



Ferndale City Council
REQUEST FOR COUNCIL ACTION
 Department Prepared By: CITY CLERK'S OFFICE

AGENDA BILL #12-02-003

TITLE

Ordinance
 Resolution
 Motion
 Info Only
 Discussion

Date Council Action Requested: February 6, 2012

Prepared by: Sam Taylor, City Clerk

Reviewed By:

Date: Feb. 3, 2012

SUBJECT: Main Street transportation improvement project eminent domain ordinance.

Committee: P&LU PW&U F&A PH&NS
PS&L Ad-Hoc

Mayor	X
City Administrator	X
City Clerk's Office	X
Community Development Dept	
Public Works Department	X
City Attorney's Office	X
Finance Director	
Police Department	
Board/Commission	
Hearings Examiner	

ACTION REQUESTED:

VOTE NEEDED TO PASS:

SUMMARY: Please see staff report.

DISCUSSION/ANALYSIS/ISSUES: Public Works & Utilities Committee members voted unanimously to recommend that the full council approve the proposal.

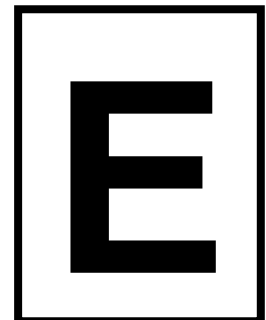
RECOMMENDATIONS: Motion to approve AB #12-02-003.

FISCAL IMPACT:

ALTERNATIVES:

ATTACHMENTS:

- Staff Report
- Ordinance
- Supplemental Information





City of Ferndale

CITY COUNCIL STAFF REPORT

MEETING DATE: _____ AGENDA BILL # _____

SUBJECT: Main Street – Douglas to Church Project
Ordinance for the acquisition of Parcels #390219 058059, 390219 066014, 390219 142009, 390219 200045, 390219 222011, 390230 170503, and 390230 175445 by eminent domain

DATE: January 30, 2012

FROM: Janice Marlega, PW Director

PRESENTATION BY: Janice Marlega, PW Director

RECOMMENDATIONS:

Staff recommends approval of Ordinance No. _____, providing for use of eminent domain for acquisition of property necessary to construction of the Main Street - Douglas to Church Road Project.

BACKGROUND:

The street improvement project, Main Street – Douglas to Church Road, is the first priority on the City's 6-Year Transportation Improvement Program 2012-2017. The Council adopted the TIP on June 20, 2011. Presently, design, permitting and right-of-way acquisition work is underway. The current project schedule is to advertise for construction bids in April and start work early June.

We have successfully negotiated with a majority of the property owners to acquire the property interests necessary for this project.

We have been and continue to negotiate with the owners of Parcels #390219 058059, 390219 200045, 390219 222011, 390230 170503, and 390230 175445 to purchase the strips of property, which are legally described in Exhibits A – G of the attached ordinance, but have not been able to reach an agreement. At the time this staff report was written, we have reached a tentative agreement with the property owners for parcels 390219 066014, and 390219 142009, but have not yet received final signatures on the conveyance documents. It is anticipated that these property owners will provide signature prior to the February 6, 2012, Council meeting. Should that be the case, we will remove those parcels from the proposed Ordinance.

ANALYSIS:

Although, the City has made a good faith effort to acquire the necessary right-of-way interests from the owners of Parcels #390219 058059, 390219 066014, 390219 142009, 390219 200045, 390219 222011, 390230 170503, and 390230 175445 through active negotiations, we have not been able to reach final agreement. Time is of the essence, and the City may not be able to acquire the interests by negotiations and meet the current project schedule. The only alternative available for acquisition of this property may be by eminent domain.

ALTERNATIVES CONSIDERED:

The alternatives considered include:

- 1) Approve Ordinance No. _____
- 2) Take no action at this time.

3) Direct staff to proceed in another direction.

FISCAL REVIEW:

The Main Street – Douglas to Church Project is funded with local funds and a State Transportation Improvement Board grant.

LEGAL REVIEW:

The City Attorney has reviewed the ordinance and has determined that it is consistent with RCW 8.12.040.

CONCLUSION:

In order to proceed with the construction of the Main Street Project, the City must acquire all right-of-way interests and obtain the temporary construction easements needed to perform the work.

Staff will continue to exhaust all reasonable negotiation efforts to purchase the property subject to this Ordinance, but to keep the Main Street Project on schedule for a construction ad date in April, it is essential that the City be prepared to initiate proceedings to acquire the property using its power of eminent domain at this time for all properties that have not signed conveyance documents.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF FERNDALE, WASHINGTON, RELATING TO THE ACQUISITION BY EMINENT DOMAIN OF CERTAIN PORTIONS OF PROPERTY IN THE CITY OF FERNDALE NECESSARY FOR CONSTRUCTION OF THE MAIN STREET – DOUGLAS TO CHURCH PROJECT; PROVIDING FOR CONDEMNATION, APPROPRIATION, TAKING AND DAMAGING OF LAND AND PROPERTY RIGHTS NECESSARY THEREFORE, PROVIDING FOR THE COST THEREOF AND DIRECTING THE INITIATION OF APPROPRIATE PROCEEDINGS IN THE MANNER PROVIDED BY LAW FOR SAID CONDEMNATION.

