

# **AGENDA ITEM SUMMARY**

## **FORT COLLINS CITY COUNCIL**

**ITEM NUMBER: 8**

**DATE: January 17, 2006**

**STAFF: Dan Mattson/Dean  
Saye/Helen Matson**

### **SUBJECT**

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Second Reading of Ordinance No. 005, 2006, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands Necessary for the Construction of Public Improvements in Connection with the Dry Creek Drainage Improvements Project - Irrigation Pipeline.

### **RECOMMENDATION**

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Staff recommends adoption of the Ordinance on Second Reading.

### **FINANCIAL IMPACT**

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Property acquisition costs for the construction of the Dry Creek Drainage Improvements Project - Irrigation Pipeline ("Project") will be covered by available project funds. Appropriations for the Project consist of \$1,700,000 in 2003, \$3,000,000 in 2004, \$3,400,000 in 2005, and future appropriations of \$1,200,000 in 2006.

### **EXECUTIVE SUMMARY**

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This Ordinance, which was unanimously adopted on First Reading on January 3, 2006, allows staff to use the eminent domain process if good faith negotiations fail to result in an agreement between the City and affected property owners. Staff is hopeful that all acquisitions will be accomplished by agreement.

**ORDINANCE NO. 005, 2006  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING ACQUISITION BY EMINENT DOMAIN PROCEEDINGS  
OF CERTAIN LANDS NECESSARY FOR THE CONSTRUCTION  
OF PUBLIC IMPROVEMENTS IN CONNECTION WITH THE DRY  
CREEK DRAINAGE IMPROVEMENTS PROJECT - IRRIGATION PIPELINE**

WHEREAS, the construction of the Dry Creek Drainage Improvements Project (the "Project") started in 2005; and

WHEREAS, the Project includes modifications to Douglas Lake spillway, construction of two detention ponds, installation of a SCADA system, construction of an irrigation water supply pipeline from Reservoir #4 to Terry Lake, and construction of open channels to carry stormwater flows from the Larimer & Weld Canal to near the confluence of Dry Creek and the Poudre River; and

WHEREAS, it is necessary for the City to acquire certain property rights for the irrigation water supply pipeline from Reservoir #4 to Terry Lake more particularly described in the attached exhibits for the purpose of constructing the Project; and

WHEREAS, the City will negotiate in good faith for the acquisition of said property rights from the owner thereof; and

WHEREAS, the acquisition of the property rights is desirable and necessary for the construction of the Project, is in the City's best interest and enhances public safety and welfare; and

WHEREAS, the acquisition of such property rights may, by law, be accomplished through proceedings in eminent domain.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby finds and determines that it is necessary in the public interest to acquire the property rights described on attached Exhibits "A" and "B", and incorporated herein by this reference, for the purpose of constructing the Project.

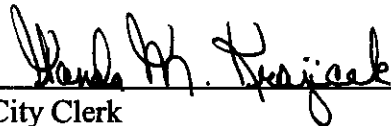
Section 2. That the City Council hereby authorizes the City Attorney and other appropriate officials of the City to acquire said property rights for the City by eminent domain proceedings.

Section 3. The City Council hereby finds that, in the event that acquisition by condemnation of the property rights described in this Ordinance is commenced, immediate possession is necessary for the public safety and welfare.

Introduced, considered favorably on the first reading and ordered published this 3rd day of January, A.D. 2006, and to be presented for final passage on the 17th day of January, A.D. 2006.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Passed and adopted on final reading this 17th day of January, A.D. 2006.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



Stantec

DESCRIPTION:

A strip of land being a portion of Lot 3 Hultgren M.R.D. (Rec. No. 89015452) located in Section 23, Township 8 North, Range 69 West of the 6<sup>th</sup> Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

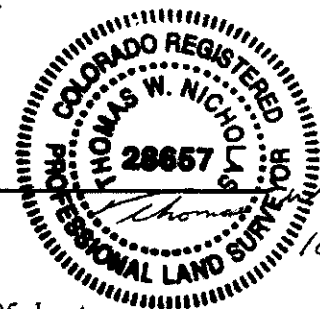
Basis of Bearings: The South Line of Section 23, being monumented at the Southwest Corner by a 2" aluminum cap stamped S22,S23,S26,S27, LS 3028 and at the Southeast Corner by a 3 1/2" aluminum cap stamped S23,S24,S25,S26 LS5020 1989 with a line between assumed to bear South 89°20'55" East with all bearings herein contained relative thereto.

