

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Public Works *Mar*

BOARD AGENDA # \*C-3

Urgent  Routine

AGENDA DATE October 15, 2013

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of a Purchase Agreement to Acquire Road Right of Way for the Claribel Road Widening Project;  
Grantor: The Fugett Living Trust 10/01/90; Assessor's Parcel Number: 074-014-010 (Portion)

STAFF RECOMMENDATIONS:

1. Approve the purchase agreement for the acquisition of the parcel identified as: Assessor's Parcel Number (APN) 074-014-010 (Portion).
2. Authorize the Chairman of the Board to execute the agreement.
3. Authorize the Director of Public Works to sign and cause to record the Grant Deed on behalf of Stanislaus County as authorized by Board Resolution No. 2011-141 executed on March 8, 2011.

FISCAL IMPACT:

The total estimated cost for the Claribel Road Widening project is \$15,400,000. The \$184,011 for the purchase of this Right of Way (ROW) is funded 100% from the Public Facilities Fee-Regional Transportation Impact Fee program and consists of \$182,151 for the purchase of a portion of real property on the parcel and \$1,860 for estimated title insurance and escrow fees. Funding is available in the Fiscal Year 2013-2014 Public Works Road Projects Budget.

BOARD ACTION AS FOLLOWS:

No. 2013-509

On motion of Supervisor Withrow and approved by the following vote, Seconded by Supervisor Monteith

Ayes: Supervisors: O'Brien, Withrow, Monteith, De Martini and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

*Christine Ferraro*

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of a Purchase Agreement to Acquire Road Right of Way for the Claribel Road Widening Project; Grantor: The Fugett Living Trust 10/01/90; Assessor's Parcel Number: 074-014-010 (Portion)

## **DISCUSSION:**

The Claribel Road Widening project proposes to widen Claribel Road from two lanes to four lanes from McHenry Avenue to Oakdale Road, construct a Class I bikeway, replace the Modesto Irrigation District Lateral No. 6 bridge with concrete pipe culverts, and signalize the intersection of Coffee Road at Claribel Road.

On May 22, 2012, the Board of Supervisors adopted the Mitigated Negative Declaration for the project. County Public Works staff is currently in the process of acquiring the ROW necessary to complete the project.

The County needs to acquire ROW from the property owner to accomplish this project. The property is located on the northern side of Claribel Road, extending approximately one-half mile east of the Claribel Road and Coffee Road intersection. The property owner has agreed to accept the following as outlined in the Agreement for Acquisition of Property in Attachment 1:

- Property Owner: Carmel Underwood, Trustee of the Carmel Underwood Exempt Trust under the Fugett Living Trust u/a/d October 1, 1990, as to an undivided one-third interest; Anna Shumate, Trustee of the Anna Shumate Exempt Trust under the Fugett Living Trust u/a/d October 1, 1990, as to an undivided one-third interest; and Rochelle Hedgepeth, Trustee of the Rochelle Hedgepeth Exempt Trust under the Fugett Living Trust u/a/d October 1, 1990, as to an undivided one-third interest
- Amount of Compensation: \$182,151
- APN: 074-014-010 (Portion)
- ROW: 4.12 Acres

The amount of compensation has been determined to be within the range of just compensation by an independent appraiser hired by the County.

ROW acquisition is required from seventeen parcels in order to construct the project. ROW is still being negotiated with the owners of four parcels.

## **POLICY ISSUES:**

The recommended actions are consistent with the Board's priorities of providing A Safe Community, A Healthy Community, and A Well-Planned Infrastructure System by improving traffic safety and flow in this area of Stanislaus County.

## **STAFFING IMPACT:**

There is no staffing impact associated with this item.

Approval of a Purchase Agreement to Acquire Road Right of Way for the Claribel Road Widening Project; Grantor: The Fugett Living Trust 10/01/90; Assessor's Parcel Number: 074-014-010 (Portion)

**CONTACT PERSON:**

Matt Machado, Public Works Director. Telephone: (209) 525-4130.