WHEREAS, the Ferndale City Council adopted by Resolution No. 11-06-20, the City’s 6-Year Transportation Improvement Program 2012-2017 (“Program”); and

WHEREAS, the Main Street – Douglas to Church Road (“Project”) is a street improvement project included in the City’s Program; and

WHEREAS, the Project consists of widening and reconstructing Main Street, along with construction of related improvements, including but not limited to curbs, gutters and sidewalks, street lighting, and storm drainage and other utility improvements; and

WHEREAS, the completion of the Project will greatly enhance corridor safety, traffic flow, and access to the downtown area; and

WHEREAS, prior to commencement of construction, the City must acquire all right-of-way interests and obtain temporary easements necessary for construction of the Project, and must justly compensate affected property owners for the property rights and interests acquired; and

WHEREAS, the City, with the assistance of its acquisition agent, has diligently worked to acquire by negotiation all property interests necessary for the Project, and has successfully negotiated with a number of property owners, and has otherwise notified all property owners of the Project and the reason for the City’s acquisition efforts; and

WHEREAS, in the event that negotiated acquisition is not fully successful in advance of the anticipated commencement of construction, it is essential that the City be prepared to initiate condemnation proceedings so that the Project can be timely constructed; and

WHEREAS, there exists in the City of Ferndale certain portions of property legally described in Section 1 of this ordinance that the City must acquire for the Project purposes; and

WHEREAS, the City Council finds that said property is critical to the Project and is in the public interest to have such property for public safety, welfare and transportation needs; and

WHEREAS, based on the foregoing, the City Council finds that the only alternative available for acquisition of the following property may be by eminent domain;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FERNDALE, DO ORDAIN AS FOLLOWS:

Section 1. Repeal of Previous Ordinance. This Ordinance hereby repeals and replaces Ordinance #1694 of the Council of the City of Ferndale in its entirety.

Section 2. Legal Description. The real property that is the subject of this ordinance is legally described as follows:

For Tax Parcel #390219 058059 (Project Parcel 01), see attached Exhibit A (legal description and map), which is incorporated herein by this reference.

For Tax Parcel #390219 066014 (Project Parcel 02), see attached Exhibit B (legal description and map), which is incorporated herein by this reference.

For Tax Parcel #390219 142009 (Project Parcel 06), see attached Exhibit C (legal description and map), which is incorporated herein by this reference.

For Tax Parcel #390219 200045 (Project Parcel 11), see attached Exhibit D (legal description and map), which is incorporated herein by this reference.

For Tax Parcel #390219 222011 (Project Parcel 12), see attached Exhibit E (legal description and map), which is incorporated herein by this reference.

For Tax Parcel #390230 170503 (Project Parcel 41), see attached Exhibit F (legal description and map), which is incorporated herein by this reference.

For Tax Parcel #390230 175445, see attached Exhibit G (legal description and map), which is incorporated herein by this reference.

Section 3. Public use and necessity.
The public health, safety, necessity and convenience demand the acquisition of the real property described in Section 2 herein for the Project.

Section 4. Condemnation of property.
The real property described in Section 2 shall be condemned, appropriated and taken for the purposes described in Section 3 herein, only after just compensation has been made, or paid into the court for the owner thereof in a manner provided by law.

Section 5. Costs of Acquisition.

The costs of the acquisition provided for by this ordinance shall be paid for using funds allocated under the Main Street Fund 308, or such other funds of the City of Ferndale as may be provided by law.

Section 6. Authority of Attorney. The City Attorney or special outside legal counsel retained for prosecution of this condemnation action, are hereby directed to exhaust reasonable efforts through direct negotiations to acquire the necessary property. In the event reasonable negotiation efforts are not successful with affected property owner, the City attorney or special outside legal counsel are hereby authorized and directed to begin and prosecute actions and proceedings in a manner provided by law to condemn, take, damage, and appropriate the real properties necessary to carry out the provisions of this ordinance, described in Section 2 herein. In conducting such condemnation proceedings, the City Attorney or special outside legal counsel are hereby authorized to enter into stipulations for the purpose of minimizing damages.

Section 7. Severability.

If any section, sentence, clause, paragraph, phrase, or word of this ordinance should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality therefore shall not affect the validity or constitutionality of any other section, sentence, clause, paragraph, phrase, or word of this ordinance.

Section 8. Corrections.

The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

This Ordinance shall take effect and be in full force five (5) days after its passage, approval and publication in accordance with law.

PASSED by the Council of the City of Ferndale, Washington, on this ____ day of February, 2012.

ATTEST:

Gary S. Jensen, MAYOR

Sam Taylor, CITY CLERK

Published:
Effective date:

EXHIBIT A

Land Description for Right-of-Way Dedication
390219 058059

A tract of land in the southwest quarter of Section 19, Township 39 North, Range 2 East of W.M., more particularly described as follows:

The west 27.00 feet of Lot 2 "James W. Summers L.L.A." as per the map thereof recorded in the Auditor's Office of Whatcom County under Auditor's File Number 2050302016, except the north 748.40 feet thereof.

Together with the south 34.50 feet of Lot 2 "James W. Summers L.L.A." as per the map thereof recorded in the Auditor's Office of Whatcom County under Auditor's File Number 2050302016, except the west 27.00 feet thereof.

Subject to and/or together with all easements, covenants, restrictions and agreements of record.



