

State of California  
Business, Transportation and Housing Agency  
Department of Transportation

HIGHWAY RIGHT OF WAY MATTERS  
Appearance - Clocktower  
Action Item

Prepared By:  
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Right of Way  
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CTC Meeting: December 5-6, 2000

Agenda Item: 2.4a.

*Original Signed By* \_\_\_\_\_

W. J. EVANS, Deputy Director

Finance

November 27, 2000

### RESOLUTION OF NECESSITY

The Department of Transportation recommends the California Transportation Commission adopt Resolution of Necessity C-18167. The summary below identifies the location of and designates the nature of the property rights covered by the Resolution of Necessity. In accordance with statutory requirements, the owners have been advised that the Department of Transportation is requesting a resolution at this time. Adoption of Resolution of Necessity C-18167 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

#### C-18167 - Clocktower Loft Owners Association - Lessee

04-SF-80-PM 5.2 - Parcel 58058-1,2 - E.A. 0435V2 (Freeway) Authorizes condemnation of two temporary easements for freeway construction, located in the city of San Francisco at 2nd Street between Bryant and Harrison Streets.

DISTRICT 4 SUPPLEMENTAL APPEARANCE INFORMATION SHEET

CTC Appearance Fact Sheet  
Hearing on Resolution of Necessity - ClockTower

At the November 2, 2000, hearing on the proposed Resolution, the CTC expressed interest regarding three matters:

1. Noise Studies/Mitigation

For projects subject to CEQA, Caltrans performs noise studies to comply with the legal requirements of that statute. As a seismic retrofit project, the West Approach project is statutorily exempt from CEQA pursuant to Streets and Highways Code section 180.2. Streets and Highways Code section 216, which requires noise abatement where a freeway project causes classroom noise levels to exceed certain levels, is similarly inapplicable to the West Approach Project. Since the Project is exempt from CEQA and section 216 is inapplicable, there is no legal requirement under California law obligating the State to address noise impacts of the West Approach Project.

NEPA and Title 23 U. S. Code § 109 and Title 23 CFR Part 772 require the FHWA to analyze and mitigate environmental impacts including noise, for highway projects that are federally funded, or require federal approval by the FHWA. These federal laws and regulations establish the responsibilities of the FHWA and do not establish a legal obligation governing Caltrans. There is no federal funding for the West Approach Project and there are no project elements which require FHWA approval (such as replacing a diamond freeway interchange with a loop interchange). Accordingly, neither NEPA nor 23 U. S. Code § 109 nor Title 23 CFR Part 772 apply to the West Approach Project.

Notwithstanding the above, Clocktower has asserted that Caltrans' internal policies and procedures require it to perform noise studies and mitigation for the subject project. This is not the case.

Caltrans policy regarding noise analysis and mitigation is to comply with existing law; however, this policy creates no legal obligations beyond those already set forth in such existing law. As noted above, Caltrans has no legal obligation under state or federal law to analyze and/or mitigate noise impacts associated with the West Approach Project, and Caltrans policy does not establish any independent legal obligation to do so.

Caltrans policy regarding noise analysis and mitigation is governed by the Project Development Procedures Manual (PDPM). The PDPM is the primary manual governing the development of Caltrans projects and states:

“The PDPM is not intended to establish legal standard for these functions, nor does it impose legal requirements different from, or in addition, to those imposed by law.”

and

“It is not intended that any standard of conduct or duty toward the public shall be created or imposed by this manual.”  
(PDPM, Chapter 1, Section 1).

For projects where State law requires Caltrans to conduct noise studies and/or mitigation (i.e., CEQA, Sts. & Hy. Code § 216), Caltrans has chosen to adopt the definitions and standards set forth in 23 Code of Federal Regulations (e.g., Type I projects, etc.). Contrary to Clocktower's assertion, Caltrans' adoption of Federal definitions and standards in its manuals, such as the PDPM and the Traffic Noise Protocol, for the purposes of discharging its obligations under State law, is not an acknowledgment that Federal law applies to all Caltrans projects, nor does it impose an obligation to conduct noise studies or mitigation where no legal requirement for such actions exists. Rather, adoption of the Federal definitions was done for purposes of simplicity of internal administration in recognition of the fact that FHWA is involved in most State highway projects and it is therefore prudent to adopt the federal definitions and standards as a single standard to assure uniformity of analysis by both Caltrans and FHWA when discharging their separate obligations under State and Federal law. Where Caltrans has no legal obligation to analyze and mitigate noise impacts, as is the case with the West Approach Project, the provisions utilizing Federal definitions and standards are immaterial and do not create a new legal obligation.

Solely to allay concerns voiced by ClockTower during negotiations, Caltrans took exterior and interior noise measurements at the ClockTower building and calculated the net noise impacts of moving the westbound lanes farther away while moving the eastbound lanes closer to the ClockTower building. These calculations indicated that exterior noise level at the north building wall, which now range from 75 to 84 dBA, would be slightly reduced after completion of construction. Noise will be further reduced by eliminating the “echo” or “rebound” noise caused by the existing double deck structure, and the lower truck impact noise, due to fewer deck joints.

The interior noise levels within the freeway facing units is so low it did not measure on Caltrans monitoring devices, which do not register noise levels below 40 dBA. 40 dBA is the general interior noise level required for new construction of motels, schools, and private residences. Because the West Approach Project does not increase

total traffic on the I-80 structures and due to the other factors outlined above, overall exterior noise levels should not increase, and interior noise at the ClockTower should remain below 52 dBA.

If noise mitigation was appropriate, the only practical way to provide additional noise dampening at the ClockTower is either (1) build a high soundwall on top of the bridge rail or, (2) additional window glass on the freeway facing units. ClockTower has proposed to add bullet proof glass on the windows of the freeway facing units. Such glass would provide additional noise dampening qualities. The cost of bullet proof glass is of course, a compensation issue and has been the subject of settlement discussions between State and ClockTower.

To reiterate, this seismic safety project does not increase the number of traffic lanes or the freeway capacity and will result in a reduction in exterior noise levels outside the ClockTower building.

## 2. Sterling Street Access

A garage door on Sterling Street originally provided truck access into and out of the ClockTower building. This door was walled up by ClockTower in 1991. Vehicle access into the main ClockTower garage is off 2nd Street; vehicular access into the smaller garage is through the State leased parking lot. The State is not acquiring access rights along Sterling Street by this resolution of necessity and the State's construction plans do not block the driveway cut in front of the walled up Sterling Street garage door. A small paved driveway connects Sterling Street and the next street to the east, Rincon Street. ClockTower asserts it would use this driveway to get to Rincon Street in the event it ever reopens the Sterling Street garage door. The existing paved driveway between Sterling and Rincon Streets will be replaced by a new driveway as part of the State's construction, and whatever access rights ClockTower asserts it has to Sterling Street in the "before condition," it will have in the "after condition."

Although the State has no plans to close the new substitute driveway being constructed as part of the Project, it is impossible to commit that this will never occur at some future time. However, if the driveway is ever closed, ClockTower could take legal action against the State at that time to assert its claimed access rights to Sterling Street.

## 3. ClockTower's Demand for Permanent Easement Across the State-Owned Parking Lot and Other Remaining Issue

At the initial hearing on November 2, 2000, in San Diego, ClockTower asserted that there is only one remaining issue preventing a settlement between ClockTower and State. The issue referred to by ClockTower centers on its demand that State grant it a permanent nonexclusive surface ingress and egress access easement, or other permanent

irrevocable property right, from four separate and widely-spaced doorways across the State-owned parking lot out to 2nd Street. ClockTower insists that this easement/irrevocable right not be subject to the State's existing Right of Entry.

Such permanent, irrevocable rights as those requested by ClockTower would significantly impair the State's ability to use its property for future State transportation purposes. The subject property, which sits beneath a vital elevated structure, was originally acquired and is still needed for transportation purposes; this is the primary purpose for which the property is held and it is imperative that the State protect its right to utilize the property for that purpose now and in the future.

