SUBJECT: RESOLUTION OF NECESSITY PERTAINING TO THE ACQUISITION OF PROPERTY LOCATED AT 655 NORTH NEWCOMB STREET (EASEMENT OF APPROXIMATELY 1900 SQ. FT. OWNED BY HARLAN BENTZ, BEN ENNIS, AND BEN WEBB -- APN NO. 254-214-019) - PROPOSED MEMORY LANE WIDENING PROJECT

SOURCE: City Attorney’s Office

COMMENT: At the last City Council meeting, the Council had before it a proposed Resolution of Necessity concerning the above-referenced property. At the hearing on the Resolution, Ben Webb appeared and notified the Council that he did not object to the City’s acquisition of his property. In fact, he stated he is willing to give the City the property, without requiring any compensation, because he believes the City is entitled to the property. His only concern with regard to his property interest was that he believes that acquisition of the easement owned by Mr. Bentz, Mr. Ennis and himself is all that the City needs for the project. He does not believe the City also needs to acquire the property from Mr. Schellhase as described in the separate Resolution of Necessity pertaining to his property interests. As previously discussed, it is counsel’s opinion that the express easement owned by Mr. Bentz, Mr. Ennis and Mr. Webb in and of itself does not confer the property interest needed by the City for its project.

Notwithstanding the difference in opinion over the property interests and uses allowed by the express easement, Mr. Webb also stated that he believes that the City is entitled to a prescriptive easement over Mr. Schellhase’s property, because the City has improved and used the property over time. Per Council’s direction, I have researched the issue and consulted with public works staff concerning this contention.

Property can be claimed by adverse possession or prescriptive easement, without having to pay fair market value for the portions claimed. Adverse possession is the terminology used for the acquisition, while a prescriptive easement merely grants the claimant a particular use for the property. In order to prove that property has been adversely possessed, the claimant must occupy the land with reasonable notice to owner (must be apparent that the City occupies it), there must be continuous and uninterrupted use for at least 5 years, the occupation must be under “color of title” or “claim of right,” the claim must be exclusive and “hostile” to the owner’s claim of right, and the claimant must pay the taxes on the claimed property during the time of occupation (with respect to the City, it must be viewed and considered as City property for tax purposes). For a prescriptive easement, the requirements are basically the same, except neither exclusive use nor payment of taxes is required. However, a prescriptive easement is limited to the portion of property currently used by the claimant as an easement and the scope of the easement is limited to the uses made during the prescriptive period. The elements for adverse possession are not met, because the elements of exclusivity and treatment of taxes are not met.
The City currently owns approximately one half of the street at the location of the property. This one half is currently viewed as a public street, and the one-half portion is utilized as such. Apparently, the City has laid asphalt on the street and has encroached upon a small portion of Mr. Schellhase's property. At best, the City could make a claim of prescriptive easement on this portion only, and the scope of such use would be limited to how the City has used it in the past. The City has determined that it needs a majority of the property from Mr. Schellhase in fee title, and as stated above the City cannot prove up a claim for adverse possession. Furthermore, in order for the City to have a viable claim, the City's possession must not be accompanied by any recognition, express or inferable from the circumstances, of Mr. Schellhase's or Mr. Webb/Mr. Ennis/Mr. Bentz's legal rights to the property. On the contrary, the City has continually recognized all of these property owner's rights to the property.

As a practical matter, in order for the City to have clear title to the property, without running the risk of future law suits, it would need to bring a legal action to quiet title unless it were able to gain all parties consent to the ownership interests as described in the Resolutions of Necessity. This action, just like a condemnation action, would require the expenditure of city funds. Although fair market value compensation to the property owners would be not be required from the City if it were to prevail in such an action, in the event it became necessary to pursue settlement, compensation to the property owners for value is often offered in such actions.