EXHIBIT B
Land Description for Right-of-Way Dedication
390219 066014

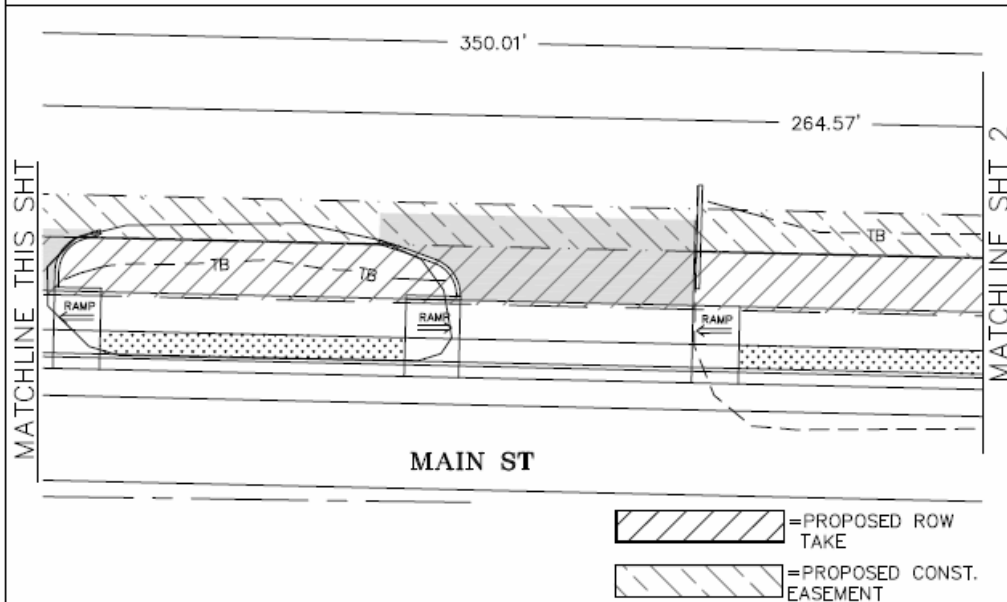
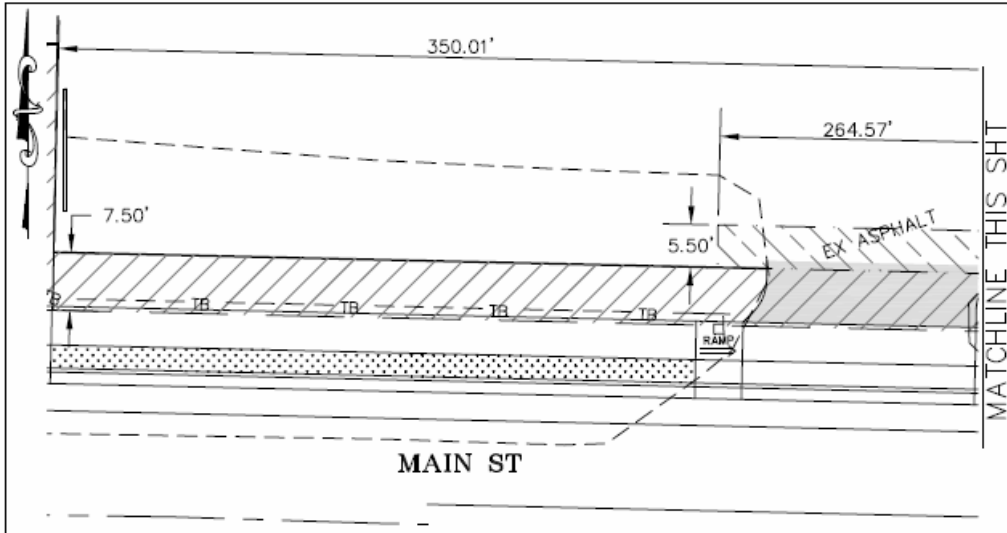
A tract of land in the southwest quarter of Section 19, Township 39 North, Range 2 East of W.M., more particularly described as follows:


The south 7.50 feet of the following described parcel:
The east 350 feet of the west 831 feet of the south 249 feet of Government Lot 4 (southwest quarter of the southwest quarter). Except the south 30.00 feet thereof for Main Street right-of-way.

Subject to and/or together with all easements, covenants, restrictions and agreements of record.

The intent of this dedication is to widen the north right-of-way of Main Street from its present width of 30.00 feet to 37.50 feet.





 = PROPOSED ROW TAKE
 = PROPOSED CONST. EASEMENT

390219 066014
 2488 MOUNTAIN VIEW RD., WESTERN WA. CORP. OF SEVENTH DAY ADVENTISTS
 LOT AREA=76,655.60 SF
 PROPOSED EASEMENT=715.00 SF
 PROPOSED TAKE=2625.10 SF
 REMAINING AREA=74,030.50 SF

1"=20'

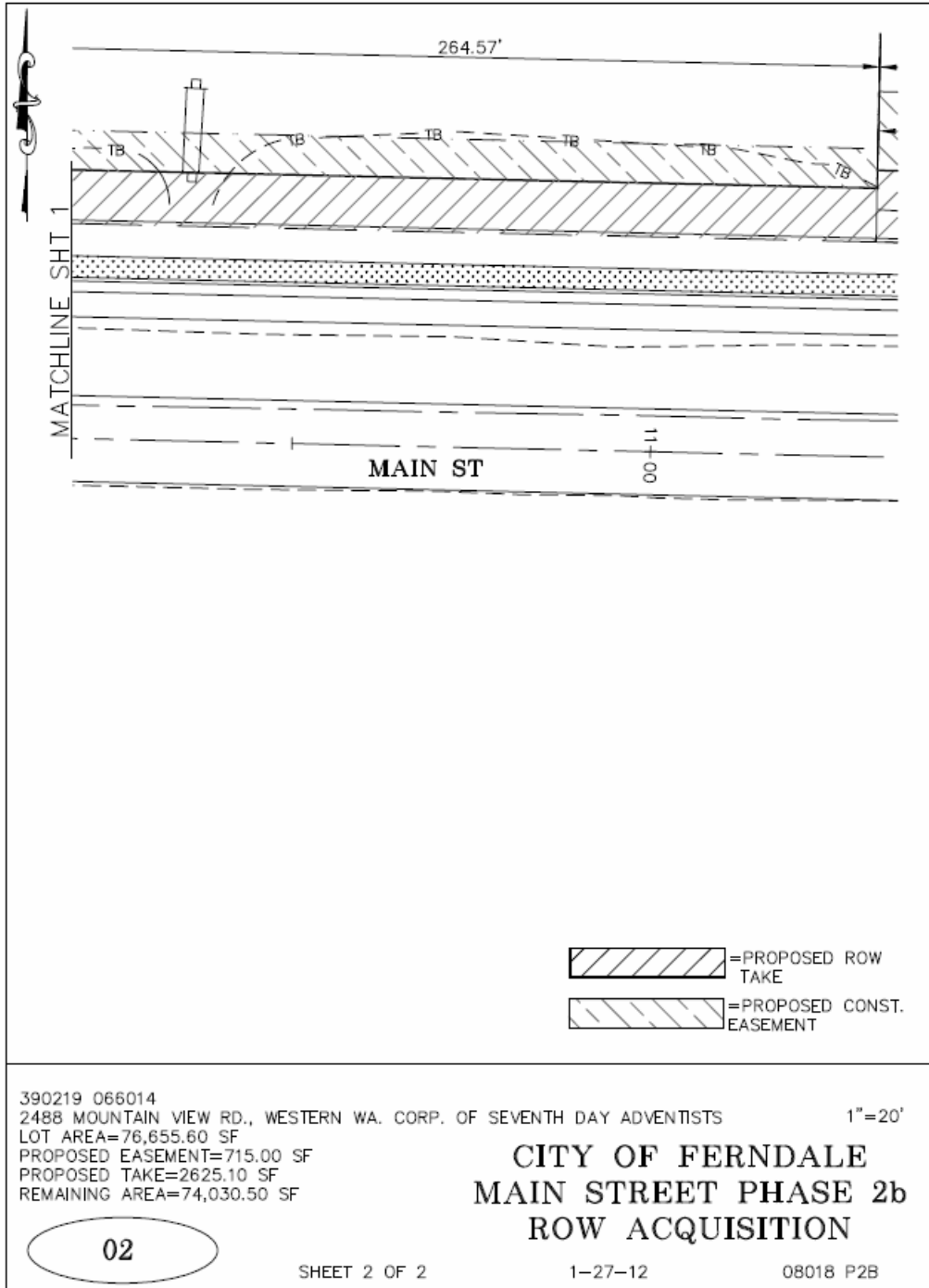
CITY OF FERNDALE
MAIN STREET PHASE 2b
ROW ACQUISITION