In 1983, when the current lease was entered into, it was highly unlikely that anyone foresaw the current specific need to use the entire parcel for the demolition and reconstruction of the existing structure for seismic safety purposes. However, as evidenced by the strong and broadly worded Right of Entry clause in the lease, the State recognized that the property would likely be needed for **some** transportation purpose in the future and preserved its rights as to such uses. Similarly, while it is currently impossible to foresee every specific transportation need which may be imposed on the property in the future, the need to preserve the right to use the property for such purposes as they arise is a continuing and critical need of the State. The current lease with its Right of Entry clause protects the State's rights and needs in this regard, while the easement/irrevocable property right demanded by ClockTower would essentially preclude the State from using all of its property for transportation needs not even contemplated today.

Further, it should be noted that ClockTower's demands for a permanent easement or other irrevocable right across the Leased premises have nothing to do with the West Approach Project. ClockTower has seized the West Approach Project as an opportunity to solve private problems related to the building which existed prior to the West Approach Project. The existing lease was adequate for ClockTower when it was signed in 1983 and it was adequate in 1991 when the building was converted to live-work lofts. For purposes of settlement only, the State has offered to extend the current 55-year lease an additional 17 years, subject to three reasonable conditions. This would take the existing lease out to 2055.

## CHRONOLOGY OF CONTACTS AND EVENTS

6-99	State informs Clocktower State has right to enter leasehold premises to do West Approach work under lease provisions. State requests parties execute document spelling out times, notices, rent reduction/cancellation and other specifics of State's entry. The Clocktower responded with a list of over 25 demands.
7-99/10-00	During the time period covered by this entry over 50 face to face meetings were held with the Clocktower to address and resolve Clocktower's demands initially and subsequently raised
9-13-00	<i>First written offer of condemnation appraisal made to lessee.</i>
9-22-00	Notice of Intent to Adopt a Resolution of Necessity mailed to lessee.
10-10-00	Received letter requesting an appearance before the CTC contesting the adoption of a Resolution of Necessity.
10-16-00	In response to request to appear letter a review hearing was convened in the District 4 Office in Oakland.
10-23-00	Clocktower attorney, Adams and board president, Hopmann, consultants Bowen and Homolka met with District Director, Yahata, District Division Chiefs for Right of Way, Macpherson and Toll Bridge Program, Mulligan, Project Manager, Terpstra and San Francisco Legal Department attorney, Baca to discuss outstanding issues.
11-6-00	Adams, Hopmann, Homolka and Gray met with Macpherson, Mulligan, Terpstra, Covert, Baca and Goodhue to discuss how to resolve outstanding matters prior to the next CTC meeting since the commission set the request or a resolution over to the December 5-6 meeting in Riverside.
11-08-00	Adams, Hopmann, Homolka, Gray met with Mulligan, Terpstra, Covert Baca and Goodhue to continue to explore options on how to resolve outstanding issues.

<b>11-15-00</b>	<b>Adams, Hopmann, Homolka and Gray met with Mulligan, Terpstra, Covert, Baca and Goodhue to continue discussions regarding the outstanding matters. The discussion primarily centered on Clocktower's desire for an easement across the State property because of their contention that the lease did not provide for their continued use of State's property unless it was renewed.</b>

## **RESOLUTION OF NECESSITY**

### **REVIEW PANEL REPORT**

The Resolution of Necessity Review Panel met October 16, 2000, in the District 4 Office in Oakland. The Panel members were: Right of Way Supervising Agent Vernon V. Rhinehart (Chair); Karla Sutliff, Office of Design and Local Programs; and Caltrans Attorney, Janet Wong. The property is owned by the Department of Transportation (Caltrans). Legal counsel, Thomas R. Adams and Alice M. Beasley represented the Clocktower Loft Owners Association (Clocktower) an airspace tenant.

This report summarizes the findings of the Panel with regard to the four Criteria required for a Resolution of Necessity as listed below:

- I. The public interest and necessity require this project.
- II. The project is planned to provide the greatest public good with the least private injury.
- III. This property is required for the proposed project.
- IV. An offer to purchase the property, in compliance with Government Code Section 7267.2, has been made to the owners of record.

#### **I. NEED FOR THE PROJECT**

The proposed project is part of the legislatively mandated statewide seismic retrofit program, which was adopted on January 1, 1991. This project will remove and replace the existing I-80 SFOBB Westbound Mainline Approach Structure, most of the Eastbound Mainline Approach Structure, and connecting ramps from 4th Street to the SFOBB West Anchorage, retrofit portions of the Transbay Transit Terminal (TTT) loops, 4th Street on-ramp, Westbound Mainline from 4th Street to 5th Street, and the Eastbound Mainline from Rincon Hill to the Anchorage.

The West Approach Structure is a vital transportation link in the chain of viaducts/bridges that make up the I-80 corridor between Oakland and the East Bay and San Francisco and the Upper Peninsula. A closure of these structures due to a seismic event, and subsequent repairs, would create a major adverse economic impact to the region. Accordingly, the West Approach qualifies as an "Important Bridge," which requires the structure to be functional immediately after a major earthquake, and that damage be repairable as defined in "Seismic Performance Criteria for the Design and Evaluation of Bridges."

The West Approach is also part of a designated life line route on the “Statewide List of Life Line Routes.” The “Statewide List of Life Line Routes” was prepared in August of 1995 and amended in December of 1997 in compliance with the Caltrans Strategic Plan. A life line route on the State Highway System is deemed so critical to emergency response/life saving activities that it must remain open immediately following a major earthquake, or for which preplanning for detour and/or expeditious repair and reopening can guarantee the through movement of emergency response activities. The Strategic Plan requires that Caltrans determine which structures on life line routes must be retrofitted to serviceable levels following a major earthquake. The existing West Approach does not provide an adequate life line connection; it must be retrofitted to guarantee the through movement of emergency response activities following a major earthquake.

The existing I-80 viaduct east of 2nd Street and at the property in question is a concrete, double-deck structure. The upper deck was constructed in 1936-37; the lower deck was added in the 1950s. The structure is similar to the Cypress double-deck viaduct, which collapsed in the Loma Prieta earthquake with major loss of life and personal injury, it is also similar to the concrete double-deck Embarcadero Freeway, which almost collapsed in Loma Prieta. In a worst-case scenario, a collapse of the I-80 viaduct at this location could result in a disaster on the scale of the Cypress Freeway collapse.

The West Approach Structures carry approximately 280,000 vehicles per day. The existing westbound structure has five lanes at the Anchorage that transition to three lanes as it spans 4th Street. The existing eastbound structure has three lanes from 4th Street to Rincon Hill. Both directions have lane widths that are approximately 11 feet wide, and do not have shoulders. From approximately mid block between 3rd Street and 2nd Street to the Anchorage, the West Approach is a double-deck structure with a single foundation system supporting both decks, similar to the Cypress Freeway prior to the Loma Prieta earthquake.

## **II. PROJECT DESIGN**

The area available for the seismic retrofit work is constrained by the narrow width of the existing right of way in downtown San Francisco, and the intense urban development which is built up to the edges of the right of way lines. At the property in question, the right of way is 136 feet wide and is constrained by the six-story Clocktower Building on the south, and a six-story warehouse/office building on the north. The length of the construction (an estimated 6-7 years) is caused by the necessity of keeping I-80 traffic volumes moving within this narrow corridor at all times, while demolishing the existing viaducts and ramps and reconstructing them piecemeal, “around the traffic,”

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**LESSEE:**  
**Clocktower Loft**  
**Owners Association**

while maintaining street access for local residents and businesses. The bulk of the construction work will take place between 7:00 a.m. and 10:00 p.m.

The Department proposes to demolish the outer (north) portion of the existing upper deck adjacent to the Clocktower Building at the outset of the first TCE. After completion of this partial demolition, the new westbound viaduct will be built using the cleared area of TCE No. 1. While the new westbound structure is being constructed, a temporary eastbound structure will be partially built under the permanent westbound structure. After this temporary eastbound detour is completed, the entire remaining existing viaduct will be demolished at the outset of TCE No. 2 and the new eastbound lanes can then be built on the cleared area of TCE No. 2. This entire demolition/reconstruction/demolition/reconstruction sequence, along with the ramp demolition/reconstruction work, is now estimated to last 6-7 years.

