

APPROVED BY



DEPARTMENT DIRECTOR

CITY MANAGER

October 6, 2011

**FROM:** PATRICK N. WIEMILLER, Director  
Public Works Department

**BY:** SCOTT L. MOZIER, PE, City Engineer/Assistant Director  
Public Works Department, Traffic and Engineering Services Division 

- SUBJECT:**
1. ADOPT A FINDING OF CATEGORICAL EXEMPTION PER STAFF DETERMINATION, PURSUANT TO SECTIONS 15332/CLASS 32 AND 15302/CLASS 2 OF THE CEQA GUIDELINES, ENVIRONMENTAL ASSESSMENT NO. C-11-062
  2. ADOPT A RESOLUTION APPROVING THE SUMMARY VACATION OF PORTIONS OF THE PUBLIC PEDESTRIAN EASEMENTS AT THE NORTHEAST CORNER OF WEST SHAW AND NORTH FELAND AVENUES (LOCATED IN COUNCIL DISTRICT NO. 2)

## RECOMMENDATIONS

Staff recommends that the City Council:

1. Adopt a finding of Categorical Exemption per staff determination, pursuant to Sections 15332/Class 32 and 15302/Class 2 of the CEQA Guidelines, Environmental Assessment No. C-11-062.
2. Adopt the attached Resolution ordering the summary vacation of portions of the public pedestrian easements at the northeast corner of West Shaw and North Feland Avenues.

## EXECUTIVE SUMMARY

Texas Roadhouse (a restaurant chain) is requesting the vacation of three foot wide portions of two public pedestrian easements at the northeast corner of West Shaw and North Feland Avenues as shown on Exhibit "A" of the attached Resolution. The purpose of the proposed vacation is to satisfy a requirement of Conditional Use Permit No. C-11-062 to correct the encroachment of the required three foot vehicle overhang of the adjacent parking spaces into the existing public pedestrian easements.

The Traffic and Engineering Services Division and other City departments have reviewed this proposal and determined that there are no public pedestrian facilities located within the easement and that the right-of-way proposed for vacation is unnecessary for present or prospective public pedestrian purposes.

## BACKGROUND

Texas Roadhouse (a restaurant chain) is requesting the vacation of 3 foot wide portions of two public pedestrian easements at the northeast corner of West Shaw and North Feland Avenues as shown on Exhibit "A" of the attached Resolution. The purpose of the proposed vacation is to satisfy a requirement of Conditional Use Permit No. C-11-062 to correct the encroachment of the required

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### Summary Vacation of Portions of a Public Pedestrian Easement

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three foot vehicle overhang of the adjacent parking spaces into the existing public pedestrian easements.

The existing public pedestrian easements along West Shaw and North Feland Avenues were dedicated by two deeds recorded on July 20, 1987 as Document Nos. 87087815 and 87087819, Official Records of Fresno County. The easements were dedicated to accommodate curvilinear sidewalks along both streets. The three foot wide area proposed to be vacated is currently landscaped and the existing curvilinear sidewalk does not fall within the area and it appears that it never did. The plan to develop the Texas Roadhouse does not include modifying the existing curvilinear sidewalk.

The Traffic and Engineering Services Division and other City Departments have reviewed this proposal and determined that there are no public pedestrian facilities located within the easement and that the right-of-way proposed for vacation is unnecessary for present or prospective public pedestrian purposes.

The provisions of Chapter 4, commencing with Section 8330 of the California Streets and Highways Code, authorize the Council to summarily vacate a public service easement (which includes pedestrian easements) when the easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation. Under these provisions, only one Council action is necessary and a published notice, posting and public hearing are not required.

### **ENVIRONMENTAL FINDING**

Conditional Use Permit Application No. C-11-062 is a request for authorization to demolish an existing 7,562 square-foot building (Sweet Tomatoes) and construct a 6,995 square-foot Texas Roadhouse Restaurant and associated public and on-site improvements. The applicant also requests authorization to establish a State of California Alcoholic Beverage Control Type 47 license (*restaurant — sale of beer, wine, and distilled spirits for consumption on the licensed premises*). The applicant also requests authorization to abandon a portion of an existing pedestrian easement that is currently landscaped (not used for pedestrian purposes).