02

SHEET 1 OF 2

1-27-12

08018 P2B



390219 066014
 2488 MOUNTAIN VIEW RD., WESTERN WA. CORP. OF SEVENTH DAY ADVENTISTS
 LOT AREA=76,655.60 SF
 PROPOSED EASEMENT=715.00 SF
 PROPOSED TAKE=2625.10 SF
 REMAINING AREA=74,030.50 SF

1"=20'

**CITY OF FERNDALE
 MAIN STREET PHASE 2b
 ROW ACQUISITION**

02

SHEET 2 OF 2

1-27-12

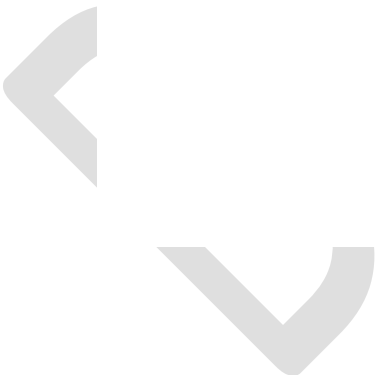
08018 P2B

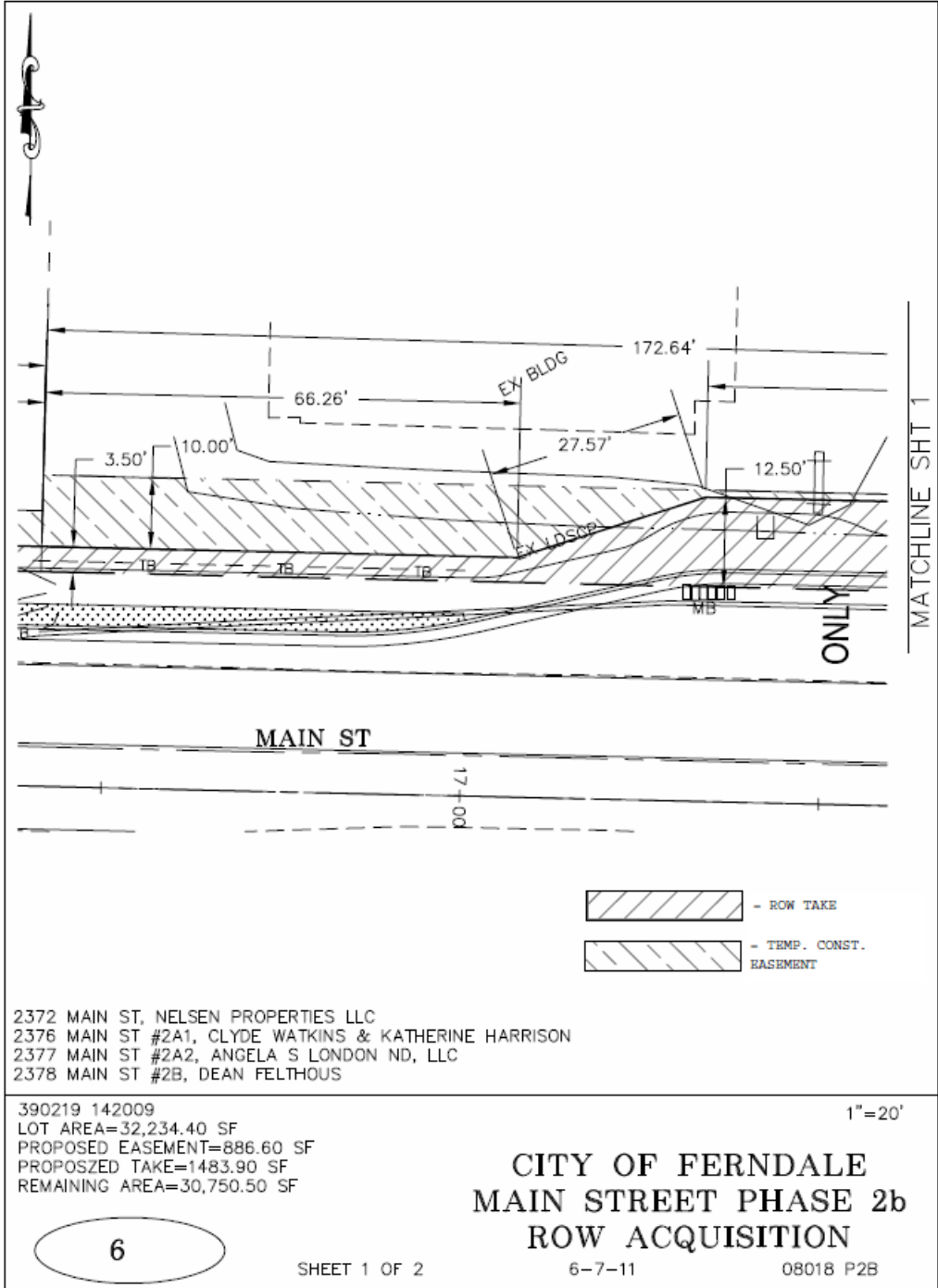
EXHIBIT C
Land Description for Right-of-Way Dedication
390219 142009