Upon completion of the retrofit project, the West Approach mainline and ramps will have the same number of lanes with improved geometrics and widths where conditions permit. The mainline eastbound and westbound structures will be adjacent to each other at 4th Street and transition to a side-by-side outrigger configuration from Rincon Hill to the Anchorage in order to tie into the SFOBB. The new mainline structures will be concrete box girders and will have independent foundations of cast-in-drilled-hole piles.

### **III. NEED FOR THE PARCEL**

The property in question is located directly beneath the I-80 double deck viaduct. The property is owned by Caltrans and is leased to the Clocktower Loft Owners Association. The leasehold area is located adjacent to the Clocktower Building and is approximately 12,219 s.f. in size. It is improved with 25 parking stalls which are used as secured surface parking for Clocktower residents. The leasehold area is shown in Caltrans records as Freeway Lease Area (FLA) 4-SF-BT-3. It is a "chair" shaped parcel that has 2 distinct nearly level areas. The parcel is bounded by the Clocktower Building on the south, 2<sup>nd</sup> Street on the west, the bus ramp from 2<sup>nd</sup> Street to the Transbay Transit Terminal on the north and a retaining wall/slope and Sterling Street on the east. The subject temporary construction easements are required to provide the Construction Contractor an area to perform the sequence of actions discussed in the previous section. At the conclusion of construction the area will be returned to the Clocktower Loft Owners Association as leased space.

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**IV. STATUTORY OFFER TO PURCHASE**

The Department has appraised the subject property and has offered the full amount of the appraisal in accordance with Government Code Section 7267.2. Compensation is outside the purview of the California Transportation Commission.

## **SUMMARY OF ISSUES**

With Regard to the Four Criteria Required for a Resolution of Necessity

### **I. The public interest and necessity require this project.**

The Clocktower raised concerns regarding the adequacy of the Project clearances and the definition of the actual project. The Clocktower contends the Commission does not have the authority to grant the resolution due to the fact that Caltrans did not follow its current Project Development guidelines pertaining to the required NEPA and CEQA clearances and approval of design exceptions. In addition without the required studies that are called for under NEPA and CEQA guidelines the Commission does not have before it the necessary information to make an informed determination regarding the consideration of the resolution.

The California Legislature deemed the seismic retrofit of Caltrans bridges to be of utmost importance as evidenced by the passage of the statewide seismic retrofit program that was adopted on January 1, 1991. The Seismic Retrofit Projects Program is a State sponsored program and with no federal involvement, therefore, NEPA regulations and requirements do not apply to this project. In addition existing State Law exempts seismic retrofit projects from compliance with CEQA requirements. The State has completed over 2000 seismic retrofit projects following the above noted environmental evaluation process. Caltrans is currently in the final stages of the approval process regarding the design exceptions for this project.

### **II. The project is planned to provide the greatest public good with the least private injury.**

Proximity of new eastbound lanes to Clocktower Building and related health and parking issues.

The Clocktower was originally constructed as a four-/six-story industrial building after the 1906 earthquake. It housed the Schmidt Lithography Company. The existing I-80 viaduct was constructed in 1936. At that time, there were no windows in the north wall of the Clocktower Building facing the freeway viaduct. Clocktower was converted to 127 "Live/Work" Lofts in 1991. Eight studio lofts were developed on the 2nd and 3rd floors and windows for these studio units were cut in the northern building wall directly facing out on the adjacent I-80 viaduct. The nearest traffic on the existing lower (eastbound) deck is 33 ft. from the windows of the units on the 2nd floor and 3rd floor. The nearest traffic on the existing upper (westbound) deck is 20 ft. from the windows of the units on the 2nd and 3rd floors.

After this project the nearest traffic on the new eastbound viaduct will be 23 ft. distant (10 ft. closer), the nearest traffic on the new westbound viaduct will be 71 ft. distant (53 ft. further away). The replacement facility will provide shoulders where space permits for emergency use.

The Clocktower expressed a safety concern with the realignment of traffic within the existing right of way. They feel with the alignment now bringing traffic 10 feet closer and the addition of a shoulder will increase the possibility of drive by shootings of the building, unit windows and common areas (hallway).

This issue of drive by shootings is a pre-existing condition and a growing problem for society in general. Rectifying this situation is beyond the scope of the Project, but Caltrans has in the course of negotiations attempted to address this issue (bulletproof glass, window screening).

The State's original design for the new eastbound viaduct positioned the outside face of the structure about 2 ft. distant from the Clocktower Building face. In response to Clocktower's objection the State moved the viaduct 8 ft. further north.

The Clocktower has requested that the edge of the new eastbound viaduct structure be at least 30 ft. from the north face of the Clocktower Building, and not 10 ft. distant, as Caltrans ' design calls for.

To achieve this goal, Clocktower originally proposed (in 1999) that Caltrans redesign the new eastbound structure, in a complex scheme, utilizing the temporary (construction) eastbound lanes as a part of the permanent eastbound structure. After looking at this proposal in great detail, Caltrans concluded that it could not be done without a number of major adverse consequences, including: (1) permanently depressing 2nd Street below its current grade where it passes under the existing freeway (lowering the grade of 2nd Street would block access into the parking lot Caltrans leases to Clocktower and would severely impact city utility lines on 2nd Street); (2) significantly increasing the construction costs for the new structure; (3) introducing a permanent, undesirable reversing S-curve for the eastbound lanes, which would violate Caltrans ' Highway Design Manual standards and create a potential safety hazard on the mainline of the new eastbound freeway. Finally, Clocktower proposal was not feasible since it would disrupt the delicate and complex sequence of construction staging necessary to build the project and keep traffic flowing at the same time.

Clocktower proposed that Caltrans sacrifice the 10-foot wide outside (slow-lane) shoulder on the eastbound structure. If disabled vehicles are forced to stop in the through lanes because there is no shoulder, they can cause severe accidents. The shoulder also provides a highly desirable area for maintenance crews, CHP, ambulances, and other emergency vehicles. The lack of shoulders on viaduct and bridge structures has also been a fertile source of lawsuits against Caltrans. It would be very difficult to defend Caltrans against a "dangerous condition" lawsuit involving a disabled vehicle stopped in through traffic because Caltrans deleted the outside shoulder to satisfy Clocktower.

Concern with noise (construction and permanent) and appropriate noise analyses were also raised in connection with the closer proximity of the replacement facility to the Clocktower building. The Clocktower feels that the appropriate noise analyses and evaluations were not completed nor were the required construction noise limiting conditions addressed within the provisions of the construction contract.

As stated above Caltrans seismic retrofit projects fall outside the compliance limits of so called "normal projects." To address this concern Caltrans, in the course of negotiations, performed in noise analyses and evaluations beyond those statutorily required to assess the actual impacts within the leasehold area outside of the Clocktower Building and within the actual units facing the freeway. These measurements indicated exterior noise of 75 to 84 dba. However, inside the units, the noise level did register on the Caltrans measuring units, which do not register readings below 40 decibels. It is projected that overall noise levels will not change significantly with the new configuration of the freeway structures, side by side and eastbound traffic 10 feet closer. This is due to several factors, westbound traffic will be moved 53 feet farther away from the building, the elimination of the double deck design which causes an echo type effect and the reduction of bridge joint in the vicinity of the building.

Parking for the area was raised as an issue that needed to be addressed. Caltrans as part of the proposed resolution will provide replacement parking for the Clocktower residents for the duration of the construction project. Upon completion of the project, the Clocktower will resume parking in the original lease area for the duration of the existing lease. Parking in the area is a concern but the area in general (south of Market Street) is going through a transition to denser type uses. This issue is beyond the scope of the project and outside the purview of the Commission.

**III. This property is required for the proposed project.**

No issue; the property owner raised no specific issues regarding the necessity of the right of way acquisition. The property is currently owned by Caltrans and is located within the existing and future right of way.

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LESSEE:  
Clocktower Loft  
Owners Association

**IV. An offer to purchase the property, in compliance with Government Code Section 7267.2, has been made to the owners of record.**

The Lessee feel access to Sterling Street from their adjacent property is being impacted by the seismic retrofit project.

