

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

307



FROM: Economic Development Agency

SUBMITTAL DATE:
September 23, 2010

SUBJECT: Public Safety Enterprise Communications Project Ground Lease, Estelle Mountain

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached ground lease and authorize the Chairman of the Board to execute the same on behalf of the County of Riverside; and
2. Authorize the Assistant County Executive Officer/EDA, or designee, to execute any other documents and administer all actions necessary to complete this transaction.

BACKGROUND: (Commences on Page 2)

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: No

SOURCE OF FUNDS: PSEC Budget	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY:

County Executive Office Signature Jennifer J. Sargent

FORM-APPROVED COUNTY COUNSEL
 BY: Greg Stoddard 9-17-10
 DATE
 Department: Information Technology

Dep't Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

BACKGROUND:

The Public Safety Enterprise Communications (PSEC) project utilizes long-term ground leases in those situations where the site owner will not sell the small land parcel required for the wireless communication site. The proposed site within the Lake Mathews/Estelle Mountain K Rat Reserve, southeast of Corona, provides wireless communication coverage to the areas along Interstate 15. The lease, subsequent construction, and site operation, was covered by an amendment to the Final Environmental Impact Report (FEIR) certified by the Board of Supervisors on September 2, 2008.

The Ground Lease is summarized below:

Location: Located on a portion of Assessor's Parcel Number 391-290-014

Lessor: Riverside County Habitat Conservation Agency

Size: Approximately 10,000 square feet

Term: Five years commencing September 1, 2010, with four options to extend five years each for a total of 25 years

Rent: No rent, the consideration for this lease is the purchase of 9.93 acres of mitigation land situated nearby.

Rent Adjustments: Not applicable

Utilities: Powered by diesel generators

Interior/Exterior Maintenance: By County

The attached Ground Lease has been reviewed and approved by County Counsel as to legal form.

FINANCIAL DATA:

All associated costs for this Ground Lease will be fully funded through the PSEC budget. Riverside County Information Technology's (RCIT) annual budget will carry operating costs. RCIT will reimburse the Economic Development Agency (EDA) for all associated lease costs. Any necessary budget adjustments will come under separate cover to the Board.

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COMMUNICATIONS SITE LEASE

This Lease is made this 16th day of September, 2010 by and between **RIVERSIDE COUNTY HABITAT CONSERVATION AGENCY**, (hereinafter "Lessor" and the **COUNTY OF RIVERSIDE**, a political subdivision of the State of California (hereinafter "Lessee").

RECITALS

A. Lessor is the owner of that certain real property (hereinafter "the Property") situated in the County of Riverside, State of California, identified as Assessor's Parcel Number 391-290-014, more particularly depicted on Exhibit "A" (assessors' parcel map), attached hereto and incorporated herein.

B. Lessor desires to lease a portion of the Property to Lessee as shown on Exhibit "B" attached hereto and incorporated herein.

C. The Property is situated in the Lake Mathews/Estelle Mountain Stephens' Kangaroo Rat Reserve Area, whereby Lessor is required to administer, operate and maintain the area for ecosystem conservation and comply with the Stephens' Kangaroo Rat Habitat Conservation Plan ("SKR HCP") in its management of reserve land.

D. Lessee desires to lease such portion of the Property from Lessor, for the purpose of constructing, installing, operating, and maintaining a communications facility, tower and related equipment and structures to house such facilities and equipment in furtherance of the County's Public Safety Enterprise Communications Project.

E. In order to be in compliance with the SKR HCP, the proposed facilities, as a public project, can be permitted for the leased area provided that reserves will be subject to a 1:1 habitat replacement.

F. As a condition precedent to the commencement of this Lease, Lessee is to convey to Lessor approximately 9.93 acres of habitat replacement land ("Mitigation Parcel"), identified as Assessor's Parcel Number 283-030-008, more particularly depicted on Exhibit "C" (assessor's parcel map), attached hereto and incorporated herein.

G. Conveyance of the Mitigation Parcel to the Lessor satisfies the SKR HCP 1:1 habitat replacement requirement and has been approved by the U.S. Fish and Wildlife Service and California Department of Fish and Game as required by the SKR HCP.