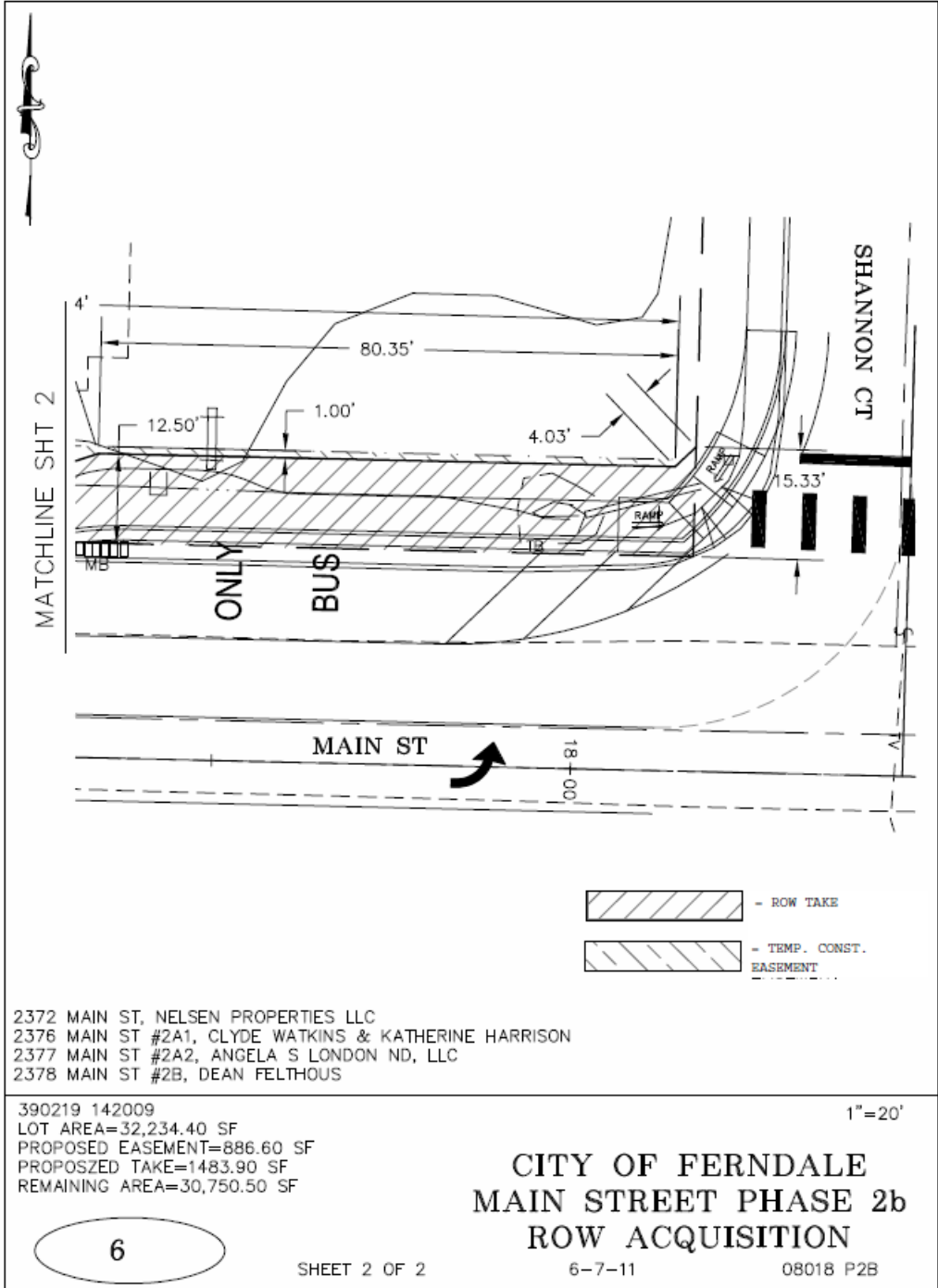
A tract of land in the southwest quarter of Section 19, Township 39 North, Range 2 East of W.M., more particularly described as follows:

Beginning at the southwest corner of Parcel 1 of "Ferndale West, A P.U.D." as per the map thereof recorded in the Auditor's Office of Whatcom County under Auditor's File Number 920501148; thence North $01^{\circ}29'46''$ East along the west line of Parcel 1 a distance of 3.50 feet; thence South $88^{\circ}40'58''$ East, leaving the west line, a distance of 66.26 feet; thence North $72^{\circ}15'56''$ East a distance of 27.57 feet; thence South $88^{\circ}40'58''$ East a distance of 80.35 feet; thence North $46^{\circ}40'02''$ East a distance of 4.03 feet to a point on the east line of said Parcel 1; thence South $01^{\circ}40'02''$ West along the east line of Parcel 1 a distance of 15.33 feet to the southeast corner of Parcel 1; thence North $88^{\circ}40'58''$ West along the south line of Parcel 1 a distance of 175.45 feet to the **Point of Beginning**.

Subject to and/or together with all easements, covenants, restrictions and agreements of record.







2372 MAIN ST, NELSEN PROPERTIES LLC
 2376 MAIN ST #2A1, CLYDE WATKINS & KATHERINE HARRISON
 2377 MAIN ST #2A2, ANGELA S LONDON ND, LLC
 2378 MAIN ST #2B, DEAN FELTHOUS

390219 142009
 LOT AREA=32,234.40 SF
 PROPOSED EASEMENT=886.60 SF
 PROPOSZED TAKE=1483.90 SF
 REMAINING AREA=30,750.50 SF

1"=20'

**CITY OF FERNDALE
 MAIN STREET PHASE 2b
 ROW ACQUISITION**

6

SHEET 2 OF 2

6-7-11

08018 P2B

EXHIBIT D
Land Description for Right-of-Way Dedication
390219 200045

A tract of land in the southwest quarter of Section 19, Township 39 North, Range 2 East of W.M., more particularly described as follows:

The south 4.97 feet of the east 63.39 feet of Lot 3 of "Enns' Short Plat" as per the map thereof recorded in the Auditor's Office of Whatcom County under Auditor's File Number 1248354.

