



Sullivan, Workman, & Dee, LLP

Excellence in Eminent Domain, Real Estate, Trusts & Estates

49th Annual SCCAI Litigation Seminar

The Synergy of Severance Damages: The Parts vs. the Whole

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GENERAL VALUATION PRINCIPLES

Constitutional Requirements

California Constitution, Article 1, §19:

“Private Property may be taken or **Damaged** for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for the owner.”

GENERAL VALUATION PRINCIPLES

“The rules for determining value of condemned land are not to be considered inflexible. In each case just compensation is the goal and if rigid application of a rule tends to produce an injustice, the court must deviate from that rule...”

- *People ex rel. Dept. of Transportation v. Southern Pacific Transportation Co.* (1978) 84 Cal. App. 3d 315, 325



GENERAL VALUATION PRINCIPLES

Fair Market Value

Code of Civil Procedure §1263.310:

“...The measure of [just] compensation is the fair market value of the property taken.”



GENERAL VALUATION PRINCIPLES

Severance Damages

Code of Civil Procedure §1263.410(a):

“Where the property acquired is part of a larger parcel, in addition to compensation awarded ... compensation shall be awarded for the injury, if any, to the remainder.”



GENERAL VALUATION PRINCIPLES

Severance Damages

Code of Civil Procedure §1263.410(b):

“Compensation for injury to the remainder is the amount of the damage to the remainder reduced by the amount of the benefit to the remainder.”

What is:

**“Damage to the
Remainder?”**



GENERAL VALUATION PRINCIPLES

Severance Damages

Code of Civil Procedure §1263.420:

“Damage to the remainder is the damage, if any, caused to the remainder by either or both of the following:

- a) The severance of the remainder for the part take
- b) The construction and use of the project for which the property is taken in the manner proposed by the plaintiff whether or not the damage is caused by a portion of the project located on the part taken.”



GENERAL VALUATION PRINCIPLES

Severance Damages

Damage can result from **any factor** causing a decline in the fair market value of the property.

“Severance damages are not limited to special and direct damages, but can be based upon **any factor**, resulting from the project, that causes a decline in the fair market value of the property.”

- *Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp.* (1997) 16 Cal. 4th 694, 712.

Damages to the Remainder

- Measuring severance damages requires determination of the value of the remainder property in the after condition.
- The analysis must consider any (all) of the eminent domain related factors that could have a negative impact upon the amount that a knowledgeable buyer would be willing to pay for the Remainder.

What Are Some Factors that Can Result in Severance Damages?

Damages to the Remainder

Factors that can result in Severance Damages:

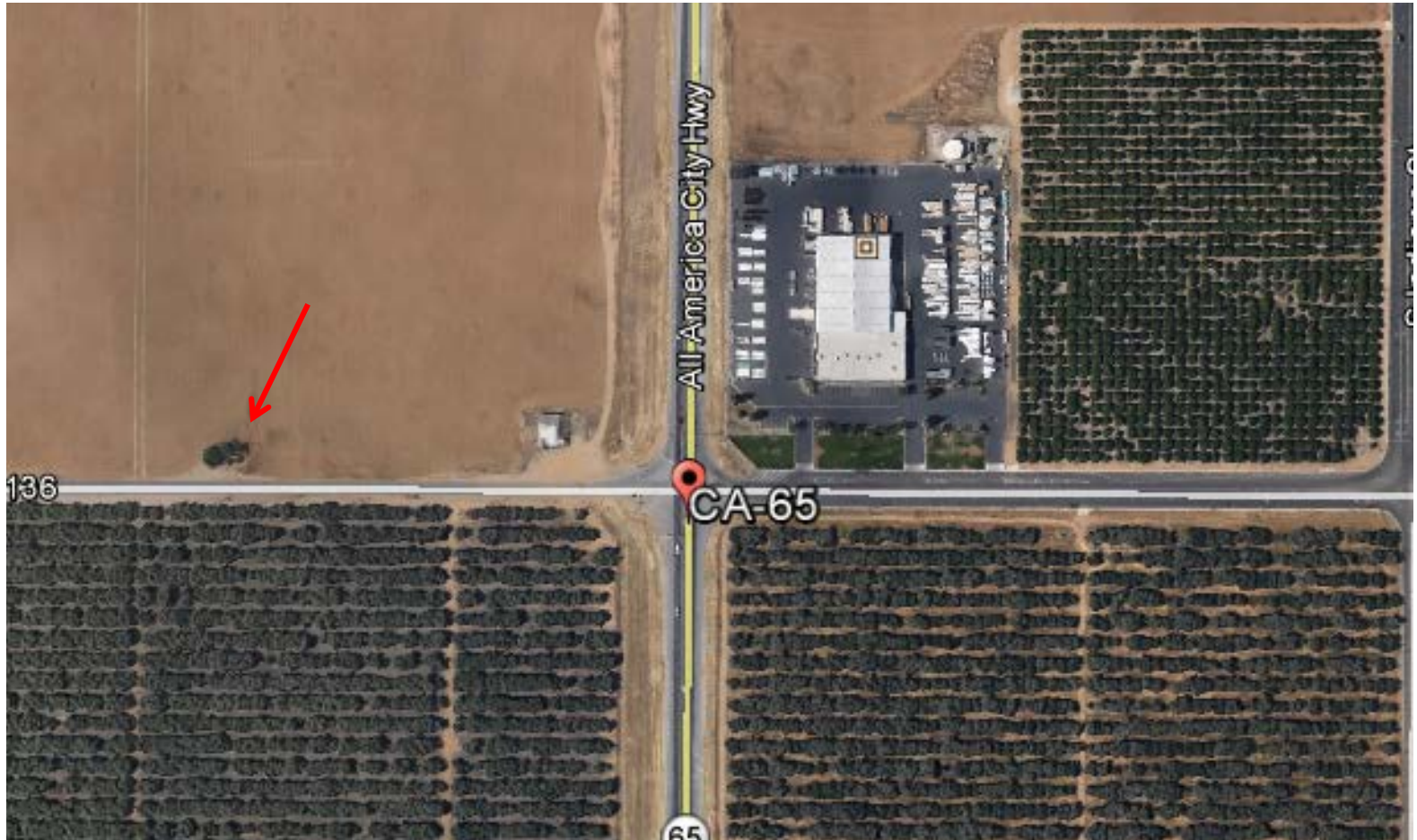
- Increased Operating Expenses
- Increased Development Costs
- Decreased Development Potential
- Loss of Frontage & Visibility
- Compliance with ADA Requirements
- Loss of Use
- Size and Shape of the Remainder
- Interference with Access
- Reduction in Rental Value
- Costs to Cure Damages to the Remainder



Increased Operating Expenses

The project can result in increased operating expenses for the landlord. These increased operating expenses can result in severance damages.