AV:sn

L:\ROADS\9732 - Claribel Road Widening Project\Design\BOS\Fugett - 074-014-010\10-15-13\_BOS item\_9732-Underwood ROW Claribel Road\_for AVerburg\_pgs 2-3

**"ATTACHMENT 1"**

Project: Claribel Road Widening  
Grantor: The Fugett Living Trust 10/01/90  
APN: 074-014-010 (portion)

### AGREEMENT FOR ACQUISITION OF PROPERTY

This Agreement for Acquisition of Property is between the **County of Stanislaus** (County) and **Carmel Underwood, Trustee of the Carmel Underwood Exempt Trust under the Fugett Living Trust u/a/d October 1, 1990, as to an undivided one-third (1/3<sup>rd</sup>) interest; Anna Shumate, Trustee of the Anna Shumate Exempt Trust under the Fugett Living Trust u/a/d October 1, 1990, as to an undivided one-third (1/3<sup>rd</sup>) interest; and Rochelle Hedgepeth, Trustee of the Rochelle Hedgepeth Exempt Trust under the Fugett Living Trust u/a/d October 1, 1990, as to an undivided one-third (1/3<sup>rd</sup>) interest** (Grantors). This Agreement is expressly subject to approval by the County Board of Supervisors.

1. **PROPERTY.**

Grantors agree to sell to County, and County agrees to purchase from Grantor, on the terms and conditions set forth in this Agreement, the real property interest described in Exhibit A, attached hereto which is incorporated herein by this reference (the "Property"), and improvements.

2. **DELIVERY OF DOCUMENTS/ESCROW.**

All documents necessary for the transfer of the Property shall be executed and delivered by Grantors to the County's designated Acquisition Agent.

This transaction shall be handled through an escrow with First American Title Company, 1506 H Street, Modesto, CA 95354, at (209) 529-5000.

3. **PURCHASE PRICE AND TITLE.**

The consideration to be paid by the County for the Property is as follows:

Land (Fee Simple: 4.12+/- Acres X \$37,500/Acre)	\$154,500.00
Temporary Construction Easement	\$ N/A
Cost to Cure (removal of 262 trees, irrigation, agricultural lane)	\$ 27,651.00
Total	\$182,151.00

County shall deliver the Purchase Price no later than 45 days after Board of Supervisors approval and after delivery and execution of all necessary transfer documents. Grantors shall convey good, marketable and insurable title to the Property free and clear of all liens, encumbrances, taxes, assessments and leases recorded and/or unrecorded.

Good, marketable and insurable fee simple title to the Property shall be evidenced by a CLTA owner's policy of title insurance ("Title Policy"). The Title Policy shall be in the amount of \$154,500.00, showing title to the Property vested in County. It shall be a condition precedent to County's obligations under this Agreement that escrow holder is able to issue the Title Policy to County.

County shall pay all costs of any escrow, title insurance, transfer taxes and recording fees incurred in this transaction.

The Grantors agree that if claims are submitted by lien-holders against Grantors and not against the County or arising out of the County's work on the Property prior to transfer of title, the County is hereby authorized to honor such claims and deduct the amount of said claims from the amount to be paid to the property owners. The County will notify the Grantors of any such claims prior to payment.

The Grantors acknowledge that this transaction is a negotiated settlement in lieu of condemnation and agree that the Purchase Price to be paid herein is in full settlement of any claims for compensation or damages that may have arisen, including, but not limited to, attorney fees, pre-condemnation damages, severance damages, business goodwill, or any other claim regarding the acquisition of the Property or construction of improvements thereon. Notwithstanding the foregoing, the County agrees to indemnify, defend and hold harmless Grantors and the Grantors' trustees, families, beneficiaries, employees, agents, successors and assigns from and against any cost, claim, liability, damage or injury arising from the Property or ownership thereof after title to the Property is transferred to the County, except to the extent such cost, claim, liability, damage or injury is due to the gross negligence or intentional act of any of the indemnified parties listed above.

**4. PRORATION OF TAXES.**

- (a) Taxes shall be prorated in accordance with California Revenue and Taxation Code section 5081 et seq., as of the recordation of the Grant Deed conveying title to County, except that where County has taken possession of the Property, taxes shall be prorated as of the date of possession.
- (b) Grantors authorize County to deduct from the purchase price any amount necessary to satisfy any delinquent taxes, together with penalties and interest thereon, and any delinquent or non-delinquent assessments or bonds, which are to be cleared from the title to the Property.

**5. POSSESSION.**

Grantors agree that immediately upon approval of this Agreement by County, the County may enter upon and take possession of the Property under the terms of that

certain Right of Entry – Long Form dated July 18, 2013 executed by Grantors and the County.