Subject to and/or together with all easements, covenants, restrictions and agreements of record.



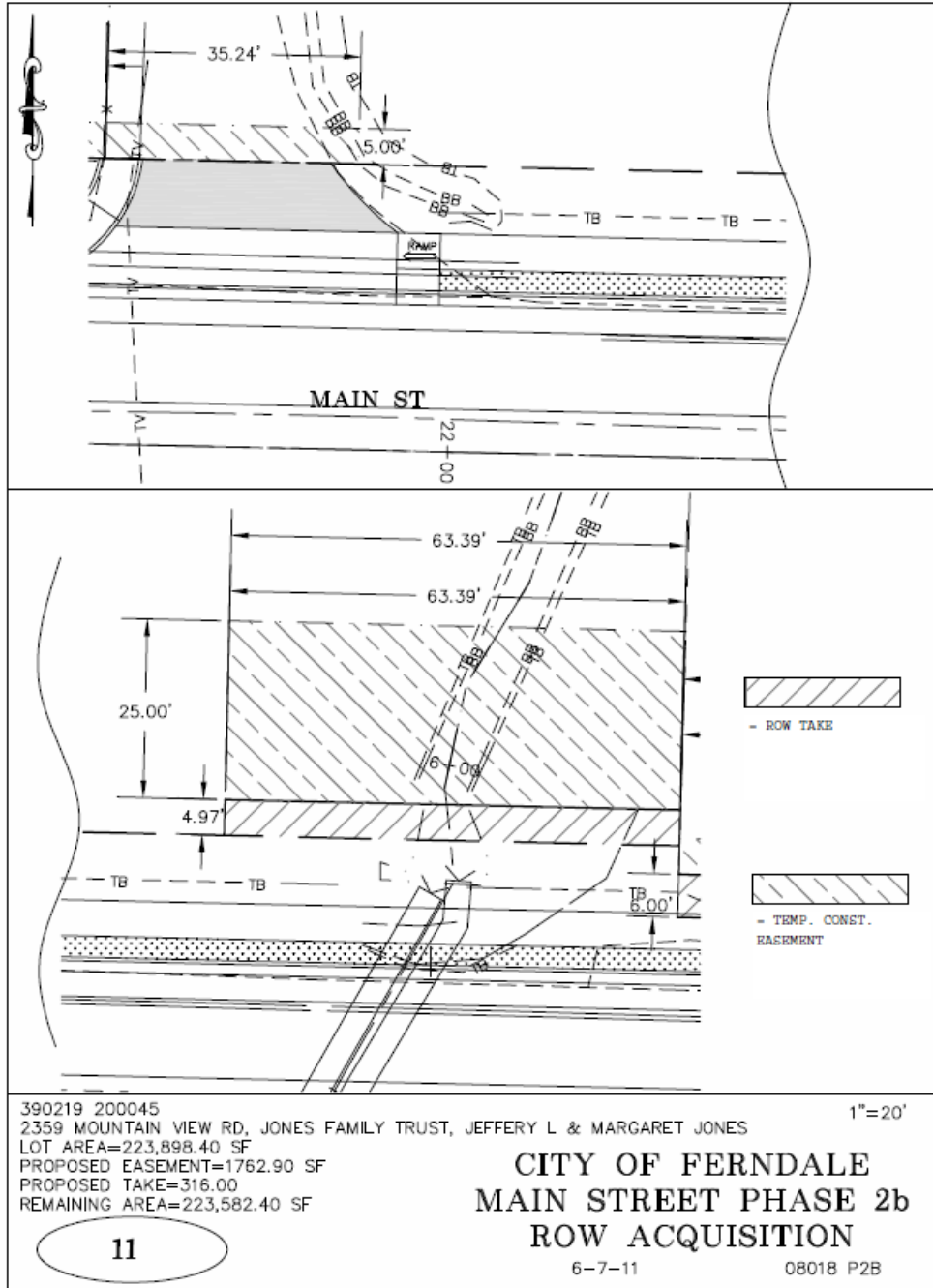


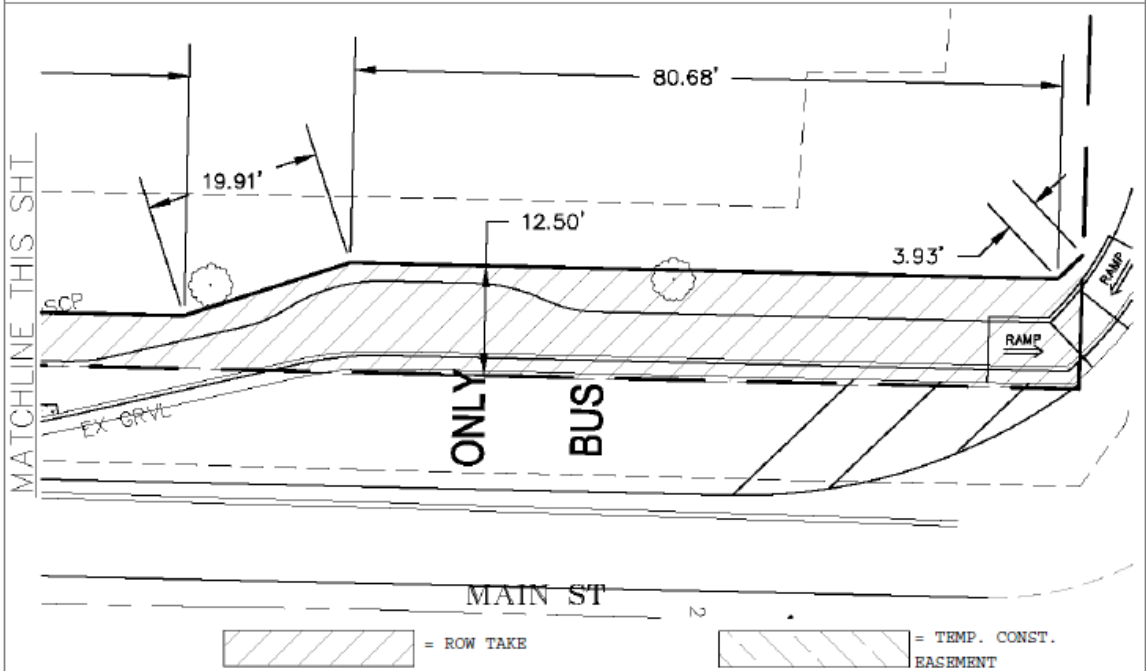
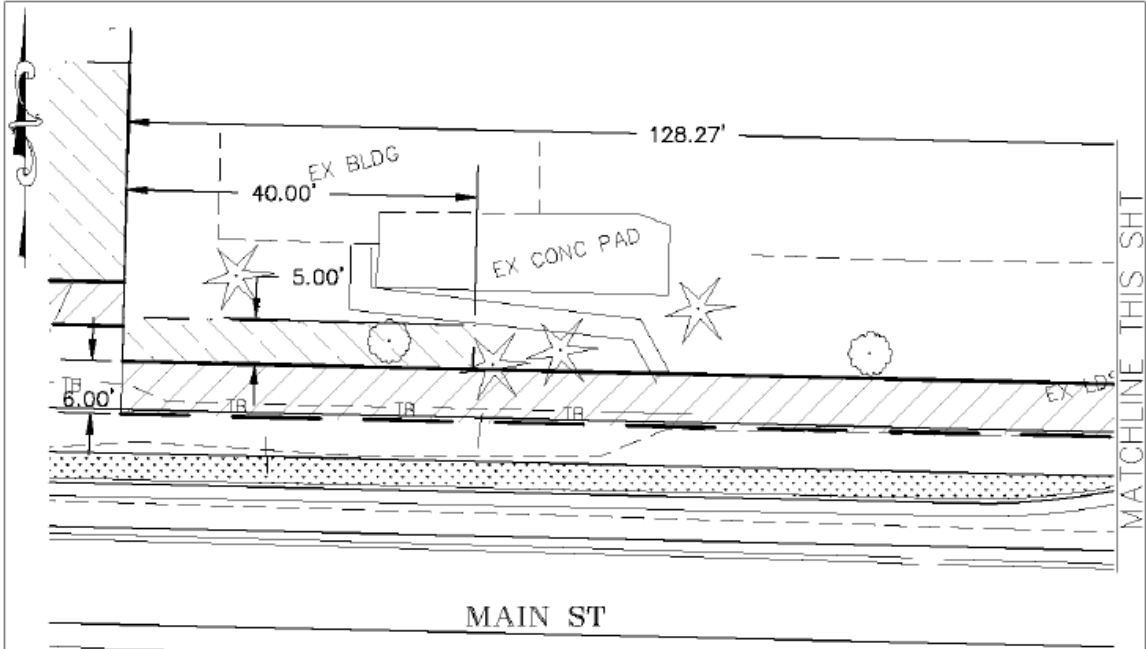
EXHIBIT E
Land Description for Right-of-Way Dedication
390219 222011

A tract of land in the southwest quarter of Section 19, Township 39 North, Range 2 East of W.M., more particularly described as follows:

Beginning at the southwest corner of the VACATED "Kramer – Thomas Short Plat" as per the map thereof recorded in the Auditor's Office of Whatcom County under Auditor's File Number 900125029; thence North 01°40'02" East along the west line of said vacated short plat a distance of 6.00 feet; thence South 88°40'58" East, leaving the west line, a distance of 128.27 feet; thence North 72°15'56" East a distance of 19.91 feet; thence South 88°40'58" East a distance of 80.68 feet; thence North 46°49'17" East a distance of 3.93 feet to a point on the east line of said vacated short plat; thence South 01°49'17" West along the east line of the vacated short plat a distance of 15.25 feet to the southeast corner thereof; thence North 88°40'58" West along the south line of the vacated short plat a distance of 230.48 feet to the **Point of Beginning**.

Subject to and/or together with all easements, covenants, restrictions and agreements of record.





390219 222011 1"=20'
 5705 HENDRICKSON RD, JONES FAMILY TRUST, JEFFREY L & MARGARET JONES