H. Lessor and Lessee understand and agree that the conveyance of the Mitigation Parcel is a permanent benefit to the Lessor regardless of the length of this Lease, the circumstances of its termination, or the extent to which Lessee exercises its rights under this Lease.

NOW, THEREFORE, the parties agree as follows:

1. Recitals. The Recitals set forth hereinabove are an integral part of this Lease and they are therefore, incorporated herein by this reference thereto.

1 2. Premises. Subject to the following terms and conditions, Lessor hereby leases to
2 Lessee that certain ground space on the Property to install certain equipment and fixtures as
3 indicated on Exhibit "B", attached hereto and incorporated herein by reference, including any
4 applicable easements for utilities and access to the Premises, (hereinafter "the Premises").
5 Lessee agrees to restore Lessor's property to the original condition at Lessee's expense upon
6 termination of the Lease, including the restoration of the vegetation quality that existed prior to
7 the tenancy created by this Lease. Lessee further agrees to remove any hazardous material
8 contaminant produced by Lessee's operations at the Premises in a code compliant manner. In
9 the event Lessee fails to return the Premises to a condition consistent with this Section within
10 ninety (90) days of the termination of this Lease, the Lessor may do so, and all costs and fees
11 expended in effecting the restoration of the Premises, including but not limited to labor and
12 disposal of materials, shall be charged to the Lessee and due payable immediately to the
13 Lessor.

14 3. Initial Term. The Term of this Lease shall be for a period of fifty (50) years,
15 commencing upon conveyance of the Mitigation Parcel to Lessor and execution of the Lease
16 pursuant to Section 22 herein ("Commencement Date"). Any holding over by Lessee after the
17 expiration of said term shall be deemed a year to year tenancy upon the same terms and
18 conditions in this Lease.

19 4. Rent. The consideration for this leasehold interest shall be the transfer in fee
20 simple absolute by the Lessee to the Lessor of approximately 9.93 acres of mitigation land
21 deemed acceptable to Lessor, identified as Assessor's Parcel Number 283-030-008, more
22 particularly depicted on Exhibit "C" (assessors' parcel map), attached hereto and incorporated
23 herein, without any liens, encumbrances, or clouds on title, and free of Hazardous waste and
24 other waste identified in the Phase 1 Environmental Site Assessment of the mitigation parcel
25 dated May 20, 2010. Should the lease be terminated, no claim on the mitigation land will be
made by the Lessee.

 5. Use. The Premises shall be used exclusively by Lessee for the sole purpose of
operating electronic communication equipment by the Riverside County Information
Technology Department (RCIT), County Fire and/or County Sheriff. The Premises shall not be
used for any other purpose, and upon obsolescence or abandonment of the purpose or
equipment, this lease shall terminate, and the Lessee shall remove all equipment and return
the Premises to a condition consistent with Section 2 herein. Lessee shall have exclusive
possession of the Premises together with appropriate non-exclusive access across Lessor's
Property to the Premises, including any required utility access corridors, during the lease term.
With pre-approval in writing from Lessor for each sub-lessee, Lessee may sublease to any
other governmental agency working directly in conjunction with RCIT, County Fire and/or
County Sheriff.

 6. Utility Charges. Lessee shall have the right to install generators to provide
electricity to operate its facilities and equipment. Alternatively, at any time during the tenancy
created by this lease, Lessee may obtain a separate electric meter and shall pay, or cause to
be paid, all charges for power, heat, air-conditioning, or other services used, rented or
supplied to Lessee in connection with its use of the Premises.

 7. Acceptance of Premises. To the best of Lessor's knowledge there have been no
hazardous material spills or underground fuel storage tanks on the Property, nor does it have
knowledge of septic or drain fields or buried wastes on or within the Premises or Property.