Case Example: Increased Operating Expenses

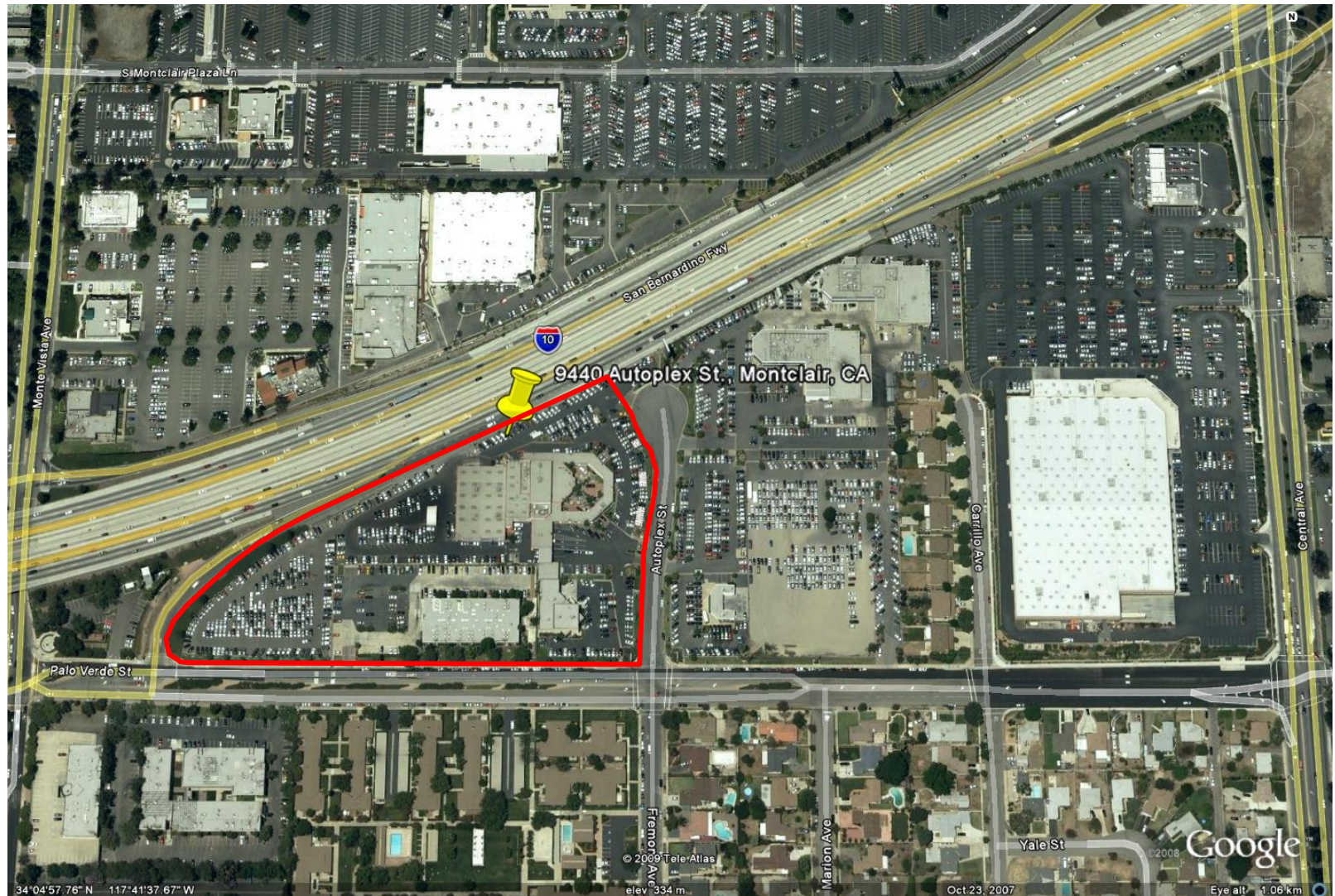




Loss of Frontage & Visibility

The project can result in damages as a result of the loss of the frontage and view that the property enjoyed before the project.

Loss of Visibility



Increased Development Costs

The project can result in increased development costs. Creating a situation where the developer now needs to build something that was wasn't required in the before condition.

Decreased Development Potential

The project can result in decreased development potential by reducing the area for legal lots. The taking can result in a situation where in the before condition the remainder could be developed with a certain number of lots but in the after condition, as a result of the project, the remaining property can only be developed with fewer lots.

Case Example:

Increased Development Costs

Decreased Development Potential

Loss of Frontage & Visibility







Loss of Use During and After the Project

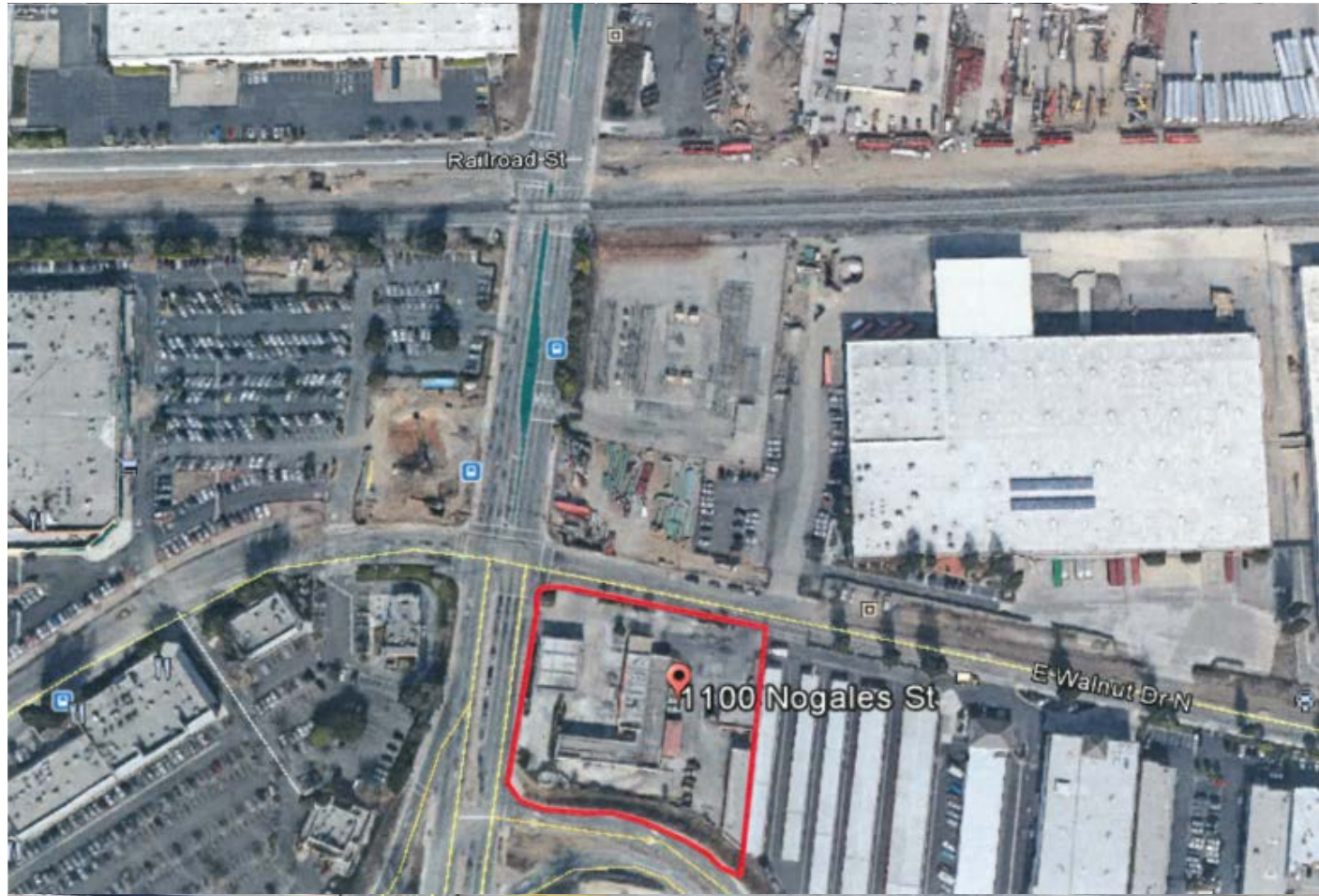
The project can result in damages as a result of both loss of use during construction and after the project is complete



Compliance with American With Disabilities Act Requirements

The project can result in damages to the remainder if the remainder is now required to comply with the American With Disabilities Act. The additional costs to make the property comply with the Act could result in Severance Damages.

Case Example: Loss of Use During and After the Project Compliance with the ADA





Size and Shape of the Remainder

The taking can adversely affect the Fair Market Value of the Remainder Parcel



Interference with Access

The taking can interfere with access to the remaining portions of the property

Reduction in Current or Future Rental Value

The project can result in damages as a result of the reduction of the rents that can be obtained from a current tenant or the value of rents that can be obtained from a future tenant.