A substitute driveway is to be provided as part of the project.

**Conclusion:**

The proposed project is the most effective alternative in accomplishing the seismic safety objectives mandated by the Legislature. The Panel believes that the District's project design complies with the Code of Civil Procedure in that:

- I. The public interest and necessity require this project.
- II. The project is planned to provide the greatest public good with the least private injury.
- III. This property is required for the proposed project.
- IV. An offer to purchase the property, in compliance with Government Code Section 7267.2, has been made to the owners of record.

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**PANEL RECOMMENDATION**

The Panel recommends submitting a request for a Resolution of Necessity to the California Transportation Commission.

Vernon V. Rhinehart  
Panel Chairperson

I concur with the Panel's recommendation.

Brent Felker  
Chief Engineer

## Resolution of Necessity Appearance Fact Sheet

PROJECT DATA: "West Approach to the San Francisco-Oakland Bay Bridge" 04-SF-80-4.9/5.9

Location: I-80, San Francisco

Contract Limits: See above

Cost: Construction: \$250,000,000.00

Right of Way: \$37,000,00.00

Funding Source: Toll Bridge Seismic Retrofit Account

Proposed Major Features: Seismic Retrofit by Replacement

### PARCEL DATA:

Property Owner: Caltrans

Tenant: Clocktower Loft Owners Association  
(Airspace Tenant)

Parcel Location: East side of 2<sup>nd</sup> Street between Perry and Stillman Streets, San Francisco

Area of Property: 12,219 s.f.

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PERSONS IN ATTENDANCE AT THE SECOND LEVEL REVIEW PANEL  
HEARING ON OCTOBER 16, 2000

Vernon Rhinehart Link, Chairperson  
Karla Sutliff, Panel Member  
Janet Wong, Panel Member

Thomas R. Adams, Attorney for Lessee  
Alice Beasley, Attorney for Lessee

Denis Mulligan, District Division Chief, Toll Bridge Program  
Ken Terpstra, Project Manager, Toll Bridge Program

R.A. Macpherson, District Division Chief, Right of Way  
John Hibel, District Office Chief, Right of Way  
Robert Bachtold, HQ Right of Way

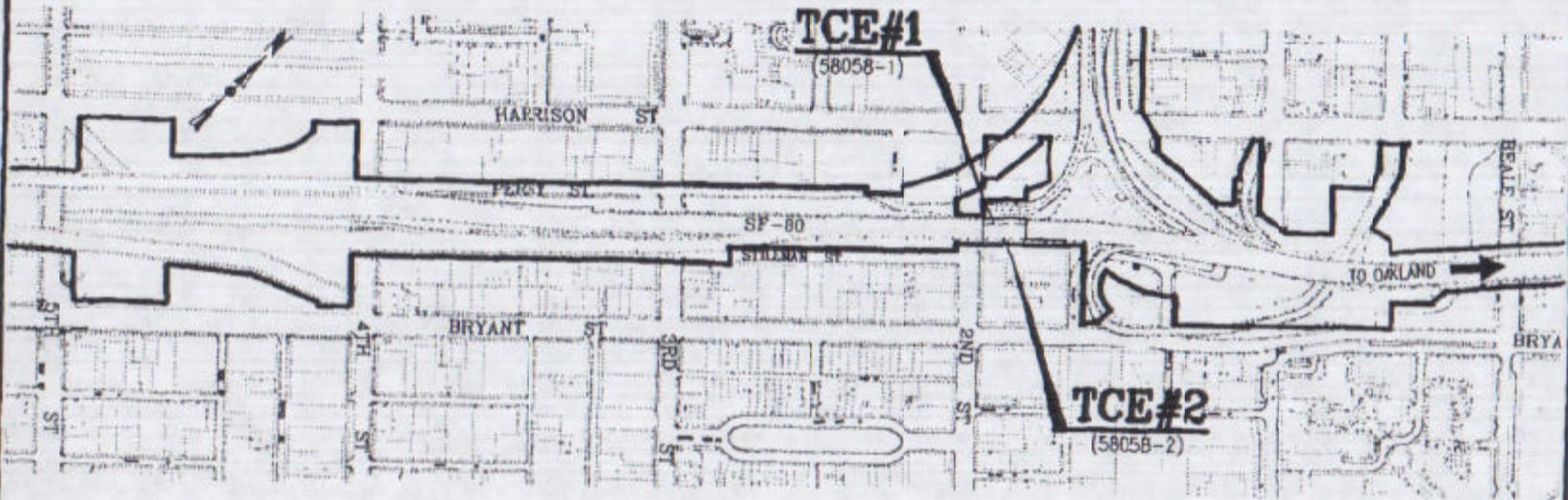
Richard Covert, Caltrans Legal  
Lucille Baca, Caltrans Legal

Jon Tapping, Caltrans HQ Construction/Design Programs

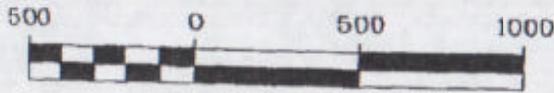


# CITY OF SAN FRANCISCO

# KEY MAP



A-1231.0



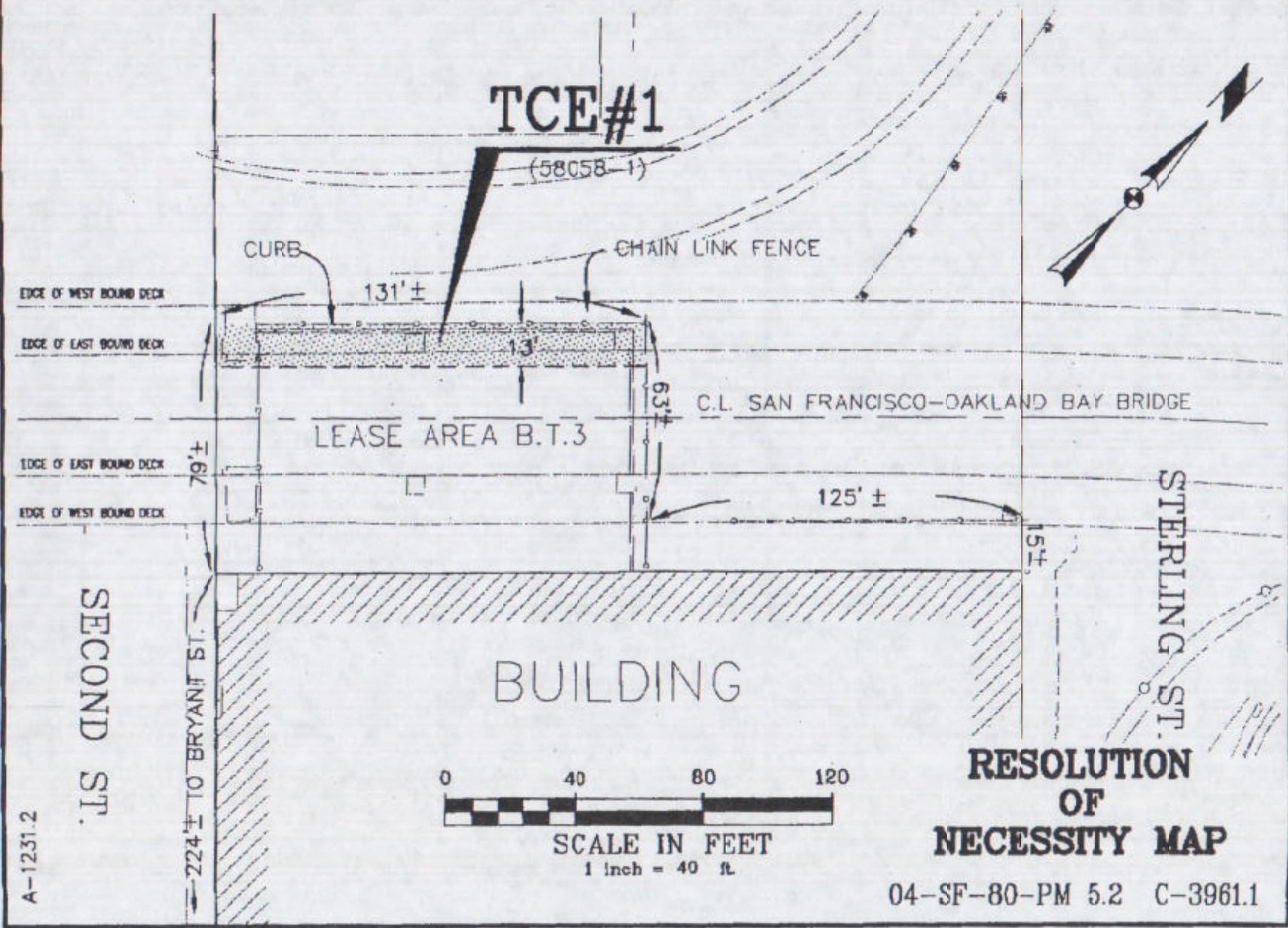
SCALE IN FEET  
1 inch = 500 ft

## RESOLUTION OF NECESSITY MAP

04-SF-80-PM5.2 C-3961.0

# CITY OF SAN FRANCISCO

# EXHIBIT B



A-1231.2

TCE#2

(58058-2)