1 Lessee, at Lessee's option and sole cost, may conduct a Phase I Hazardous materials study
2 and Lessor agrees to cooperate in completion of such study. Lessor shall inform Lessee of
3 any present or future underground utilities placed by Lessor or Lessor's tenants so that Lessee
4 may protect such improvements during construction and operation. Otherwise, Lessee
5 accepts the Premises "as is" and acknowledges that Lessor has made no representation
6 whatever concerning the fitness of the Premises for the use intended by Lessee. Lessee
7 agrees to keep the Premises free of hazardous materials contamination and shall store and
8 use fuels, lubricants, batteries and other similar materials in a safe and code compliant
9 manner and assumes full responsibilities for such materials used within the Premises. If
10 Lessee conducts a Phase 1 study, a complete copy of the Phase 1 report shall be provided to
11 Lessor.

12 8. Improvements by Lessee. Lessee shall have the right (but not the obligation) at
13 any time following the full execution of this Lease and prior to the Commencement Date, to
14 enter the Premises for the purpose of making necessary inspections and surveys consistent
15 with the executed Right of Entry (and soil tests where applicable) and other reasonably
16 necessary tests (collectively "Tests") to determine the suitability of the Premises for Lessee's
17 Facilities (as defined herein) and for the purpose of preparing for the construction of Lessee's
18 Facilities. Lessee has the right to construct, maintain, install, repair and operate, within the
19 defined lease area (Exhibit "B") only, radio and microwave communications facilities, including
20 but not limited to, radio frequency transmitting and receiving equipment, batteries, backup
21 generators, utility lines, transmission lines, radio and microwave frequency transmitting and
22 receiving antennae and supporting structures and improvements ("Lessee's Facilities"). In
23 connection therewith, Lessee has the right to do all work necessary to prepare, add, maintain
24 and alter the Premises for Lessee's communications operations and to install utility lines and
25 transmission lines connecting antennas to transmitters and receivers within the defined lease
area (Exhibit "B") only. Any external lighting fixtures shall require the written consent of Lessor
prior to installation. Lessee shall have the right to install any warning signs on or about the
Premises required by federal, state or local law. All of Lessee's construction and installation
work shall be performed at Lessee's sole cost and expense and in a good and workmanlike
manner. Lessee shall obtain all permits required by law.

Any alterations, improvements or installation of fixtures following the initial installation of
Lessee's Facilities shall require prior written consent of Lessor and any such improvement or
upgrade shall comply with Section 12 herein. Lessee may perform routine maintenance on
Lessee's Facilities without obtaining prior written consent of Lessor. All alterations and
improvements made and fixtures installed by Lessee shall remain Lessee's property and may
be removed by Lessee at or prior to the expiration of this Lease; provided, however, that such
removal does not cause injury or damage to the Premises, or in the event it does, Lessee shall
restore the Premises to good condition.

9. Insurance. Lessee is a local government entity created under the laws of the State
of California, and is self-insured against any third party liability loss. Lessee shall cause
Lessor and its governing board, officers, employees, contractors and agents to be listed as
additional insured's under Lessee's self-insurance program, shall maintain its self-insurance
program in full force during the term, and shall provide proof of self-insurance if requested by
Lessor.

10. Hold Harmless. Lessee shall indemnify, defend and hold Lessor, its governing
board, officers, employees, contractors and agents, harmless from and against any loss,

1 liability, claim, damage or expense (including attorneys' fees) arising from or in any manner
2 related to the use or occupancy of the Premises or the access thereto, except to the extent
3 such loss, liability, claim, damage or expense is caused by the sole negligence or willful
4 misconduct of the Lessor, its governing board, officers, employees, contractors or agents.

5 11. Option to Terminate. Lessee shall have the option to immediately terminate this
6 Lease if the Premises are destroyed or damaged to the extent that they cannot be repaired, or
7 with ninety (90) days written notice for any other reason at any time during the term of this
8 Lease or any extension of this Lease. If Lessee terminates this Lease in accordance with this
9 provision, Lessee at its sole cost shall remove all improvements from the Premises and leave
10 the site free of debris. Should the lease be terminated by Lessee, no claim on the mitigation
11 land will be made by the Lessee.