Costs to Cure Damages

“Severance Damages may also be measured by the cost of restoring the injured remainder to the same relative position in which it stood before the public project begun.”

- *People ex rel. Department of Public Works v. Hayward Building Materials Company* (1963) 213 Cal. App. 2d 457.

Costs to Cure Damages

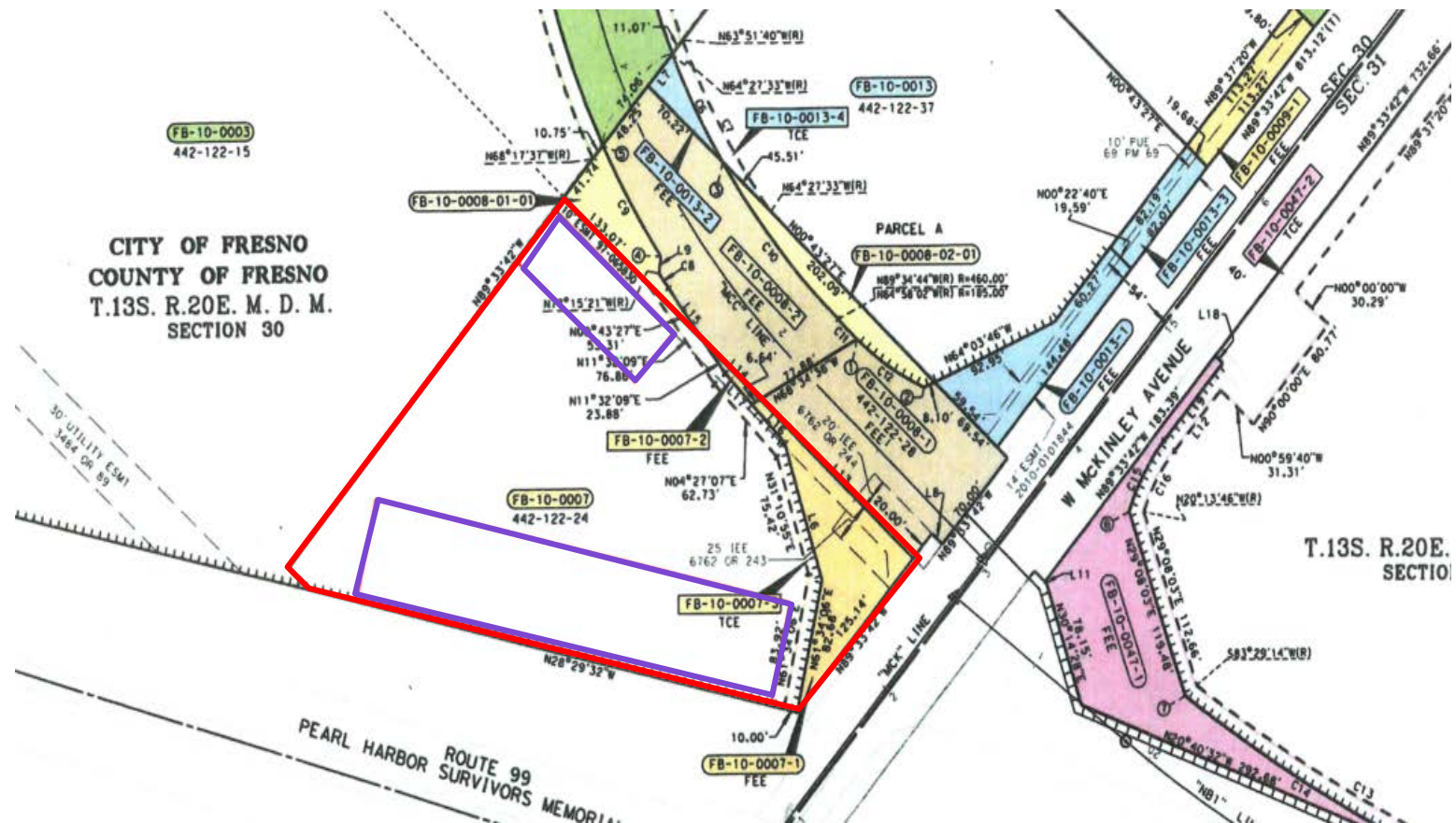
Cost to Cure Defects may include:

- Paving Reconstruction
- Reconfiguration of Parking
- Dismantling Improvements
- Relocating Utilities
- Relocation of Trees and Shrubs
- The Costs to Obtain Governmental Approvals

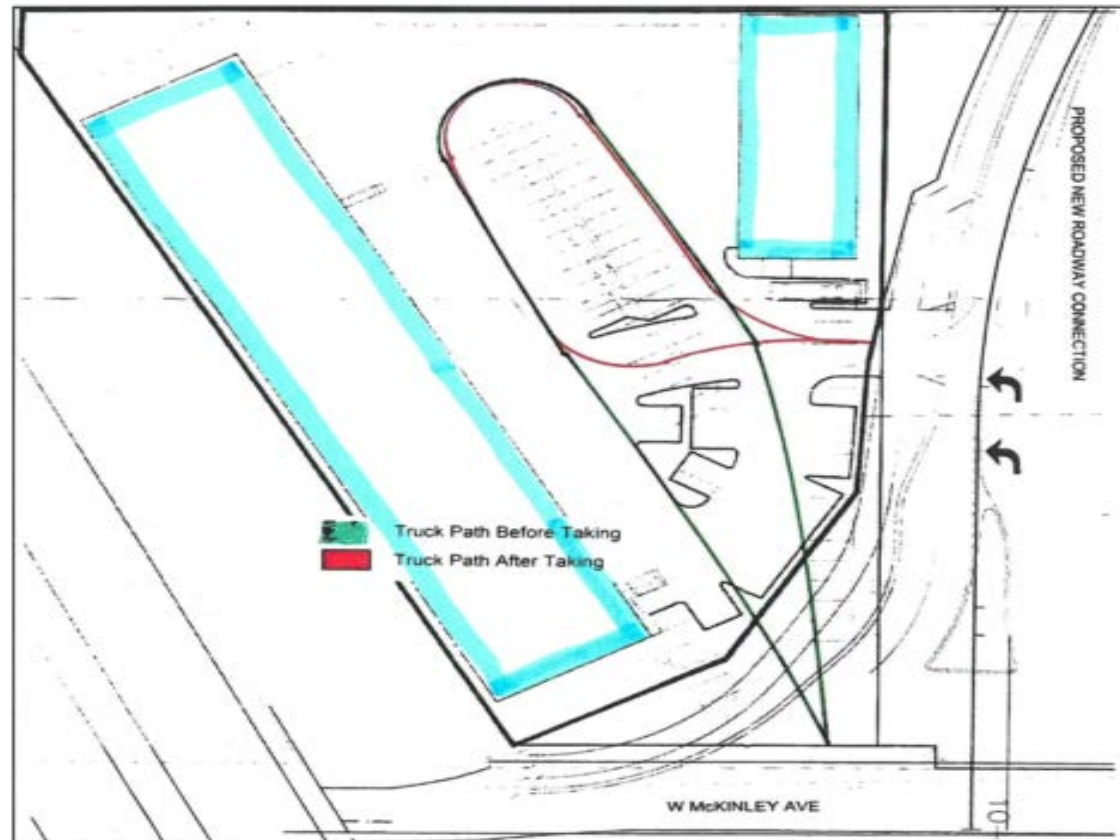
Case Example: Size and Shape of Remainder Interference with Access Cost to Cure



Case Example:
Size and Shape of Remainder
Interference with Access
Cost to Cure



Case Example: Size and Shape of Remainder Interference with Access Cost to Cure

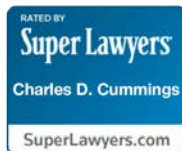


QUESTIONS?



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Charles D. Cummings