CURB

CHAIN LINK FENCE

131' ±

15'

63' ±

C.L. SAN FRANCISCO-OAKLAND BAY BRIDGE

LEASE AREA B.T.3

125' ±

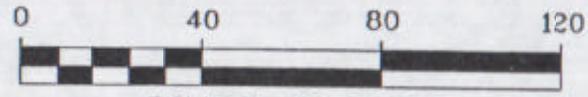
15' ±

BUILDING

SECOND ST.

STERLING ST.

224' ± TO BRYANT ST.



SCALE IN FEET  
1 inch = 40 ft.

RESOLUTION  
OF  
NECESSITY MAP

04-SF-80-PM 5.2 C-3961.2

A-1231.2

Appearance Information Sheet - CTC Meeting November 1, 2, 2000

Under the eminent domain law, a property owner of record whose property is to be considered for a Resolution of Necessity has the right to appear before the California Transportation Commission to question whether:

- The public interest and necessity require the proposed project.
- 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.
- The property sought to be condemned is necessary for the proposed project.
- The Government Code §7267.2 offer to purchase the property was made to the leasehold owner. The State is the owner of record.

The California Transportation Commission has no jurisdiction to consider the amount of compensation or deal with issues other than those listed above.

Under the terms of its lease with ClockTower Loft Owners Association, the Association “specifically waives all objections to Landlord's (State) right to take.” Under this provision of the Lease, the Association has no right to contest the passage of the Resolution of Necessity before the Commission; nevertheless, the Transportation Commission should expect an appearance at its November 1, 2, 2000 meeting by the ClockTower opposing the proposed acquisition of two temporary construction easements over land owned by CalTrans and leased to ClockTower on a long-term lease, for surface parking.

PARCEL DESCRIPTION

CalTrans leases the ground surface under the elevated double-deck I-80 viaduct in downtown San Francisco to ClockTower for surface parking. (See Exhibit 1, a cross section depicting the existing I-80 viaduct and the leasehold.) The total leasehold area is approximately 12,210 sq. ft. The leased area is improved with 25 parking stalls, used by ClockTower Loft Owners Association members. The lease runs until 2038. The property is located on the east side of 2nd Street, between Bryant and Harrison Streets, in downtown San Francisco. The existing elevated double-deck I-80 viaduct, located directly over the parking lot, is seismically deficient. The Department proposes to tear the existing viaduct down and replace it with two side-by-side, single-level viaducts which meet current seismic standards. In order to do the work, the Department needs two

temporary construction easements (TCE's), the first over the northern 20% ± of the property for two± years, the second over the entire property for 4± more years. (The two TCE's are depicted on the attached maps, Exhibits 2A and 2B.) The terms of the TCE's provide for nearby substitute parking for ClockTower during the entire duration of both TCE's. The first TCE has been revised to address the ClockTower's concerns at their request. Only the northern 13 ft. of the property (not 15 ft) is subject to the first TCE.

This parcel is one of two remaining parcels to be acquired for the West Approach Project. No other owners have, or are expected to request, appearances before the CTC. For well over a year a CalTrans team consisting of senior members of Project Development, Right of Way, and Legal office personnel have held over 45 face to face meetings with the tenant attempting to address their concerns regarding the design and construction of the West Approach Project as well as other issues. Hundreds of hours of staff time have been spent in addressing ClockTower concerns. The State believes that the most reliable way to obtain possession is via an eminent domain action.

### NEED FOR THE WEST APPROACH PROJECT

The proposed project is part of the legislatively mandated statewide seismic retrofit program, enacted on January 1, 1991.

The West Approach Structure is a vital transportation link in the chain of viaducts/bridges that make up the I-80 corridor between Oakland and the East Bay and San Francisco and the Upper Peninsula. A closure of any these structures due to a seismic event, and subsequent repairs, would create a major adverse economic impact to the region. The structure must be functional immediately after a major earthquake.

The West Approach is also part of a designated life line route on the "Statewide List of Life Line Routes." A life line route on the State Highway System is deemed so critical to emergency response/life saving activities that it must remain open immediately following a major earthquake. The existing West Approach does not provide an adequate life line connection: it must be retrofitted to guarantee the through movement of emergency response activities following a major earthquake.

The existing I-80 viaduct east of 2nd Street and at the ClockTower is a concrete, double-deck structure. The upper deck was constructed in 1936-37; the lower deck was added in the 1950s. The structure is of similar vintage to the Cypress double-deck viaduct, which collapsed in the Loma Prieta earthquake with major loss of life and personal injury—it is also similar to the concrete double-deck Embarcadero Freeway, which almost collapsed in Loma Prieta. The West Approach Structures carry approximately 280,000 vehicles per day. In a worst-case scenario, a collapse of the existing double deck I- 80 viaduct at this location could result in a disaster on the scale of the Cypress Freeway collapse. Since a major earthquake could occur at any time, it is essential that the project stay on schedule.

The existing westbound structure has five lanes at the Anchorage that transition to three lanes as it spans 4th Street. The existing eastbound structure has three lanes from 4th Street to Rincon Hill. Both directions have lane widths that are approximately 11 feet wide, and do not have shoulders. From approximately mid block between 3rd Street and 2nd Street to the Anchorage, the West Approach is a double-deck structure with a single foundation system supporting both decks, similar to the Cypress Freeway prior to the Loma Prieta earthquake.

After a peer review process that analyzed a host of issues relating to seismic design criteria, complexity and duration of construction, and cost, it was decided to demolish most of the existing West Approach structures and reconstruct new side by side viaducts.

The existing I-80 viaduct, at the ClockTower is depicted as Exhibit 1. The new side by side viaducts, after project completion , are shown on Exhibit 3.

### PROJECT DESCRIPTION

The project is a seismic retrofit project under Streets and Highway Code §§ 180(a) & 180.2. Because of the intense urban development built up to the edge of the existing right of way and the State's desire to avoid adverse impacts on private property, it is impractical to incorporate major design changes of the mainline and ramps which would require additional right of way and acquisition of multi story offices and residences, and would displace businesses and residents. Geometric improvements were made, within the existing right of way, when reasonably feasible.

The project removes and replaces the existing I-80 SFO BB West Bound Mainline Structure from 4th Street to the West Anchorage. The existing I-80 SFO BB Eastbound Mainline Structure will be removed and replaced from 4th Street to Rincon Hill. The retrofitted Mainline Eastbound and Westbound Structures will be adjacent to each other at 4th Street, and transition to side-by-side outrigger configuration from Rincon Hill to the Anchorage. The new retrofitted Mainline Structures will be concrete box girders and will have new foundation systems of cast in steel shell piles and cast in drilled hole piles.