12 Lessor shall have the right to terminate this Lease in the event of Lessee's default or
13 breach of any terms or conditions of this Agreement, including but not limited to failure to
14 maintain and operate the Premises in accordance with applicable law and requirements, after
15 providing thirty (30) days written notice to Lessee, whereupon Lessee shall have the option to
16 avoid termination by correcting the default or breach before the termination date or, if
17 correction is not possible before the termination date, by notifying Lessor, in writing, that it has
18 commenced to correct the default or breach and the estimated date of completion. In the
19 event of Lessor's termination for Lessee's default and failure to correct within the time
20 specified above, Lessee at its sole cost shall remove all improvements from the Premises and
21 leave the Premises free of debris. Should the lease be terminated by Lessor, no claim on the
22 mitigation land will be made by the Lessee.

23 12. Interference. Lessee shall operate the Premises in compliance with all Federal
24 Communications Commission ("FCC") requirements and in a manner that will not cause signal
25 interference to Lessor or other lessees or licensees on Lessor's Property, provided that any
such installations predate that of Lessee. In the event signal interference occurs, Lessee
agrees to use best efforts to eliminate such interference within a reasonable time period.
Lessee shall not install anything that conflicts with Lessor's operational needs.

13 13. Taxes. Notice is hereby given pursuant to Revenue and Taxation Code section
14 107.6 that this Communications Site Lease may create a taxable possessory interest in the
15 Premises. If personal property taxes are assessed, Lessee shall pay any portion of such
16 taxes directly attributable to Lessee's facilities. Lessor shall pay all real property taxes,
17 assessments and deferred taxes on the property.

18 14. Notices. Any notices required or desired to be served by either party upon the
19 other shall be addressed to the respective parties as set forth below or to such other
20 addresses as from time to time shall be designated by the respective parties:

21	Lessee:	Lessor:
22	County of Riverside	Riverside County Habitat
23	Economic Development Agency	Conservation Agency
24	3403 10 th Street, Suite 500	4080 Lemon Street, 12 th Floor
25	Riverside, California 92501	Riverside, California 92501

15 15. Quiet Enjoyment. Lessor covenants that Lessee shall at all time during the term of
this Lease peaceably and quietly have, hold and enjoy the use of the leased Premises so long

1 as Lessee shall fully and faithfully perform the terms and conditions that it is required to
2 perform under this Lease. Use of the Premises or facilities by Lessor for its water service or
3 other public purposes, including in the event of emergency, shall not be considered a breach
4 of Lessor's obligation under this Section 15.

5 16. Binding on Successors. The terms and conditions herein contained shall apply to
6 and bind the heirs, successors in interest, executors, administrators, representatives and
7 assigns all of the parties hereto.

8 17. Severability. The invalidity of any provision in this Lease as determined by a court
9 of competent jurisdiction shall in no way affect the validity of any other provision hereof.

10 18. Venue. Any action at law or in equity brought by either of the parties hereto for the
11 purpose of enforcing a right or rights provided for by this Lease shall be tried in a court of
12 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
13 waive all provision of law providing for a change of venue in such proceedings to any other
14 county.

15 19. Attorneys' Fees. In the event of any litigation or arbitration between Lessor and
16 Lessee to enforce any of the provisions of this Lease or any right of either party hereto, the
17 unsuccessful party to such litigation or arbitration agrees to pay to the successful party all
18 costs and expenses, including reasonable attorney's fees, incurred therein by the successful
19 party, all of which shall be included in and as a part of the judgment rendered in such litigation
20 or arbitration.

21 20. Entire Lease. This Lease is intended by the parties hereto as a final expression of
22 their understanding with respect to the subject matter hereof and as a complete and exclusive
23 statement of the terms and conditions thereof and supersedes any and all prior and
24 contemporaneous leases, agreements and understandings, oral or written, in connection
25 therewith. This Lease may be changed or modified only upon the written consent of the
parties hereto.

26 21. Interpretation. The parties hereto have negotiated this Lease at arms length and
27 with advice of their respective attorneys, and no provision contained herein shall be construed
28 against either party solely because it prepared this Lease in its executed form.

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1 22. Board Approval. Anything to the contrary notwithstanding, this Lease shall not be
2 binding or effective until its approval by the Riverside County Board of Supervisors and the
Riverside County Habitat Conservation Agency Board of Directors.