Staff has performed a preliminary environmental assessment of this project and has determined that this project is exempt under Section 15332/Class 32 and Section 15302/Class 2 of the State of California CEQA Guidelines. Class 32 consists of projects characterized as in-fill development meeting the conditions described in this Section. (a) The project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within City limits on a project site of no more than five acres substantially surrounded by urban uses. (c) The project site has no value, as habitat for endangered, rare or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public services.

The property is zoned C-2 which is consistent with the 2025 General Plan and Bullard Community Plan land use designation of community commercial pursuant to Section 12-607-A-1 of the Fresno Municipal Code. The operation of a restaurant with alcohol sales on this 1.17 acre site is allowed within the designated zone district. The site is already built-out and has no value as habitat for endangered, rare or threatened species and complies with the conditions of the Class 32 Categorical Exemption.

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**Summary Vacation of Portions of a Public Pedestrian Easement**

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A Class 2 exemption consists of the replacement or reconstruction of existing structures or facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

The above described project consists of the demolition of an existing sit-down restaurant and the replacement of this building with a slightly smaller restaurant building. Thus, this new structure will have substantially the same purpose and capacity as the structure being replaced. No adverse environmental impacts will occur as a result of the proposed project and none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project.

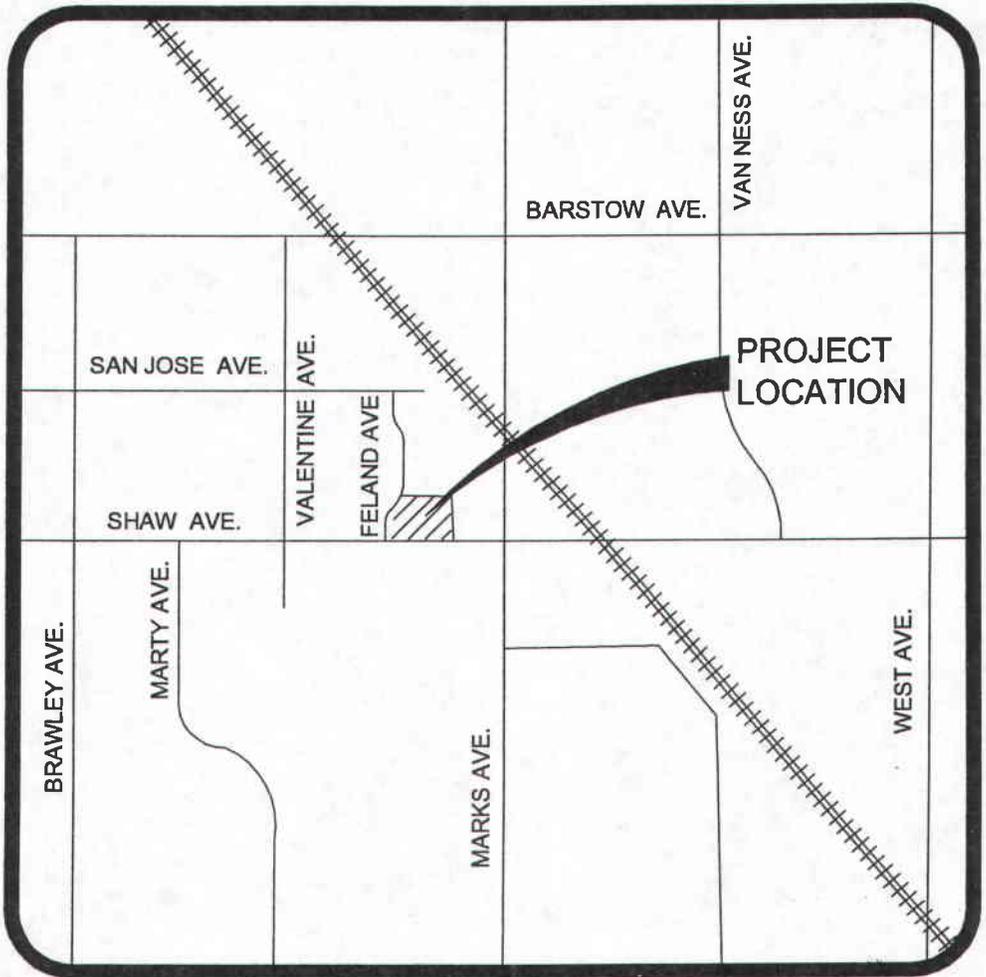
The City Attorney's Office has reviewed and approved the attached Resolution as to form.