The new mainline will have the same numbers of lanes as the existing facility. Lane widths will be increased to standard widths (12 ft. vs. existing 11 ft.). Shoulders will be provided on the inside (fast) and outside (slow) of the new Westbound Mainline

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<sup>1</sup> Fremont Street is a long U-shaped off ramp with two lanes exiting westbound I-80 before and after the retrofit. A separate project, which received full CEQA FEIR approval in 1996 calls for a short additional diverge exit near the end of the ramp to Fremont Street in addition to the existing exit onto Fremont Street. At the request of the City and County of San Francisco, to save construction costs, the additional diverge exit will be constructed as a part of the contract for the West Approach Seismic retrofit. However, it is separate project, a part of the Terminal Separator Structure Project which has full

Structure. A shoulder will be provided on the outside of the new Eastbound Mainline. Geometrics will be improved on the 5th Street on ramp, the Fremont Street off ramp<sup>1</sup>, the Harrison Street off ramp and the Sterling Street on ramp. Generally the geometric improvements on the ramps consist of standard lane widths, shoulders, improved lane merger distances, and improved curve radii. No new lanes will be added. For a more detailed description of the West Approach Project see Exhibit 4, attached.

### NEED FOR SUBJECT PROPERTY

The area available for the seismic retrofit work is constrained by the narrow width of the existing right of way in downtown San Francisco, and the intense urban development which is built up to the edges of the right of way lines. At the ClockTower, the right of way is 136 feet wide and is constrained by the six-story ClockTower Building on the south, and a six-story warehouse/office building on the north (see Exhibit 1). The length of the construction (an estimated 6-7 years) is caused by the necessity of keeping I-80 traffic volumes moving within this narrow corridor at all times, while demolishing the existing viaducts and ramps and reconstructing them piecemeal, "around the traffic," while maintaining street access for local residents and businesses.

The Department proposes to demolish the outer (north) portion of the existing upper deck at the ClockTower at the outset of the first TCE. After completion of this partial demolition, the new westbound viaduct will be built using the cleared area of TCE No. 1 (see cross-section, Exhibit 5). While the new westbound structure is being constructed, a temporary eastbound structure will be partially built, under the permanent westbound structure. After this temporary eastbound detour is completed, the entire remaining existing viaduct will be demolished at the outset of TCE No. 2 and the new eastbound lanes can then be built on the cleared area of TCE No. 2 (see cross section Exhibit 6). This entire demolition/reconstruction/demolition/reconstruction sequence, along with the ramp demolition/reconstruction work, is now estimated to last 6-7 years. The completed eastbound and westbound viaducts are shown on Exhibit 3.

The construction work cannot proceed, unless the State has possession of TCE No. 1 and TCE No. 2.

### ENVIRONMENTAL STATUS OF PROJECT

Seismic retrofit projects are exempt from CEQA under Government Code §§ 180 & 180.2. In 1994, in the wake of the Loma Prieta and Northridge earthquakes, the Legislature recognized that the preparation of an EIR, with full bore environmental

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environmental approval.

analysis including noise, air quality, water quality, natural resources, growth analysis, etc. would significantly delay needed seismic repair work. The Legislature exempted seismic retrofit work from all EIR analysis and EIR process. For this Project, CalTrans estimates that full noise analysis, air quality analysis, other environmental analysis (temporary parking impacts, temporary land use impacts, etc.), could delay this project by several years.

The project does not increase the number of lanes on the West Approach. The Project does lengthen the merge distances of some of the ramps.

There is no federal funding for the West Approach. There is no mandatory federal "action" (such as a Corps of Engineers permit or a U.S. Fish and Wildlife permit). Since there is no federal funding and no federal "action," the West Approach is not subject to NEPA and the Project is not subject to FHWA regulations providing consideration and implementation of noise attenuation (23 CFR 772). The project is not subject to FHWA regulations simply because I-80 is an Interstate Highway.

CalTrans' internal policies and procedures regarding noise analysis and noise mitigation were established to satisfy CEQA and NEPA. Since neither CEQA nor NEPA apply to the Project, CalTrans internal noise policies and procedures are not applicable.

PROJECT PLANNED AS LOCATED IN MANNER MOST COMPATIBLE WITH GREATEST PUBLIC GOOD AND LEAST AND PRIVATE INJURY

The Greatest Public Good and Least Private Injury are served by this Project in the following respects:

1. The seismic retrofit is designed to prevent potential catastrophic loss of life, personal injury, major property damage, and regional economic dislocation when a 1906 type seismic event occurs in the Bay Area. The goal is to avoid a repeat of the Cypress Freeway collapse.
2. Because a major earthquake event will occur in the Bay Area, it is crucial that the retrofit work be done as soon as possible; time consuming EIR analyses and EIR processes are contrary to the greatest public good and least private injury since they will delay construction; as discussed, they are not required here.
3. The construction work for the Project will be performed entirely on property now owned by CalTrans including the ClockTower leasehold interest and one other parcel (this other parcel is a TCE temporarily closing a City Street). No privately owned structures will be acquired. No businesses or residents will be displaced by the Project. Geometric improvements to the mainline structures and ramp are proposed wherever reasonably feasible, within the existing right of way.
4. Keeping the existing I-80 traffic moving, and constructing the project with

minimal impact to nearby residents is a tremendous challenge. In order to strike a balance between the concerns of the local residents and the needs of the 280,000 daily motorists using the bridge, the State and the City and County of San Francisco entered into lengthy negotiations, which resulted in the confinement of the high noise generating construction activities to daytime hours, as more specifically discussed at page 9 item 3.

5. Vehicular access will be maintained to private businesses and residences wherever reasonably possible. Access across the leased lot to the smaller interior garage inside the ClockTower Building will be maintained at all times except for 3-4 brief periods during demolition of the adjacent structure and during the construction of the falsework over the leased area. During these time periods State will supply nearby substitute parking to ClockTower, although it is under no legal obligation to do so.
6. In addition, see matters below.

#### PROPERTY OWNERS' SPECIFIC CONCERNS

1. Proximity of new eastbound lanes to ClockTower Building:  
The ClockTower was originally constructed as a four-/six-story industrial building after the 1906 earthquake. It housed the Schmidt Lithography Company. The existing I-80 viaduct was constructed in 1936. At that time there were no windows in the north wall of the ClockTower Building, facing the freeway viaduct. The ClockTower was converted to 127 "Live/Work" Lofts in 1991 long after the Freeway was in place. Eight studio lofts were developed on the 2nd and 3rd floors, and windows for these studio units were cut in the northern building wall, directly facing out on the adjacent I-80 viaduct. The nearest traffic on the existing lower (eastbound) deck is 33 ft. from the windows of the units on the 2nd floor and 3rd floor. The nearest traffic on the existing upper (westbound) deck is 18 ft. from the windows of the units on the 2nd and 3rd floors. (See cross-section, Exhibit 1.)

Although the nearest traffic on the new eastbound viaduct will be 23 ft. distant (10 ft. closer), the nearest traffic on the new westbound viaduct will be 71 ft. distant (53 ft. further away). (See cross-section, Exhibit 3.)

The State's original design for the new eastbound viaduct positioned the outside face of the structure about 2 ft. distant from the ClockTower's north building face. In response to ClockTower's objections the State moved the viaduct 8ft. further north.

The ClockTower has requested that the edge of the new eastbound viaduct structure be at least 30 ft. from the north face of the ClockTower Building, and not 10 ft. distant, as CalTrans's design calls for.

To achieve this goal, ClockTower originally proposed (in 1999) that CalTrans redesign

the new eastbound structure, in a complex scheme, utilizing the temporary (construction) eastbound lanes as a part of the permanent eastbound structure. After looking at this proposal in great detail, CalTrans concluded that it could not be done without a number of major adverse consequences, including: (1) permanently depressing 2nd Street below its current grade where it passes under the existing freeway (lowering the grade of 2nd Street would block access into the parking lot CalTrans leases to ClockTower, and would severely impact city utility lines on 2nd Street), (2) significantly increasing the construction costs for the new structure, (3) introducing a permanent, undesirable reversing S-curve for the eastbound lanes, create a potential safety hazard on the mainline of the new eastbound freeway. Finally, ClockTower's proposal was not feasible since it would disrupt the delicate and complex sequence of construction staging necessary to build the project and keep traffic flowing at the same time.