3 Dated: _____

**RIVERISDE COUNTY HABITAT
CONSERVATION AGENCY**

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6 By: _____
7 Gary Thomasian, Chairman
8 Riverside County Habitat Conservation
9 Agency

10 Dated: _____

COUNTY OF RIVERSIDE

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14 By: _____
15 Marion Ashley, Chairman
16 Board of Supervisors

17 **APPROVED AS TO FORM:**

18 Pamela J. Walls
19 County Counsel

20 By: Synthia M. Gunzel
21 Synthia M. Gunzel
22 Deputy County Counsel

23 **APPROVED AS TO FORM:**

24 By: _____
25 RCHCA General Counsel

RF:ra
8/26/10
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3.609

EXHIBIT "B"

Estelle Mountain Site Area for Tower

All that portion of Lot 27 of Parcel Map Book 46, Page 71, of Section 5, Township 5 South, Range 5 West, San Bernardino Meridian, in the County of Riverside, State of California, according to the official plat thereof, described as follows:

Commencing at the intersection of Highcliff Road and Lemon Heights Road, also the Southeast corner of Lot 27 of said Parcel Map;

Thence along the centerline of Highcliff Road, South $86^{\circ}56'01''$ West a distance of 42.79 feet to the beginning of a tangent curve, concave northerly the radius point of which bears N $3^{\circ}03'59''$ W a distance of 360.99 feet;

Thence along said curve, through a central angle of $35^{\circ}54'11''$ a distance of 232.51 feet, to the Northwest corner of Lot 26 of said Parcel Map;

Thence on a random line N $51^{\circ}46'03''$ E a distance of 54.62 feet, to the **True Point of Beginning**;

Thence N $46^{\circ}48'50''$ E a distance of 100.00 feet;

Thence N $43^{\circ}11'10''$ W a distance of 100.00 feet;

Thence S $46^{\circ}48'50''$ W a distance of 100.00 feet;

Thence S $43^{\circ}11'10''$ E a distance of 100.00 feet, to the **True Point of Beginning**;

Containing a total area of 10,000 sf;

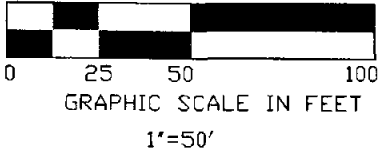
Subject to all other easements and offers of dedication of record;

As shown on Exhibit "B" and by this reference made a part thereof;

Prepared By:

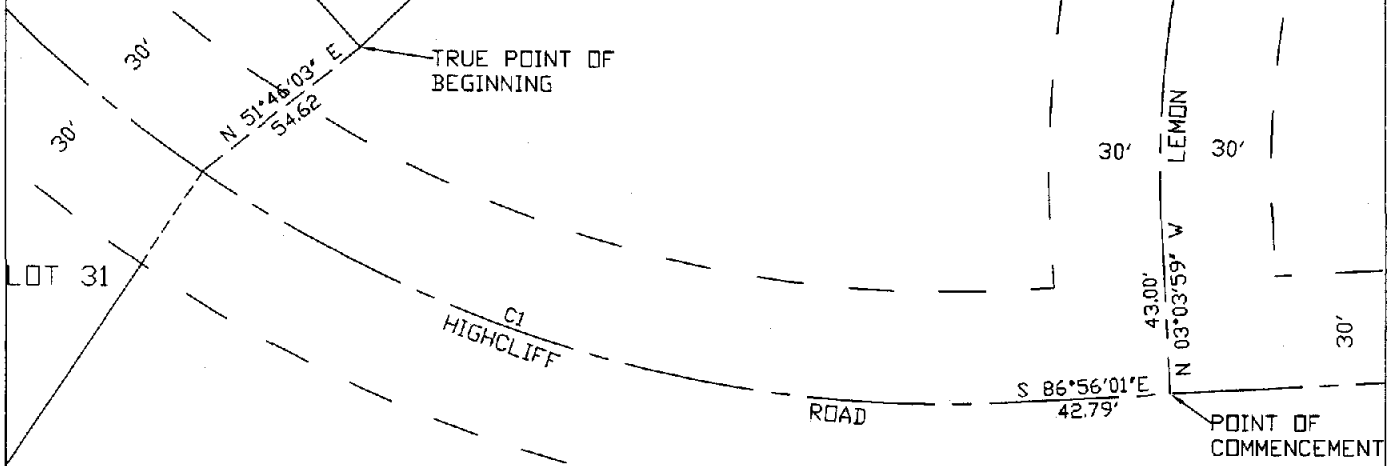
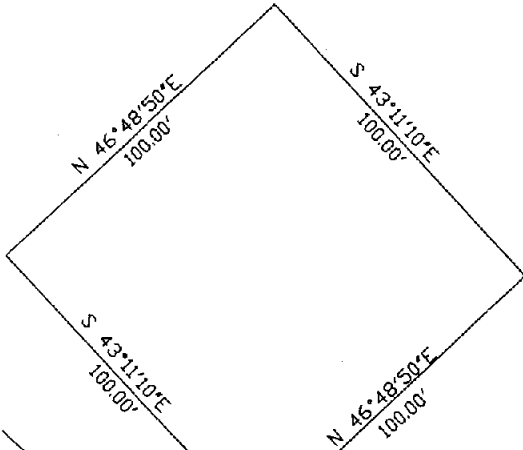
STEVE A. LEJA - PLS 5933
EXPIRES 12/31/2010
LEJA SURVEYING CORP