**FISCAL IMPACT**

There will be no impact to the City's General Fund.

- Attachments:
1. Vicinity Map
  2. Environmental Assessment No. C-11-062
  3. Resolution

P.W. File No. 11596



# ATTACHMENT 1



**CITY OF FRESNO**  
**CATEGORICAL EXEMPTION**  
**ENVIRONMENTAL ASSESSMENT NO. C-11-062**  
THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY  
EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS  
PURSUANT TO ARTICLE 19 OF THE STATE CEQA GUIDELINES.

**APPLICANT:** Catherine Otis  
Greenberg Farrow  
19000 MacArthur Blvd., Suite 250  
Irvine, CA 92612

**PROJECT LOCATION:** 3190 West Shaw Avenue, located on the north side of West Shaw Avenue between North Marks and North Feland Avenues. (APN: 415-045-28, 29)

**PROJECT DESCRIPTION:** Conditional Use Permit Application No. C-11-062 is a request for authorization to demolish an existing 7,562 square-foot building (Sweet Tomatoes) and construct a 6,995 square-foot Texas Roadhouse Restaurant and associated public and on-site improvements. The applicant also requests authorization to establish a State of California Alcoholic Beverage Control Type 47 license (*restaurant – sale of beer, wine, and distilled spirits for consumption on the licensed premises*). The applicant also requests authorization to abandon a portion of an existing pedestrian easement that is currently landscaped (not use for pedestrian purposes).

**This project is exempt under Section 15332/Class 32 and Section 15302/Class 2 of the State of California CEQA Guidelines.**

**EXPLANATION:** Class 32 consists of projects characterized as in-fill development meeting the conditions described in this Section. (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. (c) The project site has no value, as habitat for endangered, rare or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public services.

The property is zoned C-2 which is consistent with the 2025 General Plan and Bullard Community Plan land use designation of community commercial pursuant to section 12-607-A-1 of the FMC. The operation of a restaurant with alcohol sales on this 1.17 acre site is allowed within the designated zone district. The site is already built-out and has no value as habitat for endangered, rare or threatened species and complies with the conditions of the Class 32 Categorical Exemption.

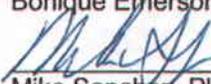
A Class 2 exemption consists of the replacement or reconstruction of existing structures or facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

The above described project consists of the demolition of an existing sit-down restaurant and the replacement of this building with a slightly smaller restaurant building. Thus, this new structure will have substantially the same purpose and capacity as the structure being replaced. No adverse environmental impacts will occur as a result of the proposed project.

Date: July 6, 2011

Prepared By: Bonique Emerson, Planner

Submitted By:

  
\_\_\_\_\_  
Mike Sanchez, Planning Manager  
City of Fresno  
Devlpmnt & Resource Management Department  
(559) 621-8277

**Recording Requested By:**  
Public Works Department  
City of Fresno  
No Fee-Gov't. Code Sections  
6103 and 27383

**When Recorded, Mail To:**  
City Clerk  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721-3623

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

RESOLUTION NO. \_\_\_\_\_

**ADOPT A RESOLUTION APPROVING THE SUMMARY VACATION OF OF PORTIONS OF  
THE PUBLIC PEDESTRIAN EASEMENTS AT THE NORTHEAST CORNER OF WEST  
SHAW AND NORTH FELAND AVENUES**

WHEREAS, the Council has elected to proceed under the provisions of the Public Streets, Highways, and Service Easements Vacation Law (Division 9, Part 3 of the California Streets and Highways Code), and specifically Chapter 4 (commencing with Section 8330) thereof, to summarily vacate portions of the public pedestrian easements at the northeast corner of West Shaw and North Feland Avenues; and

WHEREAS, the portions of the public pedestrian easements proposed to be vacated are shown on Exhibit "A", which is attached and incorporated in this Resolution; and

WHEREAS, the purpose of the proposed vacation is to satisfy a requirement of Conditional Use Permit No. C-11-062 to correct the encroachment of the required 3 foot vehicle overhang of the adjacent parking spaces into the existing public pedestrian easements; and