COMMENCING at the Southwest Corner of said Section 23, Thence S89°20'55"E, 2365.01' along the South line of said Section 23; Thence N00°00'00"E, 60.00 feet to the North Right-of-Way line of West Douglas Road and the POINT OF BEGINNING;

Thence N00°00'00"E, 114.45 feet; Thence N12°55'22"E, 504.43 feet; Thence N10°41'45"W, 407.52 feet; Thence N20°02'37"E, 638.28 feet; Thence N06°40'00"W, 288.84 feet to the Northerly line of said Lot 3; Thence along said Northerly line the following three (3) courses: 1) S71°10'25"E, 47.20 feet; 2) S01°24'25"E, 253.28 feet; 3) S68°01'55"E, 10.01 feet; Thence S20°04'08"W, 654.82 feet; Thence S10°40'03"E, 407.15 feet; Thence S12°55'22"E, 506.35 feet; Thence S00°00'00"E, 112.41 feet to the North Right-of-Way line of West Douglas Road; Thence N89°20'55"W, 20.00 feet along said Right-of-Way to the POINT OF BEGINNING.

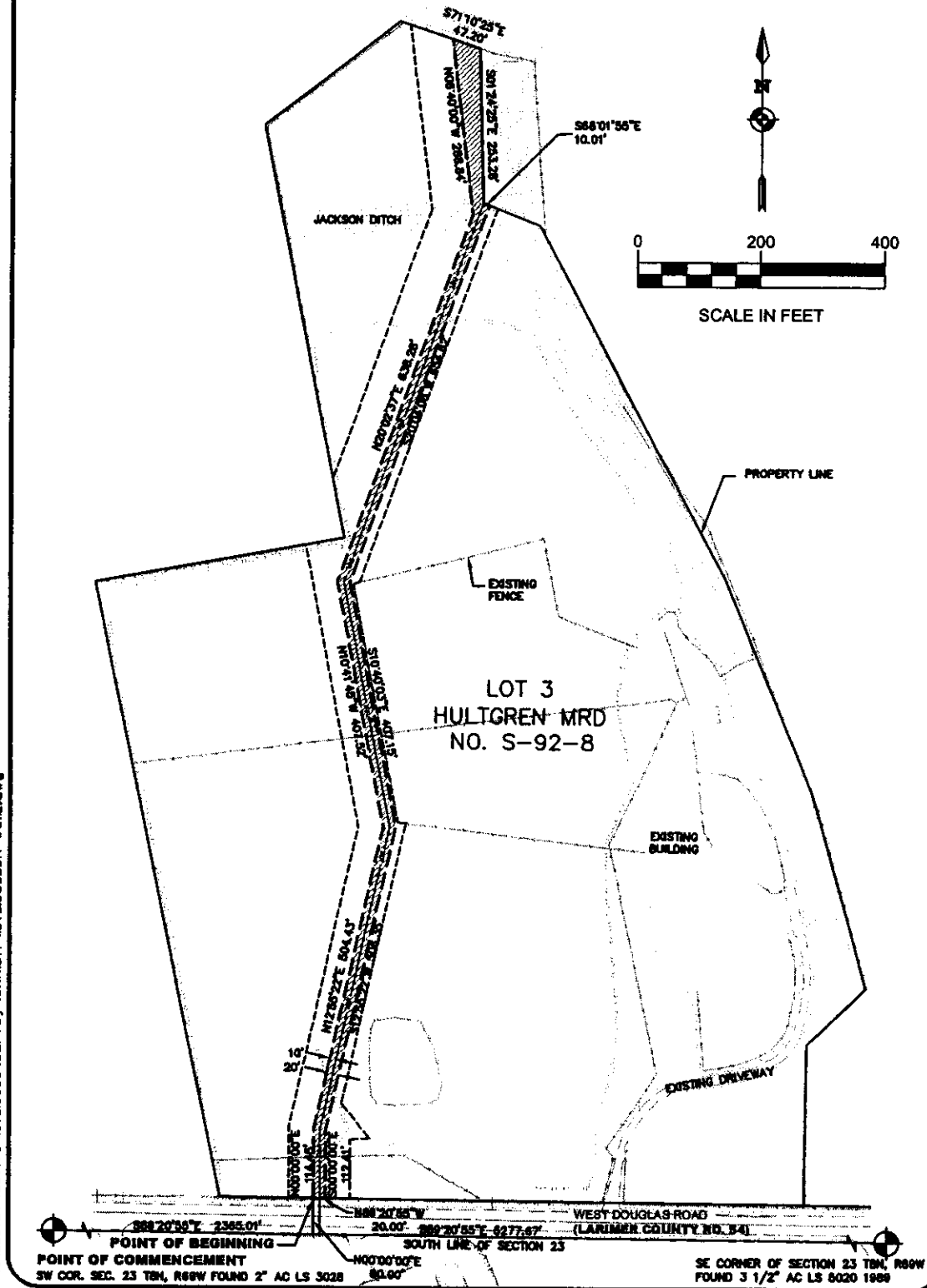
The above described strip contains 41,912 square feet (0.962 acres), more or less, and is subject to all easements and rights of way now on record or in place.