As noted above, Mr. Webb, on behalf of all of the above-referenced property easement owners, has offered to transfer the subject easement without requiring compensation. The documentation for such transfer has been provided to Mr. Webb. In the event, however, that the easement owners have not agreed to the transfer of the easement to the City, either without compensation or for the $1,500.00 amount established to be fair market value for the property interest, I recommend that the attached Resolution of Necessity be adopted.

RECOMMENDATION: That City Council:

1. Hear testimony from the owners and/or their representative(s), if they appear and request to be heard;

2. If Mr. Webb, Mr. Ennis, and Mr. Bentz have agreed to the transfer of the easement on the terms described above, approve the Resolution accepting the transfer of the easement, attached; or

3. If the owner/representatives continue to dispute the acquisition of the easement, adopt the attached Resolution of Necessity; and authorize the City Attorney to take all appropriate action necessary to acquire said property on behalf of the City of Porterville.

Attachments: 1. Resolution accepting transfer of the easement to the City
2. Resolution of Necessity (With attached Property Description, Locator Map, and Notice of Hearing)
RECORDING REQUESTED BY AND WHEN RECORDED MAIL THIS DEED AND TAX STATEMENTS TO:

City of Porterville
291 N. Main Street
Porterville, CA 93257

QUITCLAIM DEED

<table>
<thead>
<tr>
<th>Atlas</th>
<th>Section</th>
<th>Township</th>
<th>Range</th>
<th>Street/Avenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>E4</td>
<td>28</td>
<td>21</td>
<td>27</td>
<td>Memory Lane</td>
</tr>
</tbody>
</table>

BEN ENNIS, HARLAN BENTZ AND BEN WEBB, their Successors and Assigns does hereby release and quitclaim to the CITY OF PORTERVILLE, a Municipal Corporation an easement to construct, place, inspect, maintain, replace and remove communication facilities consisting of underground conduits, pipes, manholes, service boxes, wires, cables, other electrical conductors, aboveground marker posts, risers and terminals, and other appurtenances together with a right of way therefor and the right of ingress thereto and egress therefrom across, upon, in and under that portion of the of the North half of the South half of the Northeast quarter of the Northeast quarter of Section 28, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, according the Official Plat thereof, described as follows:

**Beginning** at the Southeast corner of said North half of the South half of said Northeast quarter of the Northeast quarter of Section 28;

**Thence,** Westerly, along the south line of said North half of the South half of said Northeast quarter of the Northeast quarter of Section 28, a distance of 100 feet;

**Thence,** Northerly, parallel to and 100 feet Westerly from the east line of the Northeast quarter of said Section 28, a distance of 19 feet;

**Thence,** Easterly, parallel to and 19 feet Northerly from said south line of the North half of the South half of the Northeast quarter of the Northeast quarter of Section 28, a distance of 100 feet to a point in said east line of the Northeast quarter of Section 28;

**Thence,** Southerly, along said east line of the Northeast quarter of Section 28, a distance of 19 feet, returning to the **Point of Beginning**.

**End of Description**
It is understood that the present intention of the City of Porierville is to construct and maintain a public street and underground utilities on the lands hereinabove described, and the undersigned hereby waives any claim for any and all damages to the remaining property of which the above-described parcel is a part, by reason of the location, construction, landscaping or maintenance of said public street and underground utilities.

Dated this _____________ day of _____________, 20

Ben Ennis

Harlan Bentz

Ben Webb

STATE OF CALIFORNIA

County of

On this the _____________ day of _____________, 20__, before me, _____________, Name, Title of Officer-E.G., "Jane Doe, Notary Public"

personally appeared _____________, Name(s) of Signer(s)

☐ personally known to me

☐ 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.

WITNESS my hand and official seal.