WHEREAS, the existing public pedestrian easements along North Feland and West Shaw Avenues were dedicated by two deeds recorded on July 20, 1987 as Document Nos. 87087815 and 87087819, Official Records of Fresno County; and

WHEREAS, the 3 foot wide area proposed to be vacated is currently landscaped and the existing curvilinear sidewalk does not fall within the area and it appears that it never did; and

WHEREAS, the Traffic and Engineering Services Division and other City Departments have reviewed this proposal and determined that there are no public pedestrian facilities located within the easement and that the right-of-way proposed for vacation is unnecessary for present or prospective public pedestrian purposes; and

WHEREAS, the provisions of Chapter 4, commencing with Section 8330 of the California Streets and Highways Code, authorize the Council to summarily vacate a public service easement (which includes pedestrian easements) when the easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation. Under these provisions, only one Council action is necessary and a published notice, posting and public hearing are not required; and

WHEREAS, staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Categorical Exemptions set forth in CEQA Guidelines Sections 15332/Class 32 and 15302/Class 2; and

WHEREAS, the Council desires to summarily vacate portions of the public pedestrian easements at the northeast corner of West Shaw and North Feland Avenues as shown on Exhibit "A".

NOW, THEREFORE, IT IS RESOLVED BY THE COUNCIL OF THE CITY AS FOLLOWS:

1. The above recitals are true and correct and incorporated herein.
  2. Based upon the review and consideration of the environmental documentation provided, the adoption of the proposed vacation is in the best interest of the City of Fresno.
- The Council finds in accordance with its own independent judgment that this project is

exempt under Section 15332/Class 32 and Section 15302/Class 2 of the State of California CEQA Guidelines. Class 32 consists of projects characterized as in-fill development meeting the conditions described in this Section. (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. (C) The project site has no value, as habitat for endangered, rare or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public services.

The property is zoned C-2 which is consistent with the 2025 General Plan and Bullard Community Plan land use designation of community commercial pursuant to Section 12-607-A-1 of the FMC. The operation of a restaurant with alcohol sales on this 1.17 acre site is allowed within the designated zone district. The site is already built-out and has no value as habitat for endangered, rare or threatened species and complies with the conditions of the Class 32 Categorical Exemption.

A Class 2 exemption consists of the replacement or reconstruction of existing structures or facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

The project consists of the demolition of an existing sit-down restaurant and the replacement of this building with a slightly smaller restaurant building. Thus, this new structure will have substantially the same purpose and capacity as the structure being replaced. No adverse environmental impacts will occur as a result of the proposed project

and none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project.

3. The portions of the public pedestrian easements at the northeast corner of West Shaw and North Feland Avenues as shown on Exhibit "A" are hereby vacated.

4. The City Clerk of the City of Fresno shall certify to the passage of this Resolution and shall cause a certified copy, attested by the Clerk under the seal of the City of Fresno, to be recorded in the Office of the County Recorder of the County of Fresno, State of California.

5. This vacation shall become effective on the date this resolution is recorded.

6. From and after the date this resolution is recorded, the portions of public pedestrian easements at the northeast corner of West Shaw and North Feland Avenues as shown on Exhibit "A" shall no longer constitute a public pedestrian easement.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF FRESNO )  
CITY OF FRESNO )

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

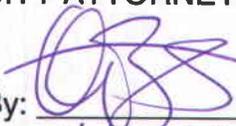
Mayor Approval: \_\_\_\_\_, 2011  
Mayor Approval/No Return: \_\_\_\_\_, 2011  
Mayor Veto: \_\_\_\_\_, 2011  
Council Override Vote: \_\_\_\_\_, 2011

