of the adoption of the Resolution, the City will commence eminent domain proceedings in Superior Court. In that proceeding, the Superior Court will determine the amount of compensation to which you are entitled.

In accordance with Code of Civil Procedure Section 1263.615, the use of the interest in property for the Project is scheduled to commence within two years of acquisition (or upon acquisition of interest in property necessary for the Project, whichever is sooner), thus the City is not offering a leaseback agreement.



# Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP  
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www.allenmatkins.com

**K. Erik Friess**  
E-mail: rfriess@allenmatkins.com  
Direct Dial: 949.553.1313 File Number: 390086.00001/4887-3753-4157.1

## Via Email/U.S. Mail

July 2, 2024

Candice Alvarez  
City Clerk  
City of Lake Elsinore  
130 South Main Street  
Lake Elsinore, CA 92530

Email: calvarez@lake-elsinore.org

**Re: Lake Elsinore City Council Meeting on July 9, 2024**

**NP Lake Elsinore Commerce, LLC (APN 370-120-001): Request to be heard at the City of Lake Elsinore's July 9, 2024, hearing on its proposed resolution of necessity.**

Dear Ms. Alvarez:

This firm represents NP Lake Elsinore Commerce, LLC, the owner of property that is the subject of the City's July 9, 2024, hearing regarding the City's intent to adopt a resolution of necessity authorizing condemnation for a portion of the property located at 32400 Stoneman Street, Lake Elsinore and designated as Assessor's Parcel Number 370-120-001, for the City's Murrieta Creek Multi-Use Trail project.

This letter constitutes NP Lake Elsinore Commerce, LLC's request to appear and be heard on the intended resolution of necessity. This letter also provides notice that NP Lake Elsinore Commerce, LLC intends to, and hereby does, object to the City's adoption of the proposed resolution of necessity.

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

Candice Alvarez  
City of Lake Elsinore  
July 2, 2024  
Page 2

NP Lake Elsinore Commerce, LLC reserves the right to submit additional comments and objections in advance of and at the July 9, 2024, hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "K. Erik Friess", written in a cursive style.

K. Erik Friess

cc: Brian R. English, Esq.

# Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law  
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Telephone: 949.553.1313 | Facsimile: 949.553.8354  
www.allenmatkins.com

**K. Erik Friess**  
E-mail: rfriess@allenmatkins.com  
Direct Dial: 949.851.5478 File Number: 390086.00001/4891-0683-9247.4

## VIA ELECTRONIC MAIL

July 9, 2024

Candice Alvarez  
City Clerk  
City of Lake Elsinore  
130 South Main Street  
Lake Elsinore, CA 92530

Email: calvarez@lake-elsinore.org

**Re: Objections to the City of Lake Elsinore's July 9, 2024, hearing on a proposed resolution of necessity for partial condemnation of NP Lake Elsinore Commerce, LLP's property located at 32400 Stoneman Street, Lake Elsinore (APN 370-120-001) in connection with the City's Murietta Creek Multi-Use Trail Project  
Agenda Item No. 18**

---

Dear Ms. Alvarez:

This firm represents NP Lake Elsinore Commerce, LLC, the owner of property that is the subject of the City of Lake Elsinore's July 9, 2024, hearing regarding the City's intent to adopt a resolution of necessity authorizing condemnation for a portion of NP Lake Elsinore Commerce's property located at 32400 Stoneman Street, Lake Elsinore and designated as Assessor's Parcel Number 370-120-001, for the City's Murrieta Creek Multi-Use Trail project.

We submit this letter in lieu of appearing and objecting at the hearing to detail and preserve NP Lake Elsinore Commerce's objections to the City's proposed resolution of necessity. We request that this objection letter appear in the record for Agenda Item Number No. 18 regarding the resolution of necessity.

We also request that copies of this objection letter be distributed to all the City decision-makers prior to their considering the resolution of necessity.

Candice Alvarez  
Valley Transportation Authority  
July 9, 2024  
Page 2

## OBJECTIONS

**1. The City has not satisfied State-mandated prerequisites for adopting a resolution of necessity. More specifically, the City failed to make an offer of just compensation based on an adequate appraisal of the property. Thus, the City cannot adopt a resolution of necessity.**

Under California's Eminent Domain Law, a condemning agency must comply with several procedural prerequisites before adopting a resolution of necessity and instituting a condemnation action. Among other requirements, the condemning agency: (1) must appraise the fair market value of the property to be condemned; (2) must make an offer of just compensation reflective of that value; (3) must provide a written statement explaining the basis of the agency's determination of fair market value; and (4) must engage in good faith negotiations before initiating a condemnation offer. (Gov. Code, §§ 7267.1, 7267.2; Code Civ. Proc., § 1245.230.)

The City has not completed the above-listed prerequisites for adopting a resolution of necessity to condemn NP Lake Elsinore Commerce's property. Specifically, the City is required to pay NP Lake Elsinore Commerce the fair market value of the property the City intends to take. (Cal. Const., art. I, § 19; Code Civ. Proc., § 1263.310.) Accordingly, the City's appraisal must accurately reflect the fair market value of NP Lake Elsinore Commerce's property and account for all relevant considerations.