(Notary Public's signature in and for said County and State)

(s/c notary seal or stamp)

Form RW 8-1(G) Revised 3/02)
RESOLUTION NO. ________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ACCEPTING A QUITCLAIM DEED FOR PUBLIC STREET AND UNDERGROUND UTILITIES PURPOSES FROM BEN ENNIS, HARLAN BENTZ AND BEN WEBB

BE IT RESOLVED by the City Council of the City of Porterville, that the City of Porterville hereby accepts a Quitclaim Deed from Ben Ennis, Harlan Bentz and Ben Webb, for underground utility purposes, in the City of Porterville, County of Tulare, State of California, to-wit:

See Exhibit “A” attached hereto and made a part thereof.

BE IT FURTHER RESOLVED that the City is authorized to open escrow account, pay the normal and customary escrow fees, authorize Mayor to sign all necessary documents, and to record the deed in the office of the Tulare County Recorder. The foregoing has been accepted by the City Council for the City of Porterville

ATTEST:

Richard M. Stadtherr, Mayor

John Longley, City Clerk

By: Georgia Hawley, Deputy
EXHIBIT “A”

An easement to construct, place, inspect, maintain, replace and remove communication facilities consisting of underground conduits, pipes, manholes, service boxes, wires, cables, other electrical conductors, aboveground marker posts, risers and terminals, and other appurtenances together with a right of way therefor and the right of ingress thereto and egress therefrom across, upon, in and under that portion of the of the North half of the South half of the Northeast quarter of the Northeast quarter of Section 28, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, according the Official Plat thereof, described as follows:

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Thence, Southerly, along said east line of the Northeast quarter of Section 28, a distance of 19 feet, returning to the Point of Beginning.

End of Description
RESOLUTION NO. ______

WHEREAS, the City of Porterville intends to construct a street improvements project (entitled the “Memory Lane Widening Project”), which involves widening of Memory Lane at Newcomb Street, and the installation of concrete improvements including sidewalks; and

WHEREAS, after notice and opportunity have been given to the property owner(s) at issue, the City Council of the City of Porterville hereby finds and determines as follows:

1. The City of Porterville intends to construct the aforementioned Project, a public use, together with related improvements to carry out and make effective the principal purpose pursuant to Code of Civil Procedure Section 1240.120(a), and in connection therewith, acquire interest in certain real property. Said public use is a function of the City of Porterville.

2. The City of Porterville is authorized to acquire the portion of the parcel described in Appendix 1 herein and exercise the power of eminent domain for the public use set forth herein in accordance with the California Constitution and the California Eminent Domain Law, Code of Civil Procedure Section 1230.010 et seq. and pursuant to Government Code Section 37350.5, Streets and Highways Code Section 5100 et seq., and Sections 3 and 4 of the Charter of the City of Porterville.

3. The property to be acquired consists of an easement on one parcel generally located at 655 North Newcomb Street. The property to be acquired is more particularly described in Appendix 1, attached hereto and incorporated herein by reference together with a map thereof.
4. On July 11, 2003, there were mailed Notices of Hearing on the intent of the City of Porterville to adopt a Resolution of Necessity for acquisition by eminent domain of the real property described in Appendix 1 herein, which Notices of Hearing are attached hereto as Appendix 2 and are incorporated herein by this reference. Said Notices of Hearing were mailed to all persons whose names appear on the last equalized County Assessment Roll as having an interest in the property described in Appendix 1. Said Notices advised said persons of their right to be heard on the matters referred to therein on the date and at the time and place stated therein. Said Notices were received.

5. The hearing set out in said Notices was held on August 5, 2003, at the time and place stated therein, and all interested parties were given an opportunity to be heard. The hearing was closed.

Based upon the evidence presented, this City Council, by vote of two-thirds or more of its members, further finds, determines, declares, and resolves each of the following:

a. The public interest and necessity require the proposed project.

b. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

c. The property described herein in Appendix 1 is necessary for the proposed project.

d. The offer required by Section 7267.2(a) of the Government Code, and the summary of the basis for the amount established as just compensation, was made to the owner or owners of record.

e. All conditions and statutory requirements necessary to exercise the power of eminent domain ("the right to take") to acquire the property described herein have been complied with by the City of Porterville.

f. A portion of the property described in Appendix 1 may be acquired for a more necessary public use pursuant to Code of Civil Procedure Section 1240.610. The City Council further finds and determines that insofar as and to the extent that said parcel has heretofore been dedicated to a public use for telephone and/or electric
utility purposes, the acquisition and use of said parcel by the City of Porterville for the public use described above is for a more necessary public use than the use to which the property has already been appropriated.