After CalTrans explained these problems, ClockTower then proposed a different redesign of the new eastbound structure – that by (1) shortening the merge distance for the eastbound 5th Street on-ramp and (2) eliminating the shoulder on the south side of the new eastbound structure, CalTrans could meet ClockTower's wish to preserve a minimum 30-foot distance from their building to the edge of the new eastbound structure.

CalTrans studied this proposal in depth and rejected it. CalTrans design for the new 5th Street on-ramp provides minimum acceptable distances to allow for safe merges of on-ramp traffic into mainline traffic. ClockTower's proposal does not. The 5th Street on-ramp is a left-side merger where relatively slow on-ramp traffic merges from the left into the fast-lane traffic. Left-side ramp mergers are rare in California (right-side, slow-lane on-ramp merges are the rule), and drivers unfamiliar with the road can be taken by surprise by a left-side on-ramp. In addition, the area of this merge has a high accident concentration rate. The merge distance designed by CalTrans provide adequate safety.

CalTrans rejects relocating the 5th Street on ramp from its existing location on the north side of I-80 to the south side of I-80. Such a relocation would significantly delay this seismic retrofit, would require major design change at and west of 5th Street outside this Project, and/or would have required major acquisition of new right of way at high cost and with dislocation of businesses and residents.

ClockTower also proposed that CalTrans sacrifice the 10-foot wide outside (slow-lane) shoulder on the eastbound structure. If disabled vehicles are forced to stop in the through lanes because there is no shoulder, they can cause severe rear end accidents. The shoulder also provides a highly desirable area for maintenance crews, CHP, ambulances, and other emergency vehicles. CalTrans rejected the proposal to delete the shoulder.

ClockTower complains that the outside shoulder will give potential "drive by shooters" the opportunity to park and take better aim at their windows. In balance, the clear safety benefits of a shoulder, to the occupants of the 280,000 vehicles that use this road

everyday, outweighs the possibility that the shoulder will increase the risk from "drive by shooters." However, ClockTower has proposed to install bullet proof glass on the freeway windows. CalTrans endorses ClockTower's solution.

In an attempt to address ClockTower's concerns that the proximity of the eastbound viaduct poses a security risk to the freeway facing windows, CalTrans has offered to install a mesh screen fence (similar to the mesh fences on pedestrian walkways over freeways) on the eastbound structure, at the ClockTower Building.

## 2. Soundwall:

ClockTower has requested that CalTrans install a soundwall on top of the bridge barrier railing on the south side of the new eastbound viaduct. CalTrans has rejected this proposal. There are no soundwalls on any of the existing I-80 viaduct structures in San Francisco. None are planned on the new retrofitted I-80 viaduct structures. No sound studies or sound mitigation is required for this project.

Moreover, a soundwall is not necessary, or even desirable at the ClockTower for the following reasons:

(1) To facilitate its negotiations with ClockTower and not because of any legal obligation, CalTrans conducted a noise analysis at the ClockTower. Noise levels will be slightly reduced at the ClockTower after project completion because moving the westbound lanes 53 ft. further away, more than offsets moving the eastbound lanes 10 ft. closer. Noise levels will also be reduced because the "rebound" (echo) noise caused by the existing over-under double-deck structure will be eliminated after the side-by-side structures are completed.

(2) The ClockTower's existing noise mitigation system, already built into the double set of windows for the freeway units, make a soundwall unnecessary. CalTrans has taken exterior noise measurements on the ClockTower north wall. These measurements indicated existing exterior noise of 75 to 84 dBA. However, inside the units, the noise level did not even register on the CalTrans measuring units, which do not register readings below 40 decibels. When new motels, hotels, schools, private residences are proposed for construction, on-site noise abatement must be considered when interior noise readings will exceed 52 dBA. The seismic retrofit for the West Approach will not increase the total traffic on the I-80 structure, and it will not increase traffic capacity. Therefore, overall noise levels will not change significantly. The interior noise levels inside the eight freeway-facing units, which are now below 40 decibels, will not approach or exceed 52 dBA after completion of the seismic retrofit. The interior noise levels are obviously more significant than exterior noise levels, since there are no yards, balconies, or terraces on the exterior of the ClockTower.

(3) A soundwall on the viaduct bridge barrier rail would adversely impact the exterior light into, and the view from, the freeway units.

(4) It might seem easy, fast, and cheap for CalTrans to provide a soundwall at this location. This is not the case. Design of a sound wall would require redesign of the viaduct structures to carry the extra loading and delay the project. Since a major

earthquake could happen at any time, we feel that delay is to be avoided, whenever possible.

(5) The length of acoustically effective soundwalls at the ClockTower and other locations would also pose significant aesthetic problems, creating obtrusive visual barriers to views along 2nd and 3rd Streets, for pedestrians and motorists. 2nd and 3rd Streets are the main pedestrian approaches from downtown to PacBell Park. Recent history has demonstrated that the City of San Francisco does not look favorably at unsightly and obtrusive view barriers.

### 3. Temporary Construction Noise.

To keep the existing traffic on I-80 moving, and construct the project, with a minimum of impact to nearby residents, construction work which generates very high noise levels will be limited to hours from 7:00 a.m. to 8:00 p.m. No pile driving is planned at ClockTower. In order to complete the job within 6-7 years some night construction will be necessary—however, construction noise will be limited to 86 dBA at 50 ft. after 8:00 p.m. This limit effectively eliminates demolition work and other heavy construction noise after 8:00 p.m. However, to demolish the existing viaduct over 2nd and 3rd Streets and Main Street and construct the new falsework over those streets, it will be necessary to close the streets for a few weekends and work with no noise limits until 10:00 p.m. The weekend work will enable the State to keep these streets open Monday-Friday when they carry very heavy volumes. For a more complete description of noise limits and traffic management see Exhibit 7. These limits are supplements to the noise provisions in CalTrans Standard Contract provision.

More stringent noise limits will only lengthen the construction. To the extent ClockTower claims that construction noise is excessive, this is a compensation issue. ClockTower has asserted monetary damages due to construction noise.

### 4. Interim loss of parking/Lease issues:

ClockTower will lose four parking stalls for two± years during TCE No. 1 and will lose all 25 stalls for 4± more years during TCE No. 2. CalTrans' lease with ClockTower contains a "Right of Entry" clause which gives State the right to enter the Leasehold Premises to protect, repair, maintain, and reconstruct the freeway without payment of compensation. ClockTower disputes State's legal position on this issue. Although State has no legal obligation to do so, it has offered ClockTower nearby substitute parking throughout the construction period. The TCE's now before the CTC include an offer of nearby substitute parking within their descriptions.

### 5. Alleged vehicular access to Sterling Street:

When the ClockTower was converted to "Live/Work Lofts," the developer provided 2 separate, unconnected interior garages. The main interior garage is on the second, third, and fourth floors. It has 65 spaces. The developer developed access off of Second Street, up interior ramps, into the main garage. At the same time, the developer walled off an existing garage door on Sterling Street which opened into the second floor level of the

main interior garage (Sterling Street is at a higher elevation than 2nd Street). Sterling Street is on the east side of the ClockTower, and serves as an on ramp to the existing lower deck. For many reasons the Sterling Street vehicular access was deemed to be unworkable at the time the Sterling Street door was walled up and access was developed off 2nd Street. At the same time the main garage was developed, a second and smaller interior garage, with 28 stalls, was developed with its sole access onto and through the parking lot leased from the State. All parties were fully aware that the only access to the smaller garage was over leased property.

The garage door on Sterling Street has been walled over and closed since at least 1991. ClockTower complains that the State's reconstruction of the Sterling Street on ramp, as a part of the West Approach Project, will eliminate a small, narrow paved driveway, from the east side of Sterling Street, over to the next city street, Rincon Street. As part of the Project, a substitute driveway will be provided.

Further, ClockTower's complaints/theories regarding its claim of access to Sterling Street are claims of compensation; they do not relate to matters within the Commission's jurisdiction.