Thomas William Nicholas  
Colorado Professional Land Surveyor Reg. No. 28657



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Date: 10/04/05

**A STRIP OF LAND BEING A PORTION OF LOT 3 HULTGREN M.R.D. LOCATED IN SECTION 23, TOWNSHIP 8 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO**



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COPYRIGHT © 2005 STANTEC 	PROJECT ENGINEER/DESIGNER <b>D. SLAR</b>	PROJECT <b>DRY CREEK</b> LARIMER COUNTY, COLORADO	PROJECT NO. <b>187310058</b>
	PROJECT MANAGER <b>M. LANG</b>		
CHECKED BY <b>T. KAUFFMAN</b>	200 South Meldrum Ft. Collins, CO 80521-2003 Tel: (970) 482-6622 Fax: (970) 482-6386 www.stantec.com	TITLE OF DRAWING <b>A REPRESENTATION OF EXHIBIT A          WELL PROPERTY</b>	

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Stantec

DESCRIPTION:

A strip of land being a portion of Lot 3 Hultgren M.R.D. (Rec. No. 89015452) located in Section 23, Township 8 North, Range 69 West of the 6<sup>th</sup> Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

Basis of Bearings: The South Line of Section 23, being monumented at the Southwest Corner by a 2" aluminum cap stamped S22,S23,S26,S27, LS 3028 and at the Southeast Corner by a 3 1/2" aluminum cap stamped S23,S24,S25,S26 LS5020 1989 with a line between assumed to bear South 89°20'55" East with all bearings herein contained relative thereto.

COMMENCING at the Southwest Corner of said Section 23, Thence S89°20'55"E, 2375.01' along the South line of said Section 23; Thence N00°00'00"E, 60.00 feet to the North Right-of-Way line of West Douglas Road, Thence N89°20'55"W, 10.00 feet along said North Right-of-Way line to the POINT OF BEGINNING ;

Thence N89°20'55"W, 40.00 feet; Thence N00°00'00"E, 118.52 feet; Thence N12°55'22"E, 500.60 feet; Thence N10°41'45"W, 467.87 feet to a point on the Northwesterly line of said Lot 3; Thence N79°49'05"E, 64.35 feet along the Northwesterly line of said Lot 3; Thence N11°03'55"W, 98.90 feet along the Northwesterly line of said Lot 3; Thence N20°02'31"E, 467.19 feet; Thence North 06°40'00" W, 304.36 feet to a point on the North line of said Lot 3; Thence S71°10'25"E, 72.01 feet along said North line; Thence S06°40'00"E, 288.84 feet; Thence S20°02'31"W, 638.28 feet; Thence S10°41'45"E, 407.52 feet; Thence S12°55'22"W, 504.43 feet; Thence S00°00'00"E, 114.45 feet to the North Right-of-Way line of West Douglas Road and the POINT OF BEGINNING.