ESTELLE MOUNTAIN SITE AREA FOR TOWER



PARCEL MAP 46/71
SECTION 5, T.5S. R5W.
S.B.M.

LOT 27



CURVE DATA
 C1 R=360.99 D=35°54'11" L=232.51'
 C2 R=299.23 D=34°33'05" L=180.46'

LOT 26

LOT 31

Estelle Mountain Staging Area

All that portion of Lot 27 of Parcel Map Book 46, Page 71, of Section 5, Township 5 South, Range 5 West, San Bernardino Meridian, in the County of Riverside, State of California, according to the official plat thereof, described as follows:

Commencing at the intersection of Highcliff Road and Lemon Heights Road, also the Southeast corner of Lot 27 of said Parcel Map;

Thence along the centerline of Highcliff Road, South $86^{\circ}56'01''$ West a distance of 42.79 feet to the beginning of a tangent curve, concave northerly the radius point of which bears N $3^{\circ}03'59''$ W a distance of 360.99 feet;

Thence along said curve, through a central angle of $35^{\circ}54'11''$ a distance of 232.51 feet, to the Northwest corner of Lot 26 of said Parcel Map;

Thence on a random line N $51^{\circ}46'03''$ E a distance of 54.62 feet;

Thence N $46^{\circ}48'50''$ E a distance of 100.00 feet; to the **True Point of Beginning**;

Thence N $46^{\circ}48'50''$ E a distance of 100.00 feet;

Thence N $43^{\circ}11'10''$ W a distance of 100.00 feet;

Thence S $46^{\circ}48'50''$ W a distance of 100.00 feet;

Thence S $43^{\circ}11'10''$ E a distance of 100.00 feet, to the **True Point of Beginning**;

Containing a total area of 10,000 sf;

Subject to all other easements and offers of dedication of record;

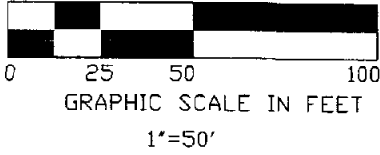
As shown on Exhibit "B" and by this reference made a part thereof;

Prepared By:

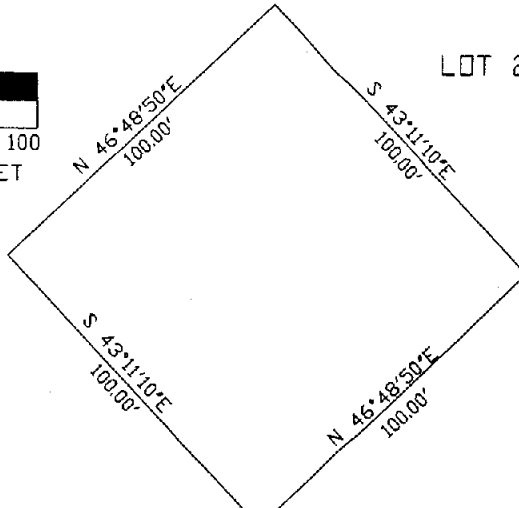
STEVE A. LEJA - PLS 5933
EXPIRES 12/31/2010
LEJA SURVEYING CORP

ESTELLE MOUNTAIN STAGING AREA

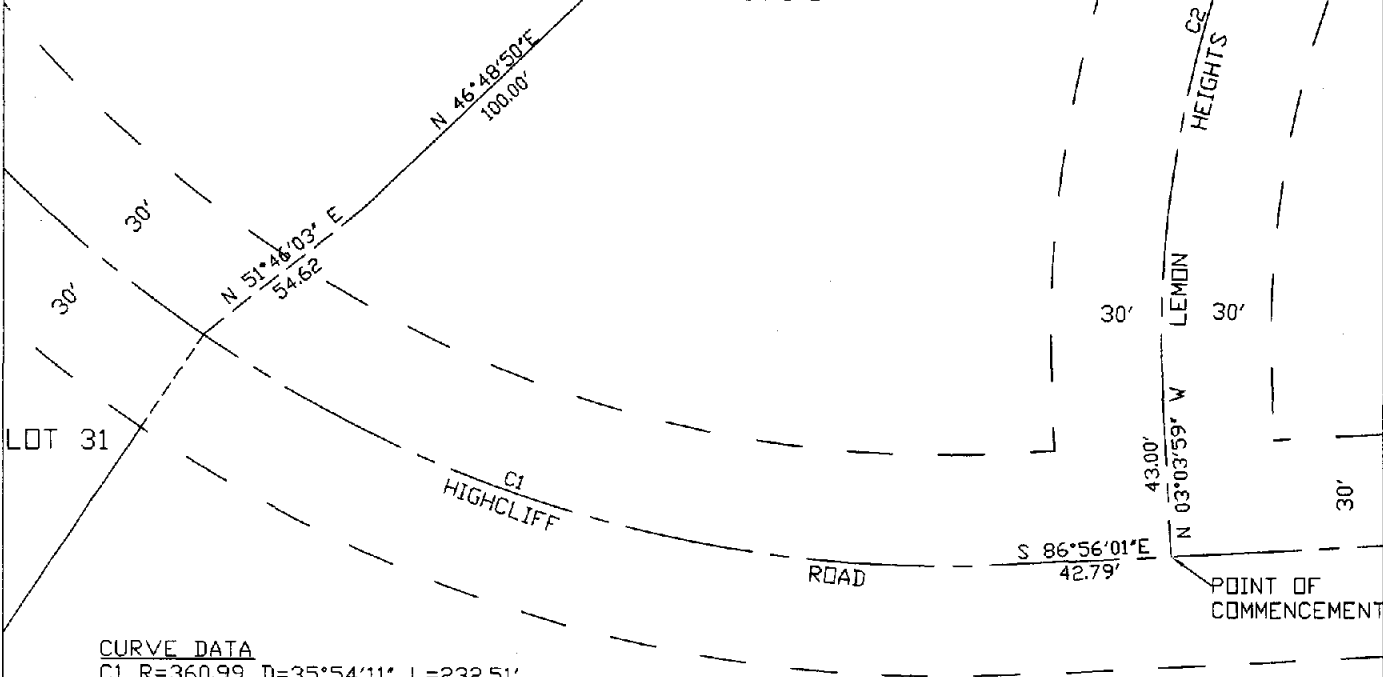
PARCEL MAP 46/71
SECTION 5, T.5S. R5W.
S.B.M.



LOT 27



TRUE POINT OF BEGINNING



CURVE DATA
C1 R=360.99 D=35°54'11" L=232.51'
C2 R=299.23 D=34°33'05" L=180.46'

LOT 26