But the City's appraisal is seriously defective, as detailed below. Because of these significant defects in the appraisal, the City has not properly made an offer under Government Code section 7267.2 and cannot make a finding that it has. Thus, the City cannot properly adopt a resolution of necessity.

**The City's appraisal misses the proper value of the property by failing to evaluate whether the property's highest-and-best uses will still be feasible in light of the City's acquisition.**

NP Lake Elsinore Commerce's property consists of roughly 116 acres located in Planning Area 3 of the East Lake Specific Plan, which is zoned for "Action Sports, Tourism, Commercial and Recreation" land uses. This land use designation is the "main focal point" of the East Lake Specific Plan. This land use designation allows for a broad, versatile range of uses, including bars/cocktail lounges, hotels, municipal parking lots and parking structures, personal service establishments, restaurants, and retail stores.

Approximately 38 acres of NP Lake Elsinore Commerce's property is also zoned as an "Airport Overlay," which allows airport-related industrial uses, aviation-related residential development, and accessory buildings.

Candice Alvarez  
Valley Transportation Authority  
July 9, 2024  
Page 3

Advantageously located adjacent to residential communities, NP Lake Elsinore Commerce's property is ripe for development. The City's appraiser recognized this by stating that the property's highest-and-best use is to "[h]old for future development when feasibility of an Action Sports, Tourism, Commercial or Recreation use for this site exists."

Yet the City's appraiser completely missed that taking 2.55 acres of the property along its main access road, Stoneman Street, for a trail easement hinders NP Lake Elsinore Commerce's ability to develop the property for its highest-and-best uses.

NP Lake Elsinore Commerce is obtaining entitlements from the City for NP Lake Elsinore Commerce's development of three industrial buildings on portions of Planning Areas 2 and 3 of the East Lake Specific Plan near the property. NP Lake Elsinore Commerce is open to negotiating to set aside as conserved land the 2.55 acres of its property that the City seeks to acquire for its trail easement. It make the most sense for these negotiations to take place in the context of NP Lake Elsinore Commerce's pending entitlement applications for its nearby industrial development project. The City's appraisal fails to mention NP Lake Elsinore Commerce's industrial development project despite it being a matter of public record.

The City's proposed taking may hinder potential negotiations between NP Lake Elsinore Commerce and the City related to NP Lake Elsinore Commerce's industrial development project. By pushing ahead with the proposed taking, the City will force NP Lake Elsinore Commerce to set aside many more acres of its property for conservation than necessary to achieve the City's project. The City's appraisal misses this and thus fails to evaluate whether the property's highest-and-best uses will still be feasible in light of the City's acquisition. The City's proposed taking significantly impedes NP Lake Elsinore Commerce's ability to develop its property for the property's highest-and-best uses when the amount of acreage subject to conservation can be negotiated between the parties.

### **The City's appraisal used non-reflective and outdated comparable sales.**

To determine land value, the appraisal includes six "comparable" land sales. The majority of the "comparable" land sales were located in different cities from NP Lake Elsinore Commerce's property, with some properties as far as 36 miles away. Many of the "comparable" land sales were zoned for very different and less valuable land uses than NP Lake Elsinore Commerce's property. Two of the "comparable" land sales were zoned for residential use. One "comparable" land sale was zoned for agricultural use within a specific plan that allows for golf course use. Only one of the "comparable" land sales was zoned for "Action Sports, Tourism, Commercial and Recreation." (And this land sale is pending.)

In addition, half of the "comparable" land sales were distinguishable in land size to NP Lake Elsinore Commerce's 116-acre larger parcel. Two of the "comparable" land sales had less than half

Candice Alvarez  
Valley Transportation Authority  
July 9, 2024  
Page 4

the acreage of NP Lake Elsinore Commerce's larger parcel, with one property as small as roughly 40 acres. And one of the "comparable" land sales was significantly larger in land size at 218 acres.

These "comparable" land sales used by the City's appraiser drove down the value conclusion for NP Lake Elsinore Commerce's property. Many of the "comparable" land sales are not reflective of NP Lake Elsinore Commerce's property. Not only that, but the City's appraiser also chose a price per square foot at the lower range of the "comparable" sales. At a minimum, NP Lake Elsinore Commerce's price per square foot should have been at the top of the range.

Further, the date of value of the City's appraisal is nearly a year old, rendering it stale. Additionally, nearly all of the sales dates of the six land sales were over a year before the July 2023 date of value in the City's appraisal. Four sales were as far back as 2021, which is a very different real-estate market. Such outdated "comparable" sales do not reflect fair market value in this rapidly escalating real-estate market. This should be reflected in the City's appraisal.