6. The City Attorney is hereby AUTHORIZED and EMPOWERED:

a. To acquire in the name of the City of Porterville, by condemnation, the property described in Appendix 1, attached hereto and incorporated herein by this reference in accordance with the provisions of the California Eminent Domain Law and the Constitution of California;

b. To acquire the property in fee simple unless a lesser estate is described in Appendix 1, herein;

c. To prepare or have prepared and to prosecute or to retain counsel to prosecute in the name of the City of Porterville such proceedings in the proper court as are necessary for such acquisition;

d. To deposit the probable amount of compensation, based on an appraisal, and to apply to said court for an order permitting the City of Porterville to take immediate possession and use of said property for said public uses and purposes.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Porterville at a regularly scheduled meeting thereof on the 5th day of August, 2003.

PORTERVILLE CITY COUNCIL

____________________________
Mayor Richard Stadtherr, Mayor

ATTEST:
John Longley, City Clerk

____________________________
by Georgia Hawley, Deputy
PROPERTY DESCRIPTION

An easement to construct, place, inspect, maintain, replace and remove communication facilities consisting of underground conduits, pipes, manholes, service boxes, wires, cables, other electrical conductors, aboveground marker posts, risers and terminals, and other appurtenances together with a right of way therefor and the right of ingress thereto and egress therefrom across, upon, in and under that portion of the North half of the South half of the Northeast quarter of the Northeast quarter of Section 28, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, according the Official Plat thereof, described as follows:

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PROPOSED PROPERTY ACQUISITION

PROPOSED EASEMENT ACQUISITION PER DEED 3681/702

APN 254-214-019
655 N. NEWCOMB
PORTION PARCEL 3
PM 1941 20/42

MEMORY LN.
APPENDIX 2 – NOTICE(S) OF INTENT TO ADOPT RESOLUTION OF NECESSITY
July 11, 2003

[VIA CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED]

Harlan Bentz
1481 W. Nancy Circle
Porterville, California 93257

Re: Notice of Hearing regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain [California Code of Civil Procedure 1245.235]

Dear Mr. Bentz:

1. Notice of Intent of City of Porterville to Adopt a Resolution of Necessity. The City Council of the City of Porterville intends to consider the adoption of a Resolution of Necessity on August 5, 2003, which, if adopted, will authorize the City to acquire the property described herein by eminent domain for the proposed Memory Lane Widening Project. A description of the property being considered for acquisition is attached to this Notice and is marked Appendix 1.

2. Notice of Your Right to Appear and Be Heard. Please take notice that the City Council of the City of Porterville, at a regular meeting to be held on Tuesday, August 5, 2003, at 7:00 p.m., or as soon thereafter as the matter may be heard, at City Hall, 291 North Main Street, Porterville, California, will hold an hearing on whether such Resolution of Necessity should be adopted, as required by California Code of Civil Procedure Section 1245.220 for the commencement of an eminent domain proceeding to acquire real property.

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 judicious 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 proposed project;
b. Whether the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

c. Whether the property sought to be acquired by eminent domain and described in the Resolution of Necessity is necessary for the proposed project;

d. Whether the offer required by Government Code Section 7267.2(a), and the summary of the basis for the amount established as just compensation, was actually made to you and whether said offer and summary were sufficient pursuant to Government Code Section 7267.2(a);

e. Whether the City of Porterville has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the right to “take”) to acquire the property described herein, as well as any other matter regarding the right to take said property by eminent domain; and

f. Whether the City has the authority to acquire the property by eminent domain.