**6. HAZARDOUS WASTE MATERIAL.**

The Grantors hereby represent and warrant, to the best of Grantors' knowledge, that during the period of Grantors' ownership of the Property, there have been no disposals or releases of hazardous substances on, from, or under the Property, except for standard herbicides, pesticides and fertilizers commonly used for farming in the area. Grantors further represent and warrant that Grantors have no knowledge of any disposal or release of hazardous substances, on, from, or under the Property which may have occurred prior to Grantors taking title to the Property (other than standard herbicides, pesticides and fertilizers commonly used for farming in the area).

The Purchase Price of the Property reflects the fair market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous substances which requires mitigation under Federal or County law, the County reserves the right to recover its clean-up costs from those who caused or contributed to the contamination. Other than Grantors' representations expressly included in this Agreement, the County acknowledges and agrees that it is purchasing the Property in its "as is" and "with all defects" condition, and Grantors specifically disclaim any representations or warranties about the Property's marketability or fitness for the County's intended purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement on October 15, 2013 as follows:

**COUNTY OF STANISLAUS**

  
\_\_\_\_\_  
Vito Chiesa  
Chairman of the Board of Supervisors

**GRANTORS:**

**Carmel Underwood, Trustee of the  
Carmel Underwood Exempt Trust under  
the Fugett Living Trust u/a/d October 1,  
1990, as to an undivided one-third (1/3<sup>rd</sup>)  
interest**

By: Carmel Underwood, Trustee  
Carmel Underwood, Trustee

**Anna Shumate, Trustee of the Anna  
Shumate Exempt Trust under the Fugett  
Living Trust u/a/d October 1, 1990, as to  
and undivided one-third (1/3<sup>rd</sup>) interest**

By: Anna Shumate, Trustee  
Anna Shumate, Trustee

Agreement for Purchase  
Carmel Underwood, Anna Shumate,  
Rochelle Hedgepeth, Trustees  
Page 4 of 4

ATTEST:

Christine Ferraro Tallman  
Clerk of the Board of Supervisors of the  
County of Stanislaus, State of California

Rochelle Hedgepeth, Trustee of the  
Rochelle Hedgepeth Exempt Trust under  
the Fugett Living Trust u/a/d October 1,  
1990, as to an undivided one-third (1/3<sup>rd</sup>)  
interest

By: Patricia Yonally  
Deputy Clerk

By: Rochelle Hedgepeth, Trustee  
Rochelle Hedgepeth, Trustee

APPROVED AS TO CONTENT:  
Department of Public Works

By: Matt Machado  
Matt Machado, Director

APPROVED AS TO FORM:  
John P. Doering  
County Counsel

By: Thomas E. Boze  
Thomas E. Boze  
Deputy County Counsel



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**CLARIBEL ROAD & COFFEE ROAD RIGHT OF WAY WIDENING**  
**A.P.N. 074-014-010**

All that certain piece or parcel of land situate in the County of Stanislaus, State of California, lying within the Southwest quarter of Section 34, Township 2 South, Range 9 East, Mount Diablo Meridian, described as follows:

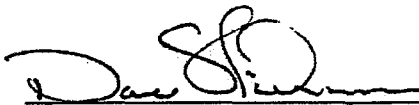
ALL that portion of that certain parcel of land conveyed to Lloyd E. Fugett and Beatrice C. Fugett, Trustees of the Fugett Living Trust under Instrument dated October 1, 1990 by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on March 3, 1995 as Document No. 95-0015845, being more particularly described as follows:

COMMENCING at the Southwest corner of said Section 34; thence North  $00^{\circ}26'35''$  West along the West line of said Southwest quarter, a distance of 10.00 feet to the point of intersection with the center line of County Road known as Claribel Road; thence North  $45^{\circ}02'49''$  East, a distance of 28.05 feet to the point of intersection of the North right of way line of said Claribel Road and the East right of way line of a 40.00 foot wide County Road known as Coffee Road and being the TRUE POINT OF BEGINNING of this description; thence North  $00^{\circ}26'35''$  West along the East right of way line of Coffee Road, a distance of 562.95 feet; thence North  $89^{\circ}33'25''$  East, a distance of 11.41 feet; thence South  $01^{\circ}30'31''$  East, a distance of 220.39 feet; thence South  $05^{\circ}47'47''$  East, a distance of 208.90 feet to a point which lies 55.00 feet perpendicular to and East of the West line of the Southwest quarter of said Section 34; thence South  $00^{\circ}26'35''$  East, 55.00 feet East of and parallel with last said West line of the Southwest quarter, a distance of 21.84 feet to an angle point; thence South  $65^{\circ}23'47''$  East, a distance of 46.93 feet to an angle point; thence South  $87^{\circ}01'27''$  East, a distance of 427.84 feet to a point which lies 106.00 feet perpendicular to and North of the South line of the Southwest quarter of said Section 34; thence South  $89^{\circ}27'47''$  East, 106.00 feet North of and parallel with last said South line of the Southwest quarter, a distance of 1700.55 feet to a point on the Northwesterly line of that certain 30.00 foot wide strip of land conveyed to Gregory Development Co., a California Corporation by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on May 14, 1997 as Document No. 97-0036950; thence South  $48^{\circ}51'38''$  West along last said line, a distance of 114.30 feet to a point on the North right of way line of Claribel Road, said right of way line being 30.00 feet North of and parallel with the South line of said Southwest quarter of Section 34; thence North  $89^{\circ}27'47''$  West along last said right of way line, a distance of 2118.55 feet to the point of beginning of this description.