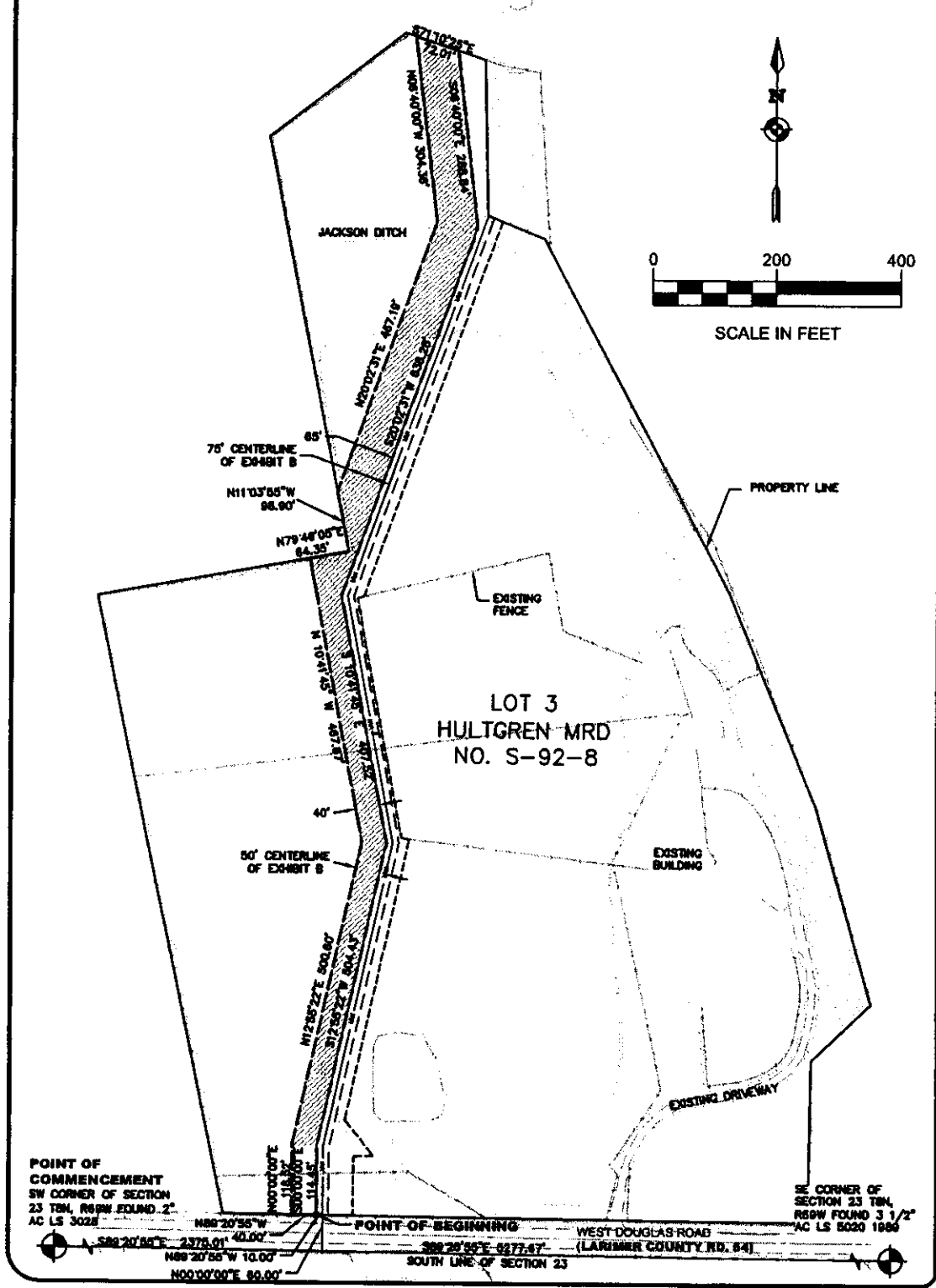
The above described tract contains 98,454 square feet (2.260 acres), more or less, and is subject to all easements and rights of way now on record or in place.