A copy of the proposed Resolution of Necessity will be available, upon your request, for inspection at the office of the Clerk of the City Council of the City of Porterville at City Hall ten (10) days prior to the hearing.

Your name appears on the last equalized Tulare County assessment roll and as Owner in our preliminary title report of the property required for the proposed project.

The statutes which authorize the City of Porterville to acquire the property by eminent domain for this proposed project include Code of Civil Procedure Section 1240.010, Streets and Highways Code Sections 5100 et seq., and Government Code Section 37350.5.

3. Failure to File a Written Request to Be Heard within Fifteen (15) Days After the Notice Was Mailed Will Result in Waiver of the Right to Appear and Be Heard. If you desire to be heard, please be advised that you must file a written request with the clerk of the governing board. You must file your request to be heard with the City Clerk, Porterville City Hall, 291 N. Main Street, Porterville, California 93257. California Code of Civil Procedure Section 1245.235(b)(3) provides that “failure to file a written request to appear and be heard within fifteen (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.
The date of Mailing appears at the end of this Notice.

If you elect not to appear and be heard in regard to compensation, your nonappearance will not be a waiver of your right to claim greater compensation in a court of law. The amount to be paid for the property will not be considered by the board at this hearing.

If you elect not to appear and not to be heard, your failure to appear will be a waiver of your right to later challenge the right of the City of Porterville to take the property by eminent domain.

This Notice is not intended to foreclose future negotiations between you and the representatives of the City of Porterville on the amount of compensation to be paid for your property.

If you elect not to appear and not to be heard, you will only be foreclosed from raising in a court of law the issues which are the subject of this noticed hearing and which are concerned with the right to take the property by eminent domain.

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


Very truly yours,

[Signature]

Julia M. Lew

JML/Img

Enclosure

cc: Baldo Rodriguez, Public Works Director
    City of Porterville
PROPERTY DESCRIPTION

An *easement* to construct, place, inspect, maintain, replace and remove communication facilities consisting of underground conduits, pipes, manholes, service boxes, wires, cables, other electrical conductors, aboveground marker posts, risers and terminals, and other appurtenances together with a right of way therefor and the right of ingress thereto and egress therefrom across, upon, in and under that portion of the North half of the South half of the Northeast quarter of the Northeast quarter of Section 28, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, according the Official Plat thereof, described as follows:

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PROPOSED PROPERTY AQUISITION

PROPOSED EASEMENT AQUISITION PER DEED 3681/702

APN 254-214-019
655 N. NEWCOMB
PORTION PARCEL 3
PM 1941 20/42

BC MON INT MEMORY & NEWCOMB RM 28/67
# U.S. Postal Service
## CERTIFIED MAIL RECEIPT
(For Domestic Mail Only; No Insurance Coverage Provided)

<table>
<thead>
<tr>
<th>Postage</th>
<th>$1.60</th>
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<td>Certified Fee</td>
<td>$0.30</td>
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<tr>
<td>Return Receipt Fee (Endorsement Required)</td>
<td>$1.70</td>
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<tr>
<td>Restricted Delivery Fee (Endorsement Required)</td>
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<td>Total Postage &amp; Fees</td>
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**Recipient's Name:**
HARLAN BENZ