CONTAINING 4.12 Acres more or less.

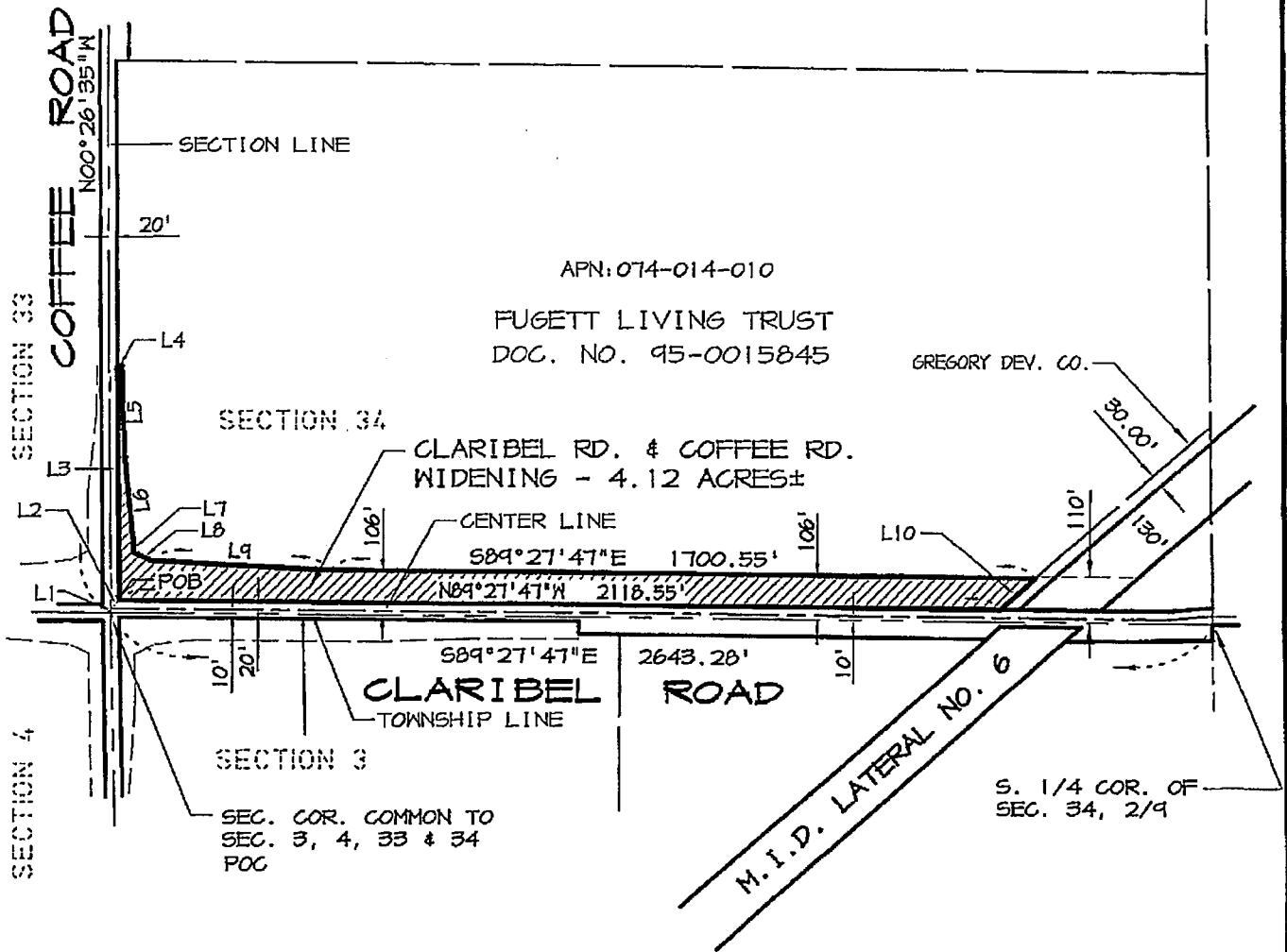
SUBJECT to all easements and/or rights of way of record.