 LOT AREA=35,719.20 SF
 PROPOSED EASEMENT=200.00 SF
 PROPOSED TAKE=1990.20 SF
 REMAINING AREA=33,729.00 SF

**CITY OF FERNDALE
 MAIN STREET PHASE 2b
 ROW ACQUISITION**

12

6-7-11 08018 P2B

EXHIBIT F
Land Description for Right-of-Way Dedication
390230 170503

A tract of land in the northwest quarter of Section 30, Township 39 North, Range 2 East of W.M., more particularly described as follows:

Beginning at a point 620 feet west and 20 feet south of the quarter section corner between Sections 19 and 30; thence South $02^{\circ}10'28''$ West a distance of 15.00 feet; thence North $88^{\circ}40'58''$ West a distance of 49.47 feet; thence North $68^{\circ}40'58''$ West a distance of 8.77 feet; thence North $88^{\circ}40'58''$ West a distance of 47.32 feet more or less to the east line of the "Mountain View-RDM, LLC Short Plat" as per the map thereof recorded in the Auditor's Office of Whatcom County under Auditor's File Number 2071003520; thence North along said east line a distance of 12.00 feet to the south right-of-way line of Mountain View Road; thence South $88^{\circ}40'58''$ East along the south line of Mountain View Road a distance of 105.07 feet more or less to the **Point of Beginning**.

Subject to and/or together with all easements, covenants, restrictions and agreements of record.

The intent of this dedication is to widen the south right-of-way of Main Street from its present width of 20.00 feet.