Thomas William Nicholas  
Colorado Professional Land Surveyor Reg. No. 28657

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Date: 10/04/05



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<p><b>COPYRIGHT © 2005 STANTEC</b>          Surveyed by: [Signature]          Project Number: [Blank]</p>	<p><b>PROJECT ENGINEER/SUPERVISOR</b>  <b>D. SILAR</b>          PROJECT MANAGER  <b>M. LANG</b></p>	<p><b>208 South Meldrum</b>          Ft. Collins, CO, 80521-2803          Tel: (970) 482-8922          Fax: (970) 482-8368          www.stantec.com</p>	<p><b>PROJECT</b>          DRY CREEK          LARIMER COUNTY, COLORADO</p> <p><b>PROJECT NO.</b>          187310058</p> <p><b>DRAWING NO.</b>          1</p>
<p>Drawn by:  <b>T. KAUFFMAN</b></p>		<p><b>TITLE OF DRAWING</b>          A REPRESENTATION OF EXHIBIT B          WELL PROPERTY Page 2 of 6</p>	



Stantec

DESCRIPTION:

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COMMENCING at the Southwest Corner of said Section 23; Thence S89°20'55"E, 2594.24' along the South line of said Section 23; Thence N00°00'00"E, 60.00 feet to the North Right-of-Way line of West Douglas Road and the TRUE POINT OF BEGINNING;

Thence N00°00'00"E, 195.37 feet; Thence N12°46'09"W, 63.73 feet; Thence N26°55'51"W, 70.59 feet; Thence N90°00'00"W, 100.58 feet; Thence N12°55'22"E, 301.40 feet; Thence S83°11'10"E, 275.00 feet; Thence S09°07'08"W, 491.15 feet; Thence S00°00'00"W, 40.00 feet; Thence S45°00'00"E, 40.00 feet; Thence S89°20'55"E, 140.00 feet; Thence S00°00'00"E, 30.00 feet to the North Right-of-Way line of West Douglas Rd; Thence N89°20'55"W, 284.26 feet along said North Right-of-Way line to the TRUE POINT OF BEGINNING.

The above described tract contains 129,229 square feet (2.97 acres), more or less, and is subject to all easements and rights of way now on record or in place.

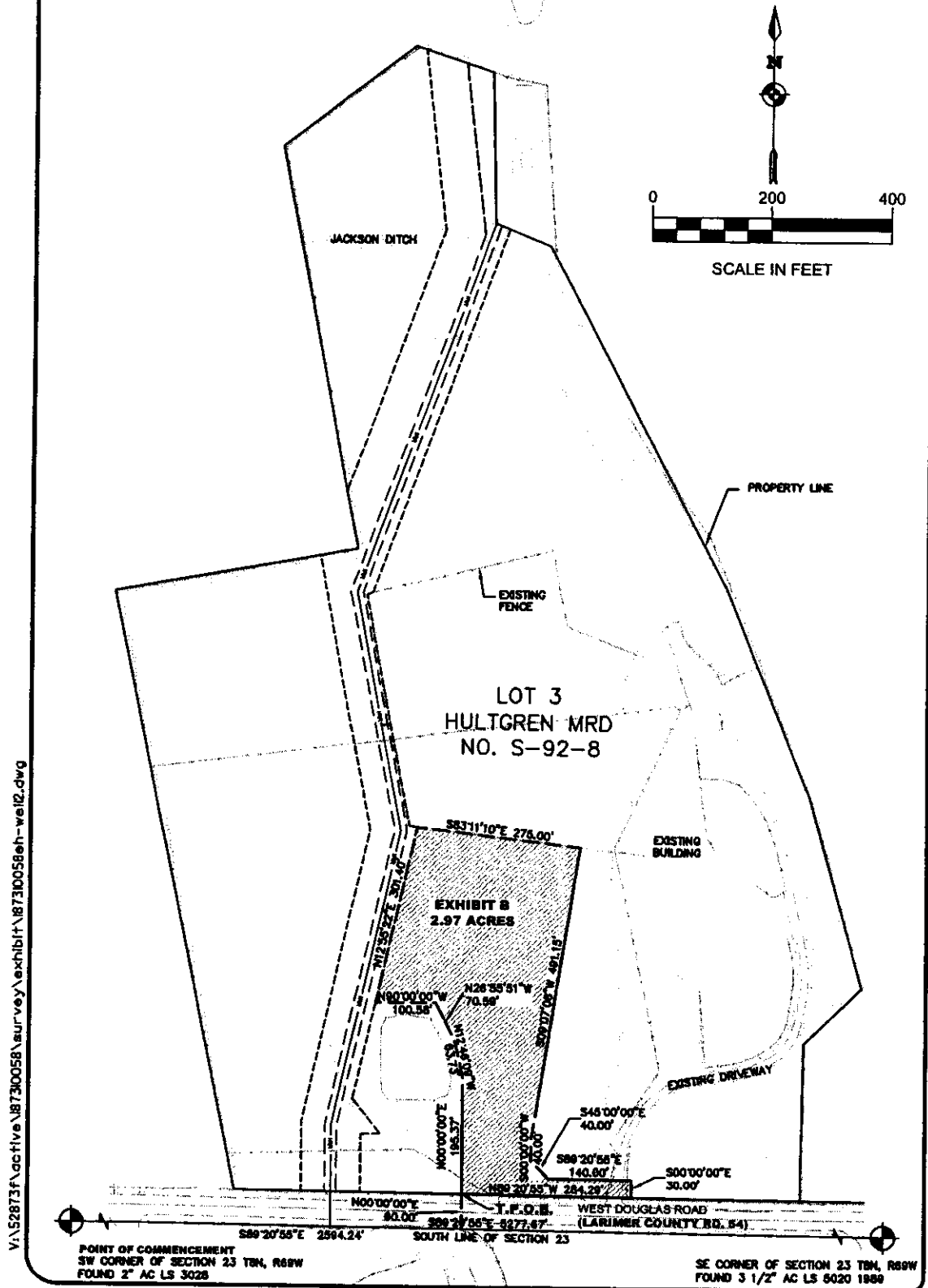
Thomas William Nicholas: Colorado Professional Land Surveyor Reg. No. 28657