  
Dave Skidmore, P.L.S. 7126  
11/15/12



LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°26'35"W	10.00'
L2	N45°02'49"E	28.05'
L3	N00°26'35"W	562.95'
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DRAWN:	DLS
DATE:	11/15/12
SCALE:	1"=400'
JOB #:	784-10
DWG:	ld_plats

**EXHIBIT "B"**

APN: 074-014-010



4206 TECHNOLOGY DRIVE, SUITE 4, MODESTO, CA 95356  
 PHONE: (209) 545-3390 FAX: (209) 545-3875 www.assoceng.com

3

**Recording Requested By:**  
First American Title Company  
Order No. 5005-3753280  
Project: Claribel Road Widening

**When Recorded Mail To:**  
STANISLAUS COUNTY  
DEPARTMENT OF PUBLIC WORKS  
1716 MORGAN ROAD  
MODESTO, CA 95358



Stanislaus, County Recorder  
Lee Lundrigan Co Recorder Office  
**DOC- 2013-0100863-00**

Acct 503-First American Title Co  
Friday, DEC 06, 2013 08:00:00  
Ttl Pd \$0.00 Rcpt # 0003464492  
OLD/R3/1-5

No Documentary Transfer Tax - Exempt per R&I Code 11922-  
Governmental Acquisition, NO RECORDING FEE per GC 6103

Road Name: Claribel Road  
APN: 074-014-010 (portion)

**GRANT DEED**

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

**CARMEL UNDERWOOD, ROCHELLE HEDGEPEETH AND ANNA SHUMATE, SUCCESSOR TRUSTEES OF  
THE FUGETT LIVING TRUST U/A/D OCTOBER 1, 1990,**

hereby grant to the COUNTY OF STANISLAUS, a political subdivision of the State of California, all that real property situated in the unincorporated area of the County of Stanislaus, State of California, and described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Dated: 11/29/13

EXHIBIT "B"

**THE FUGETT LIVING TRUST U/A/D OCTOBER 1, 1990**

By: Carmel Underwood, Successor Trustee  
**CARMEL UNDERWOOD, Successor Trustee**

By: Rochelle Hedgepeeth, Successor Trustee  
**ROCHELLE HEDGEPEETH, Successor Trustee**

By: Anna Shumate, Successor Trustee  
**ANNA SHUMATE, Successor Trustee**

*SD*

APPROVED as to description: LSF

Dated: 8/27/2013

**CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDATION**

This is to certify that the interest in real property conveyed by the deed or grant dated 8/27/2013 from Carmel Underwood, Trustee of The Carmel Underwood Exempt Trust Under The Fugett Living Trust U/A/D October 1, 1990, and Rochelle Hedgepeth, Trustee of The Rochelle Hedgepeth Exempt Trust Under The Fugett Living Trust U/A/D October 1, 1990, and Anna Shumate, Trustee of The Anna Shumate Exempt Trust Under The Fugett Living Trust U/A/D October 1, 1990 to County of Stanislaus, a political subdivision of the State of California, is hereby accepted by the undersigned officer or agent on behalf of the Board of Supervisors of the County of Stanislaus, pursuant to authority conferred by resolution of the Board of Supervisors of the County of Stanislaus adopted on March 8, 2011, in accordance with the provisions of Government Code Section 27281, and the grantee consents to recordation thereof by its duly authorized officer.

**MATT MACHADO, Public Works Director**  
of Stanislaus County, State of California

By 

Dated: 8/28/13

**ALL-PURPOSE ACKNOWLEDGMENT**

State of California )  
County of Stanislaus ) ss.