**Address:**
1481 W. NANCY CIRCLE
PORTERVILLE, CA 93257

**Postmark Date:**
7-11-03

---

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. **Article Addressed to:**
   
   HARLAN BENZ
   
   1481 W. NANCY CIRCLE
   
   PORTERVILLE, CA 93257

---

**COMPLETE THIS SECTION ON DELIVERY**

- **A. Received by (Please Print Clearly):**
  
  HARLAN BENZ

- **B. Date of Delivery:**
  
  7/11/03

- **C. Signature:**
  
  
  HARLAN BENZ

- **D. Is delivery address different from item 1?**
  
  No

---

**Article Number:**
7049 64-00 0018 9356 8531

**PS Form 3811, July 1999**

**Domestic Return Receipt**

**102595-004-M-0952**
APPENDIX 1 -- PROPERTY DESCRIPTION(S)
PROPERTY DESCRIPTION

An easement to construct, place, inspect, maintain, replace and remove communication facilities consisting of underground conduits, pipes, manholes, service boxes, wires, cables, other electrical conductors, aboveground marker posts, risers and terminals, and other appurtenances together with a right of way therefor and the right of ingress thereto and egress therefrom across, upon, in and under that portion of the North half of the South half of the Northeast quarter of the Northeast quarter of Section 28, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, according the Official Plat thereof, described as follows:

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APN 254-214-019
655 N. NEWCOMB
PORTION PARCEL 3
RM 1941 20/42

BC MON INT MEMORY & NEWCOMB RM 26/67
July 11, 2003

[VIA CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED]

Ben Ennis
1540 N. Lombardi
Porterville, California 93257

Re: Notice of Hearing regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain [California Code of Civil Procedure 1245.235]

Dear Mr. Ennis:

1. Notice of Intent of City of Porterville to Adopt a Resolution of Necessity. The City Council of the City of Porterville intends to consider the adoption of a Resolution of Necessity on August 5, 2003, which, if adopted, will authorize the City to acquire the property described herein by eminent domain for the proposed Memory Lane Widening Project. A description of the property being considered for acquisition is attached to this Notice and is marked Appendix 1.

2. Notice of Your Right to Appear and Be Heard. Please take notice that the City Council of the City of Porterville, at a regular meeting to be held on Tuesday, August 5, 2003, at 7:00 p.m., or as soon thereafter as the matter may be heard, at City Hall, 291 North Main Street, Porterville, California, will hold an hearing on whether such Resolution of Necessity should be adopted, as required by California Code of Civil Procedure Section 1245.220 for the commencement of an eminent domain proceeding to acquire real property.

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 judicious 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 proposed project;
b. Whether the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

c. Whether the property sought to be acquired by eminent domain and described in the Resolution of Necessity is necessary for the proposed project;

d. Whether the offer required by Government Code Section 7267.2(a), and the summary of the basis for the amount established as just compensation, was actually made to you and whether said offer and summary were sufficient pursuant to Government Code Section 7267.2(a);

e. Whether the City of Porterville has-complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the right to “take”) to acquire the property described herein, as well as any other matter regarding the right to take said property by eminent domain; and

f. Whether the City has the authority to acquire the property by eminent domain.

A copy of the proposed Resolution of Necessity will be available, upon your request, for inspection at the office of the Clerk of the City Council of the City of Porterville at City Hall ten (10) days prior to the hearing.

Your name appears on the last equalized Tulare County assessment roll and as Owner in our preliminary title report of the property required for the proposed project.

The statutes which authorize the City of Porterville to acquire the property by eminent domain for this proposed project include Code of Civil Procedure Section 1240.010, Streets and Highways Code Sections 5100 et seq., and Government Code Section 37350.5.

3. Failure to File a Written Request to Be Heard within Fifteen (15) Days After the Notice Was Mailed Will Result in Waiver of the Right to Appear and Be Heard. If you desire to be heard, please be advised that you must file a written request with the clerk of the governing board. You must file your request to be heard with the City Clerk, Porterville City Hall, 291 N. Main Street, Porterville, California 93257. California Code of Civil Procedure Section 1245.235(b)(3) provides that “failure to file a written request to appear and be heard within fifteen (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.
The date of Mailing appears at the end of this Notice.

If you elect not to appear and be heard in regard to compensation, your nonappearance will not be a waiver of your right to claim greater compensation in a court of law. The amount to be paid for the property will not be considered by the board at this hearing.

If you elect not to appear and not to be heard, your failure to appear will be a waiver of your right to later challenge the right of the City of Porterville to take the property by eminent domain.