**The City's project is not planned or located in a manner that will be most compatible with the greatest public good and the least private injury.**

A public agency may not exercise the power of eminent domain for a proposed project unless it establishes that "the project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury." (Code Civ. Proc., § 1240.030, subd. (b).) The City does not satisfy this requirement. The City's staff report states that the project serves the greatest public good but includes no substantive support to demonstrate the project results in the least private injury to NP Lake Elsinore Commerce. The City's project is not planned to result in the least private injury to NP Lake Elsinore Commerce.

As discussed earlier, the City's proposed taking may frustrate potential negotiations between NP Lake Elsinore Commerce and the City related to NP Lake Elsinore Commerce's industrial development project. This is likely to result in the City's forcing NP Lake Elsinore Commerce to conserve many more acres of its property for conservation than is necessary to achieve the City's project. This will also impact NP Lake Elsinore Commerce's ability to develop its property for "Action Sports, Tourism, Commercial and Recreation" land uses and airport-related development – depriving the public of many activities envisioned in the City's East Lake Specific Plan.

Additionally, the City's appraisal misses that the City's proposed taking may interfere with the Riverside County Multi Species Habitat Conservation Plan. The City's appraisal recognized that the MSHCP has designated portions of NP Lake Elsinore Commerce's property as conservation land. Yet the City's appraisal fails to identify how the proposed taking will impact the MSHCP's conservation efforts. More specifically, whether the City's 2.55-acre trail easement will require NP Lake Elsinore Commerce to dedicate even more of its property's acreage to the MSHCP, especially when considering that that portion of land is potentially available to the City as a conservation area

Candice Alvarez  
Valley Transportation Authority  
July 9, 2024  
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through negotiations. At a minimum, the City needs to coordinate with the Western Riverside County Regional Conservation Authority about the areas of the property subject to the MSHCP to avoid improperly and unnecessarily multiplying the amount of NP Lake Elsinore Commerce's property that must be conserved. The City's proposed resolution of necessity is thus extremely premature.

**The City's appraisal grossly underestimates NP Lake Elsinore Commerce's devastating severance damages, both for physical changes caused by the City's taking and impacts on future redevelopment.**

The City's appraisal concluded that the proposed taking would result in \$0 of severance damages. But the City's appraisal offers *no support* for this conclusion. Rather, the City's appraisal claims that the City's proposed taking will not result in any change "to the utility, highest and best use, or further development of the property." There is no support provided for these claims.

For example, the City's appraisal completely ignores the severance damages that will arise from the City's proposed trail easement. In particular, the City's 2.55-acre trail easement will block the only point of access to NP Lake Elsinore Commerce's remainder property, rendering it landlocked and making development impossible. The City's appraisal recognizes that "direct access" to the property is via Stoneman Street. This is the only point of access because additional access via Como Street "is on paper only and does not physically exist." But the City's proposed trail easement, which would be ten feet wide with a four-and-a-half-foot wood-post fence installed on both sides of the trail, runs along the property's boundary adjacent to Stoneman Street. Obviously, this renders Lake Elsinore Commerce's remainder property landlocked, inaccessible, and undevelopable. Yet the City's appraiser assigned *zero* dollars of severance damages for this.

The City's appraiser also undervalues the trail easement. The trail easement prohibits any development of the easement area. Despite the extreme limitations, the City's appraiser values the trail easement as 95% of fee value. The City's trail easement area should be valued at 100% of fee value given that area will be undevelopable (just like the remainder property). Further, the City's 12-month temporary construction easement will encumber another .65 acres of the property.

The City's appraisal also fails to recognize that the property's highest-and-best uses will not be feasible as described above. Notwithstanding this, the City's appraisal ignores these significant negative impacts to opine to \$0 for severance damages. The City's appraiser is simply wrong.

Negotiations remain a possibility between NP Lake Elsinore Commerce and the City related to the entitlements for NP Lake Elsinore Commerce's industrial development project and the City's trail easement on this property. Proceeding with the proposed taking at this time is premature since the parties have yet to engage in meaningful, substantive negotiations.

Candice Alvarez  
Valley Transportation Authority  
July 9, 2024  
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## 2. Conclusion.

Because the evidence presented in these objections establishes that the City's appraisal is fundamentally flawed, the City must commission a new appraisal that properly assesses NP Lake Elsinore Commerce's property, and the City must make a new offer before proceeding with a resolution of necessity. (See Cal. Code Regs., tit. 25, § 6182, subd. (i)(2).)

NP Lake Elsinore Commerce therefore respectfully requests that the City's Board *not* proceed with the premature adoption of any resolution of necessity and that the City instead begin negotiations with NP Lake Elsinore Commerce in connection with NP Lake Elsinore Commerce's industrial development project to set aside as conserved land the 2.55 acres of NP Lake Elsinore Commerce's property that the City wants to acquire for its trail easement. In the event that negotiations do not succeed, NP Lake Elsinore Commerce respectfully requests that the City obtain a new or updated appraisal that properly values the property and resultant severance damages and make a proper offer to NP Lake Elsinore Commerce to purchase the property interests.

Very truly yours,



K. Erik Friess

KEF:slp