REBECCA E. KLISCH  
City Clerk

BY: \_\_\_\_\_, Deputy

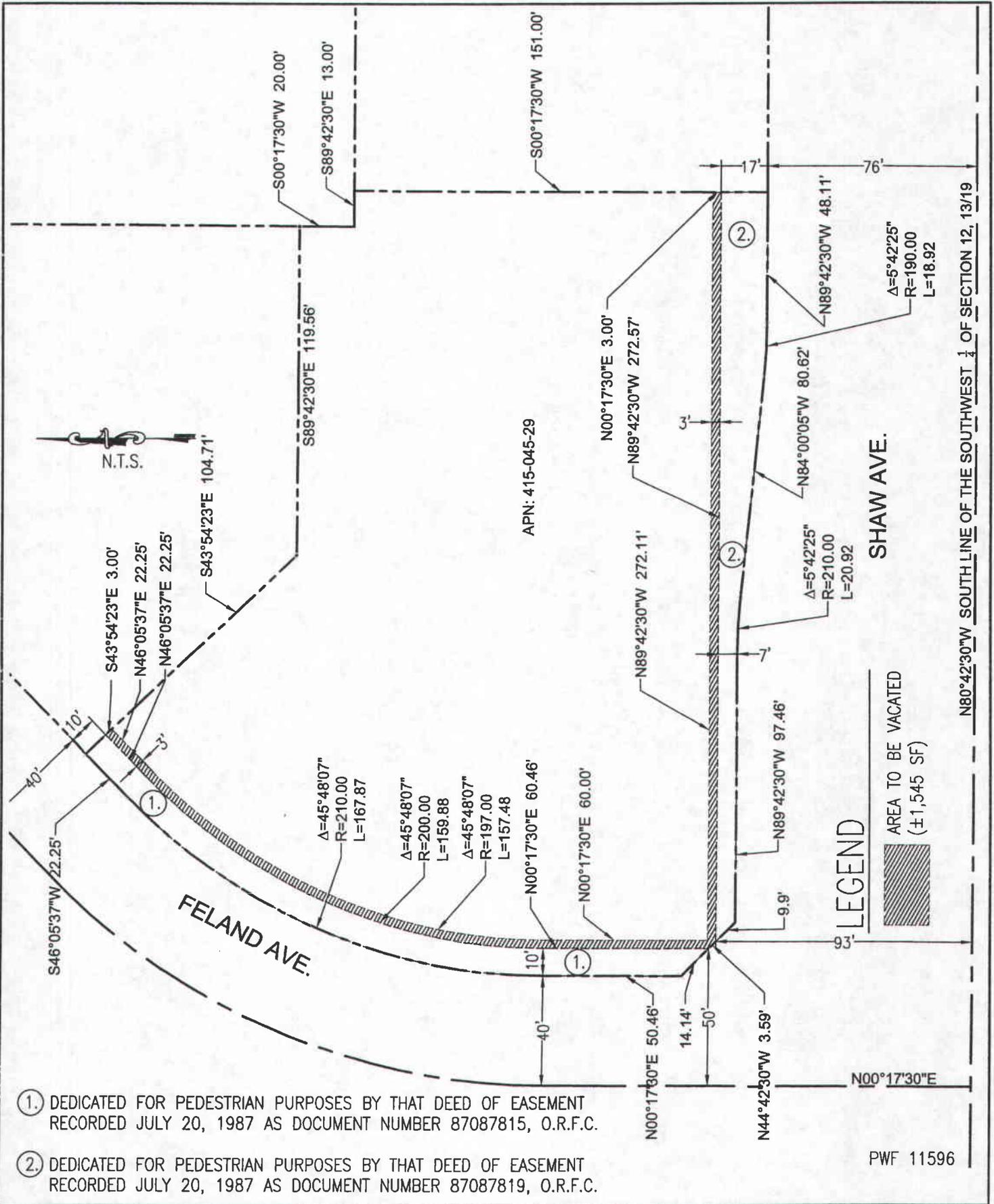
APPROVED AS TO FORM:

JAMES C. SANCHEZ  
CITY ATTORNEY

By:  \_\_\_\_\_, Deputy  
K. DOERR

PW File No. 11596

Adopt Cat. Exempt. and Summary Vac. of pedestrian easements at the NE cor. of W. Shaw and N. Feland Ave.



**GreenbergFarrow**  
 19000 W. MacArthur Blvd., Suite 250  
 Irvine, CA 92612  
 t: 949 296 0450 f: 949 296 0437

**TEXAS ROADHOUSE**  
 3190 W. SHAW AVE.  
 PARTIAL PEDESTRIAN EASEMENT VACATION

PROJECT NUMBER:  
 20110017.0  
**EXHIBIT-A**  
 DATE: 09-06-11