This Notice is not intended to foreclose future negotiations between you and the representatives of the City of Porterville on the amount of compensation to be paid for your property.

If you elect not to appear and not to be heard, you will only be foreclosed from raising in a court of law the issues which are the subject of this noticed hearing and which are concerned with the right to take the property by eminent domain.

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


Very truly yours,

[Signature]

JML/Img

Enclosure

cc: Baldo Rodriguez, Public Works Director
    City of Porterville
PROPERTY DESCRIPTION

An easement to construct, place, inspect, maintain, replace and remove communication facilities consisting of underground conduits, pipes, manholes, service boxes, wires, cables, other electrical conductors, aboveground marker posts, risers and terminals, and other appurtenances together with a right of way therefor and the right of ingress thereto and egress therefrom across, upon, in and under that portion of the North half of the South half of the Northeast quarter of the Northeast quarter of Section 28, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, according the Official Plat thereof, described as follows:

**Beginning** at the Southeast corner of said North half of the South half of said Northeast quarter of the Northeast quarter of Section 28;

**Thence**, Westerly, along the south line of said North half of the South half of said Northeast quarter of the Northeast quarter of Section 28, a distance of 100 feet;

**Thence**, Northerly, parallel to and 100 feet Westerly from the east line of the Northeast quarter of said Section 28, a distance of 19 feet;

**Thence**, Easterly, parallel to and 19 feet Northerly from said south line of the North half of the South half of the Northeast quarter of the Northeast quarter of Section 28, a distance of 100 feet to a point in said east line of the Northeast quarter of Section 28;

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PROPOSED PROPERTY AQUISITION

PROPOSED EASEMENT AQUISITION PER DEED 3681/702

APN 254-214-019
655 N. NEWCOMB
PORTION PARCEL 3
PM 1941 20/42

MEMORY LN.
## U.S. Postal Service
### CERTIFIED MAIL RECEIPT
( Domestic Mail Only; No Insurance Coverage Provided )

<table>
<thead>
<tr>
<th>Postage</th>
<th>$0.60</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certified Fee</td>
<td>2.30</td>
</tr>
<tr>
<td>Return Receipt Fee (Endorsement Required)</td>
<td>1.75</td>
</tr>
<tr>
<td>Restricted Delivery Fee (Endorsement Required)</td>
<td></td>
</tr>
<tr>
<td><strong>Total Postage &amp; Fees</strong></td>
<td><strong>$4.65</strong></td>
</tr>
</tbody>
</table>

**Postmark:** 7-11-08

**Recipient's Name:** BEN E Loans
**Street, Apt. No., or P.O. Box (if any):** 1540 W. LOMBARDI
**City, State, ZIP Code:** PORTERVILLE, CA 93257

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### SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. **Article Addressed to:**
   - BEN E Loans
   - 1540 W. LOMBARDI
   - PORTERVILLE, CA 93257

2. **Article Number (Copy from service label):** 9099 3400 001A 9355 850V

---

### COMPLETE THIS SECTION ON DELIVERY

- **Received by (Please Print Clearly):**
  - Robert J. Evans
- **Date of Delivery:** 7-11-08
- **Signature:**
- **Agent:**
- **Address:**
- **No**

**D. Is delivery address different from Item 1?**
- **Yes**
  - If YES, enter delivery address below:

3. **Service Type**
   - Certified Mail
   - Registered
   - Insured Mail
   - C.O.D.
   - Express Mail
   - Return Receipt for Merchandise

4. **Restricted Delivery? (Extra Fee)**
   - **Yes**
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APN 254-214-019
655 N. NEWCOMB
PORTION PARCEL 3
PM 1941 20/42

MEMORY LN.
July 11, 2003

[VIA CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED]

Ben Webb  
97 S. Corona Drive  
Porterville, California 93257

Re: Notice of Hearing regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain [California Code of Civil Procedure 1245.235]

Dear Mr. Webb:

1. Notice of Intent of City of Porterville to Adopt a Resolution of Necessity. The City Council of the City of Porterville intends to consider the adoption of a Resolution of Necessity on August 5, 2003, which, if adopted, will authorize the City to acquire the property described herein by eminent domain for the proposed Memory Lane Widening Project. A description of the property being considered for acquisition is attached to this Notice and is marked Appendix 1.