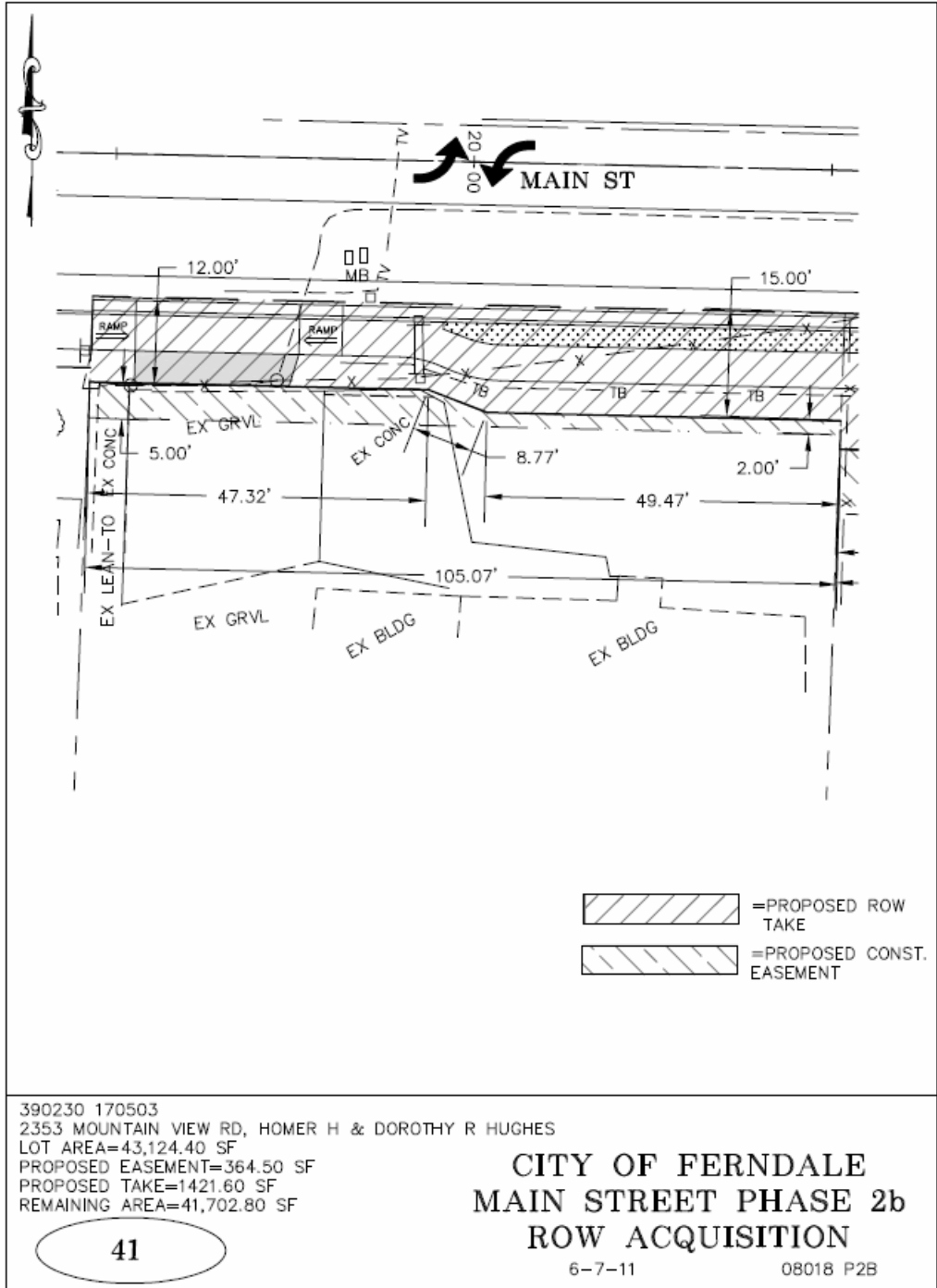


EXHIBIT G
Land Description
Easement – Parcel Number 390230 175445

A 20 foot wide Tract of land within the northeast quarter of the northwest quarter and within the southeast quarter of the northwest quarter of Section 30, Township 39 North, Range 2 East of W.M., being more particularly described as follows:

Commencing at the northwest corner of Section 30, Township 39 North, Range 2 East of W.M.; thence South 88°40'39" East along the north line of Section 30 a distance of 1402.50 feet; thence South 01°33'51" West, leaving said section line, a distance of 20.00 feet to a point on the south right-of-way line of Main Street, also called Mountain View Road, thence continuing South 01°33'51" West a distance of 506.00 feet to the northeast corner of "Lamplighter Mobile Court" according to the plat thereof recorded under Whatcom County Auditor's File Number 1339390; thence South 01°33'50" West along the east line of "Lamplighter Mobile Court" a distance of 16.32 feet to the **True Point of Beginning**; thence South 32°28'36" East a distance of 61.36 feet; thence South 12°20'51" East a distance of 184.13 feet; thence South 00°46'07" West a distance of 457.45 feet; thence South 36°15'02" East a distance of 66.85 feet; thence South 62°26'54" East a distance of 78.11 feet more or less to the north right-of-way line of Douglas Road, as dedicated to the City of Ferndale on the "Ferndale Mobile Village General & Specific Binding Site Plan" as recorded under Whatcom County Auditor's File Number 920210202; thence South 62°58'59" West along said north right-of-way line a distance of 24.55 feet to a point 20.00 feet distant when measured at right angles from the previous course; thence North 62°26'54" West a distance of 68.53 feet; thence North 36°15'02" West a distance of 78.20 feet; thence North 00°46'07" West a distance of 461.84 feet; thence North 12°20'51" West a distance of 178.28 feet; thence North 32°28'36" West a distance of 28.20 feet to a point on the east line of aforesaid "Lamplighter Mobile Court"; thence North 01°33'51" East along said east line a distance of 35.73 feet to the **True Point of Beginning**.

Less Road.

Containing approximately 16,629 s.f.

Subject to and/or together with all easements, covenants, restrictions and/or agreements or record.