On November 29, 2013 before me, Jessica Jean Twitt, Notary Public  
(Date) (Name & Title of Officer)

personally appeared Carmel Underwood, Rochelle Hedgepeth, Anna Shumate,  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Jessica Jean Twitt  
Signature



(SEAL)

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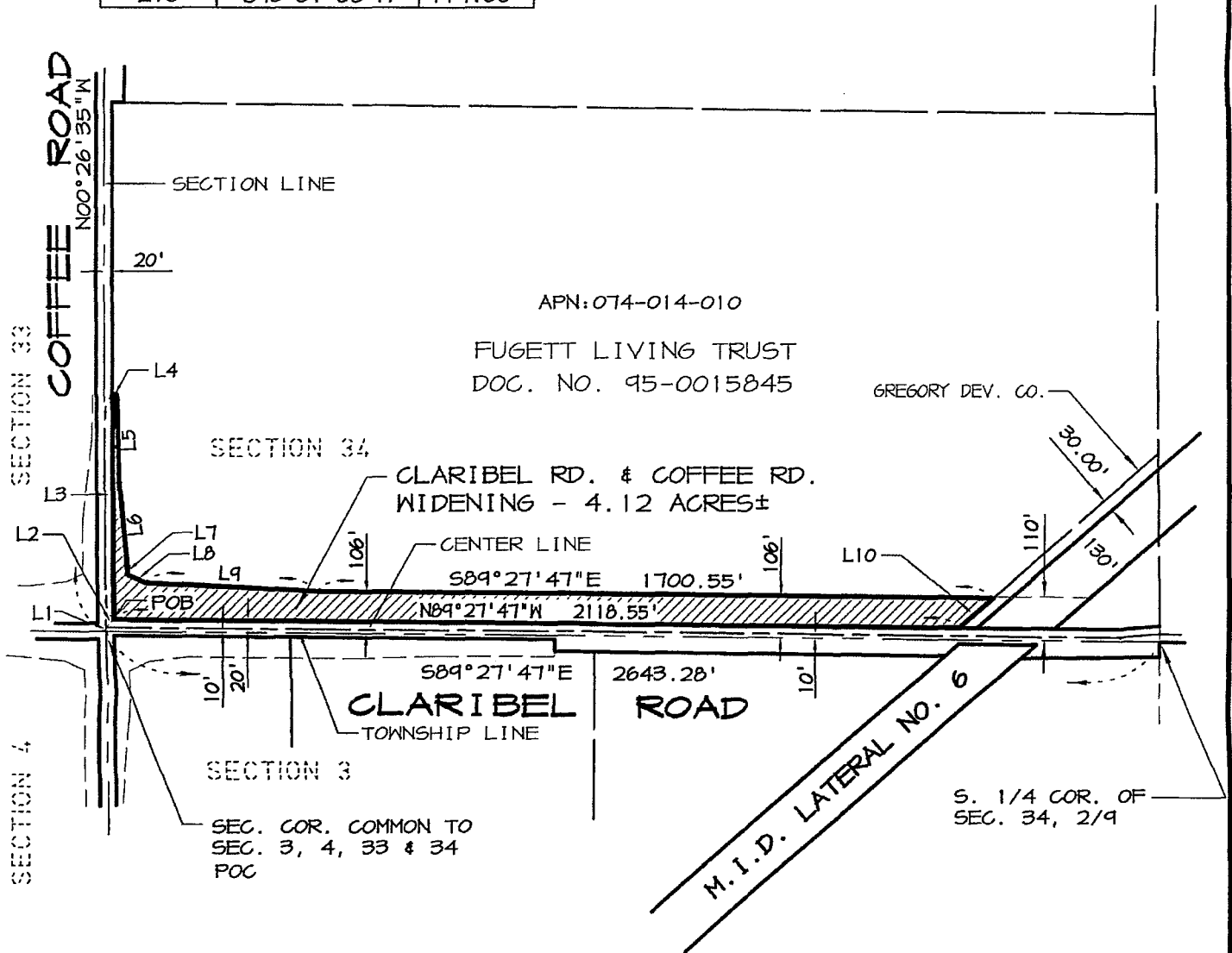
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DRAWN: DLS  
 DATE: 11/15/12  
 SCALE: 1"=400'  
 JOB #: 784-10  
 DWG: 1d\_plats

**EXHIBIT "B"**

APN: 074-014-010

**ASSOCIATED  
ENGINEERING  
GROUP**

4206 TECHNOLOGY DRIVE, SUITE 4, MODESTO, CA 95356  
 PHONE: (209) 545-3390 FAX: (209) 545-3875 www.assoceng.com