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**A STRIP OF LAND BEING A PORTION OF LOT 3 HULTGREN M.R.D. LOCATED IN SECTION 23, TOWNSHIP 8 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO**



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COPYRIGHT © 2005 STARTEC 209 South Meldrum Ft. Collins, CO 80521-2803 Tel: (970) 482-5822 Fax: (970) 482-6368 www.startec.com	PROJECT DESIGN/ANALYSIS <b>D. SLAR</b> PROJECT SURVEY <b>M. LANG</b>	PROJECT NO. <b>187310058</b> DRAWING NO. <b>1</b>
	DRAWN BY <b>T. KAUFFMAN</b> CHECKED BY <b>T. KAUFFMAN</b> SCALE <b>1"=200'</b>	



**Stantec**

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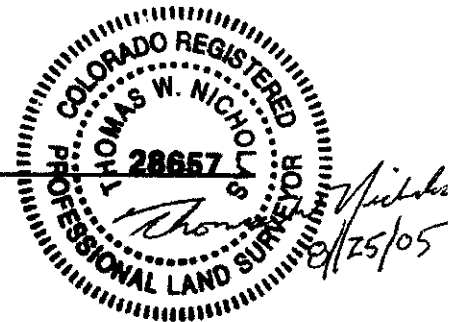
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TRUE POINT OF BEGINNING;

Thence N20°02'31"E, 35.99 feet; Thence N76°30'46"E, 320.41 feet; Thence S10°43'35"E, 144.18 feet; Thence S68°29'56"E, 110.26 feet; Thence S21°30'04"W, 30.00 feet; Thence N68°29'56"W, 126.81 feet; Thence N10°43'35"W, 129.25 feet; Thence S76°30'46"W, 308.81 feet to the TRUE POINT OF BEGINNING;