2. Notice of Your Right to Appear and Be Heard. Please take notice that the City Council of the City of Porterville, at a regular meeting to be held on Tuesday, August 5, 2003, at 7:00 p.m., or as soon thereafter as the matter may be heard, at City Hall, 291 North Main Street, Porterville, California, will hold an hearing on whether such Resolution of Necessity should be adopted, as required by California Code of Civil Procedure Section 1245.220 for the commencement of an eminent domain proceeding to acquire real property.

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 givejudicious 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 proposed project;
b. Whether the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

c. Whether the property sought to be acquired by eminent domain and described in the Resolution of Necessity is necessary for the proposed project;

d. Whether the offer required by Government Code Section 7267.2(a), and the summary of the basis for the amount established as just compensation, was actually made to you and whether said offer and summary were sufficient pursuant to Government Code Section 7267.2(a);

e. Whether the City of Porterville has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the right to “take”) to acquire the property described herein, as well as any other matter regarding the right to take said property by eminent domain; and

f. Whether the City has the authority to acquire the property by eminent domain.

A copy of the proposed Resolution of Necessity will be available, upon your request, for inspection at the office of the Clerk of the City Council of the City of Porterville at City Hall ten (10) days prior to the hearing.

Your name appears on the last equalized Tulare County assessment roll and as Owner in our preliminary title report of the property required for the proposed project.

The statutes which authorize the City of Porterville to acquire the property by eminent domain for this proposed project include Code of Civil Procedure Section 1240.010, Streets and Highways Code Sections 5100 et seq., and Government Code Section 37350.5.

3. Failure to File a Written Request to Be Heard within Fifteen (15) Days After the Notice Was Mailed Will Result in Waiver of the Right to Appear and Be Heard. If you desire to be heard, please be advised that you must file a written request with the clerk of the governing board. You must file your request to be heard with the City Clerk, Porterville City Hall, 291 N. Main Street, Porterville, California 93257. California Code of Civil Procedure Section 1245.235(b)(3) provides that “failure to file a written request to appear and be heard within fifteen (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.
The date of Mailing appears at the end of this Notice.

If you elect not to appear and be heard in regard to compensation, your nonappearance will not be a waiver of your right to claim greater compensation in a court of law. The amount to be paid for the property will not be considered by the board at this hearing.

If you elect not to appear and not to be heard, your failure to appear will be a waiver of your right to later challenge the right of the City of Porterville to take the property by eminent domain.

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Very truly yours,

[Signature]

Julia M. Lew

JML/Img

Enclosure

cc: Baido Rodriguez, Public Works Director
    City of Porterville
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U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Postage $1.00
Certified Fee 2.20
Return Receipt Fee (Endorsement Required) 1.75
Restricted Delivery Fee (Endorsement Required)

Total Postage & Fees $4.65

Postmark Here

Recipent's Name (Please Print Clearly) to be completed by maller

SSU WEBB
973 CORONA DR.
PORTERVILLE CA 93257

Send Form 3805, February 2000
See Reverse for Instructions

SEND SER: COMPLETE THIS SECTION:

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SSU WEBB
973 CORONA DR.
PORTERVILLE, CA 93257

2. Article Number (Copy from service label)

709 340 9355 8517

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)
B. Date of Delivery

C. Signature

D. Is delivery address different from item 1? Yes No
   If YES, enter delivery address below:

3. Service Type

- Certified Mail
- Express Mail
- Registered
- Return Receipt for Merchandise
- Insured Mail
- C.O.D.

4. Restricted Delivery? (Extra Fee) Yes