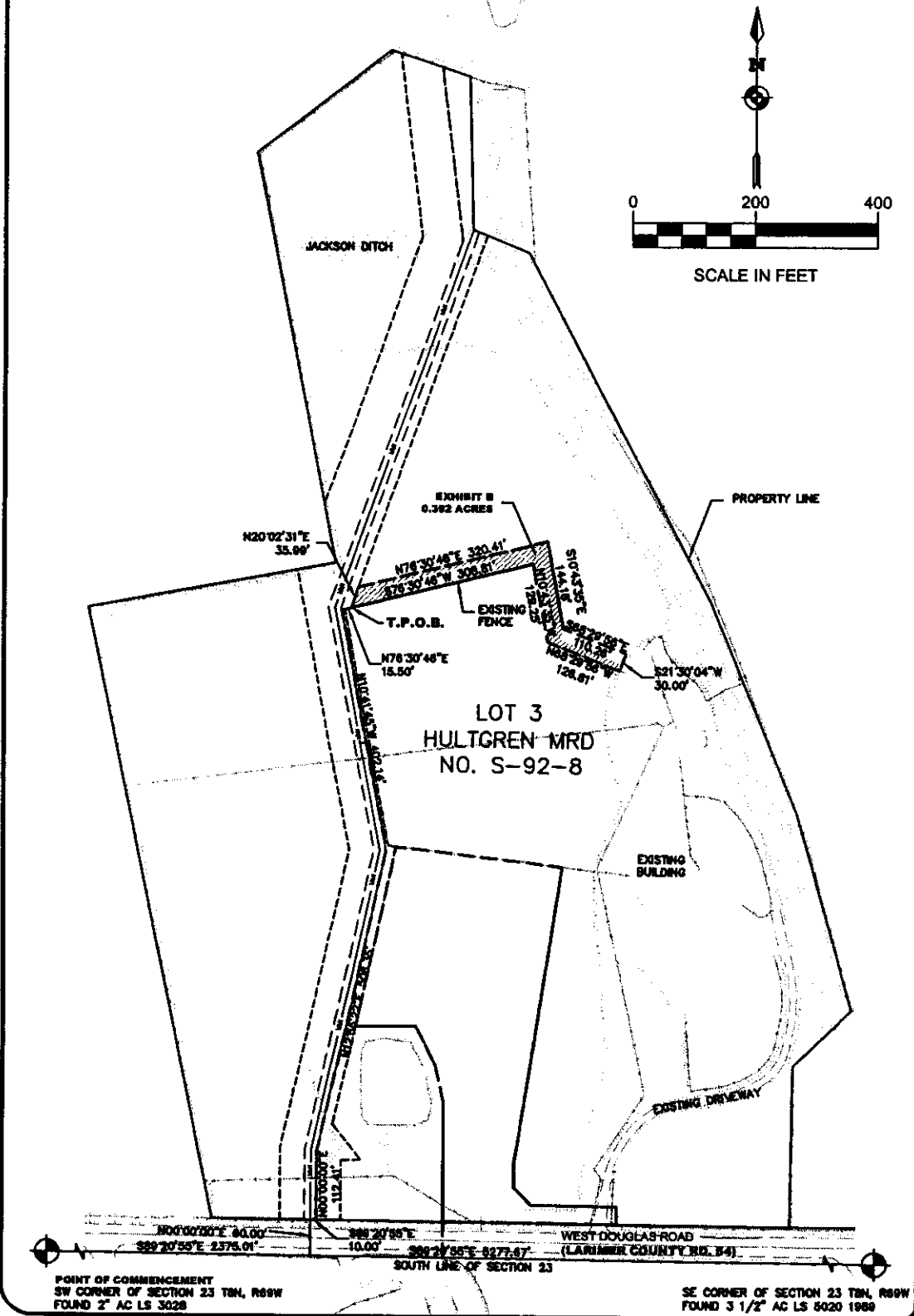
The above described tract contains 17,096 square feet (0.392 acres), more or less, and is subject to all easements and rights of way now on record or in place.

Thomas William Nicholas  
Colorado Professional Land Surveyor Reg. No. 28657



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twn/ 8/24/05

**A STRIP OF LAND BEING A PORTION OF LOT 3 HULTGREN M.R.D. LOCATED IN SECTION 23, TOWNSHIP 8 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO**



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COPYRIGHT © 2005 STANTEC 209 South Meldrum Ft. Collins, CO 80521-2003 Tel: (970) 482-9022 Fax: (970) 482-8388 www.stantec.com	PROJECT MANAGER <b>D. SLAR</b> PROJECT MANAGER <b>M. LANG</b>	PROJECT DRY CREEK LARIMER COUNTY, COLORADO PROJECT NO. <b>187310058</b> DRAWING NO. <b>1</b>
	DRAWN BY <b>T. KAUFFMAN</b> SCALE <b>P=200'</b>	

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**AGENDA ITEM SUMMARY**  
**FORT COLLINS CITY COUNCIL**

**ITEM NUMBER: 16**

**DATE: January 3, 2006**

**STAFF: Dan Mattson/Dean  
Saye/Helen Matson**

**SUBJECT**

**COPY**

First Reading of Ordinance No. 005, 2006, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands Necessary for the Construction of Public Improvements in Connection with the Dry Creek Drainage Improvements Project - Irrigation Pipeline.

**RECOMMENDATION**

Staff recommends adoption of the Ordinance on First Reading.

**FINANCIAL IMPACT**

Property acquisition costs for the construction of the Dry Creek Drainage Improvements Project - Irrigation Pipeline ("Project") will be covered by available project funds. Appropriations for the Project consist of \$1,700,000 in 2003, \$3,000,000 in 2004, \$3,400,000 in 2005, and future appropriations of \$1,200,000 in 2006.

**EXECUTIVE SUMMARY**

The design portion of the entire Dry Creek Drainage Improvements Project began in 2003. The construction of the overall project began in April 2005 with completion scheduled in 2006. The total project involves a combination of sub-projects in the upper, middle and lower basins to reduce the likelihood of flooding.

This Ordinance does not automatically result in the filing of a petition in eminent domain; it simply allows staff to use the process if good faith negotiations fail to result in an agreement between the City and affected property owners. Staff is hopeful that all acquisitions will be accomplished by agreement.

Staff intends to follow the standard City acquisition process:

1. Staff will conduct an internal value finding. If the preliminary valuation of the property indicates that the value of the property to be acquired exceeds \$5,000 staff will order an appraisal from a certified appraiser.
2. Staff will attempt to meet with each property owner onsite, and may include the appraiser in this meeting if appropriate.

3. Staff will mail and/or hand deliver letters of intent to the owners with written offers based on the internally prepared value findings or appraisals.
4. Staff will negotiate in good faith to reach a mutually acceptable agreement.
5. Staff will inform the owners that they always have the right to consult with their own appraiser and/or attorney at any time in the process.

## BACKGROUND

Dry Creek, a tributary to the Poudre River, extends from near the Wyoming border to a point on the Poudre River near the intersection of Mulberry Street and Timberline Road. The Dry Creek Basin is approximately 23 miles long and six miles wide, encompassing approximately 62 square miles. The upper and middle portions of the basin are primarily used as rangeland, irrigated hay meadows and pastures. The majority of the lower basin is developed for commercial, industrial and residential uses.

The 100-year floodplain and floodway were originally mapped as part of a FEMA Flood Insurance Study in 1979 and revised in 1996. The original master plan was completed in 1980. In 2002, Fort Collins Utilities mapped a revised floodplain and floodway for portions of the basin as part of a comprehensive update of the City's stormwater master plan. The floodplain and floodway map reflect the higher rainfall standard adopted by City Council in 1999. Dry Creek is a FEMA-designated floodplain and is subject to the City's floodplain regulations.

The total project includes modifications to Douglas Lake spillway, construction of two detention ponds, installation of a SCADA system, construction of an irrigation water supply pipeline from Reservoir #4 to Terry Lake, and construction of open channels to carry stormwater flows from the Larimer & Weld Canal to near the confluence of Dry Creek and the Poudre River. Sub-projects in the lower basin are currently in the final design phase. One of these sub-projects, the Irrigation Pipeline, requires the purchase of a permanent access easement and a temporary construction easement from a private property owner.

Staff has initiated the negotiation and education process and is reviewing the proposed irrigation pipeline improvements with the affected property owner. However, to ensure that the City will be able to secure all of the property interests needed in time to begin construction of the project, it is necessary to initiate the first step of the eminent domain process, including passage of this ordinance authorizing acquisition by eminent domain. Staff has advised the affected property owner that it is not unusual for the City to authorize the use of eminent domain at the same time as negotiations are taking place and that it is the City's intention to continue good faith negotiations for the property interests.