6. Pedestrian Fire Access across Leasehold Premises:

In 1983, at the time the State leased the parking lot to the original developer, the developer cut two pedestrian access doors into the north wall of the ClockTower building, exiting directly onto the leased parcel. There are also pedestrian access doors on 2nd Street and Sterling Street. The City Planning Department, Public Works Department, and Fire Department were fully aware that the pedestrian access doors on the north side of the property exited onto leased property and not directly onto a public street. The development was permitted by the City, on this basis. ClockTower now alleges that in 2038, in the event it does not release the parking lot from the State, the City may revoke some of its certificates of occupancy because the two pedestrian doors on the north side of the building will access onto property ClockTower does not control.

These claims do not involve matters within the jurisdiction of the Commission in considering the resolution of necessity.

These concerns have nothing to do with the West Approach Project, or the State's need for the two TCEs. If a problem occurs, it will only arise after 2038. There are substantial legal issues as to whether the City would have the legal right to revoke certificates of occupancy, having approved the project in 1983, knowing that some pedestrian door open onto leased property.

ADEQUACY OF GOVERNMENT CODE §7267.2 OFFER

Government Code §7267.2 requires that the State offer an amount no less than the State's

approved appraisal and also requires that the owner be given a written statement and summary of the basis for the amount established as just compensation. The State has complied with Gov. Code §7267.2.

The State supplied a three page "Basis of Appraisal" of the value of the temporary construction easements to the owner. The "Basis of Appraisal" notes that the Lease appraiser considered the Right of Entry Clause, which gives the State the right to enter the leasehold to do any and all acts necessary or proper to protect, maintain, reconstruct, operate the freeway structures; the appraiser concluded that under this clause the tenant is entitled to no compensation.

The "Basis of Appraisal" also notes that the appraiser considered the Condemnation Clause in the Lease. Under that clause, the only compensation the tenant receives in a condemnation is the present value of the tenant's improvements on the premises, (gates, fencing, and pavement).

ClockTower asserts that the Basis of Appraisal is inadequate because it fails to mention ClockTower's claims of severance damages for "alleged loss of access rights" to Sterling Street. This assertion ignores the fact that the "Basis of Appraisal," sets forth that under the Condemnation Clause the tenant only receives the value of tenant improvements in a condemnation action. Further, as discussed previously, this is ultimately an issue of the amount of compensation due. A copy of the Basis of Appraisal is attached as Exhibit 8.

The offers made in the context of negotiations initiated by ClockTower were made with the goal of obtaining ClockTower's voluntary Consent to allow the State to enter the premises for construction of the Project. In that context and with that goal in mind, the State's settlement package is quite generous in its benefits to ClockTower and went beyond what is required by any statute. However, ClockTower, having refused to provide the Consent, the State, in order to ensure timely possession of the property for the project, is now proceeding to condemnation and its statutory offer is based strictly on what ClockTower is legally entitled to in a condemnation action.

#### POSSIBILITY OF RESOLUTION OF DIFFERENCES

Over a year ago the State sent ClockTower a written "Consent to Enter" requesting ClockTower to recognize that under the "Right of Entry" Clause in the lease, State had the right to enter the leasehold and conduct seismic work. ClockTower responded with a list of numerous demands, some relating to the design of the project, some to compensation. ClockTower refused to sign the "Consent" until all its demands were resolved. ClockTower insisted on extensive negotiations as soon as State sent ClockTower the "Consent." To this date, ClockTower has refused to sign the "Consent."

The State has gone to great lengths to attempt to resolve all matters raised by ClockTower prior to seeking a resolution of necessity. The State's engineers, Right of Way agents,

and attorneys have had over 45 face-to-face negotiating sessions with ClockTower extending over a year to address all of ClockTower's concerns. Despite extraordinary efforts by the State, ClockTower has failed to consent to State's entry on the leasehold.

There remains disagreement over a number of issues, none of which involve the four items within the jurisdiction of the Commission. At least one of these issues involves major compensation claims.

The only reliable way to obtain timely State possession of the leasehold prior to start of construction and to assure keeping the West Approach Project on schedule, is an eminent domain action followed by an Order for Possession.

The Lease provides as follows:

“In the event it becomes necessary for the Landlord to acquire the whole or any part of the premises for a transportation-related use, Tenant hereby specifically waives all objections to Landlord's right to take.”

# SFOBB WEST APPROACH EXISTING CROSS-SECTION

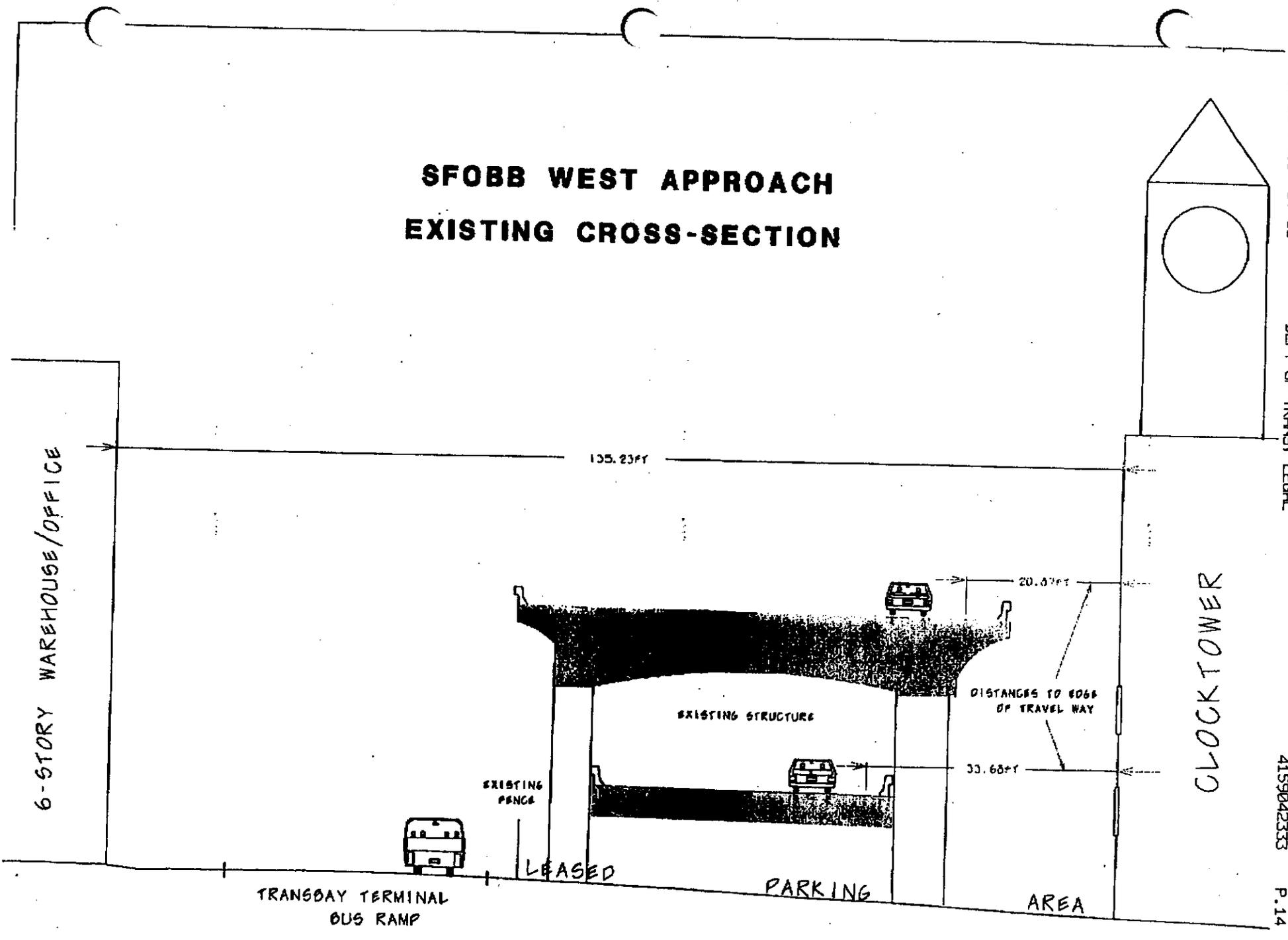
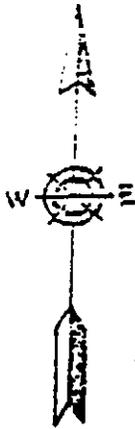
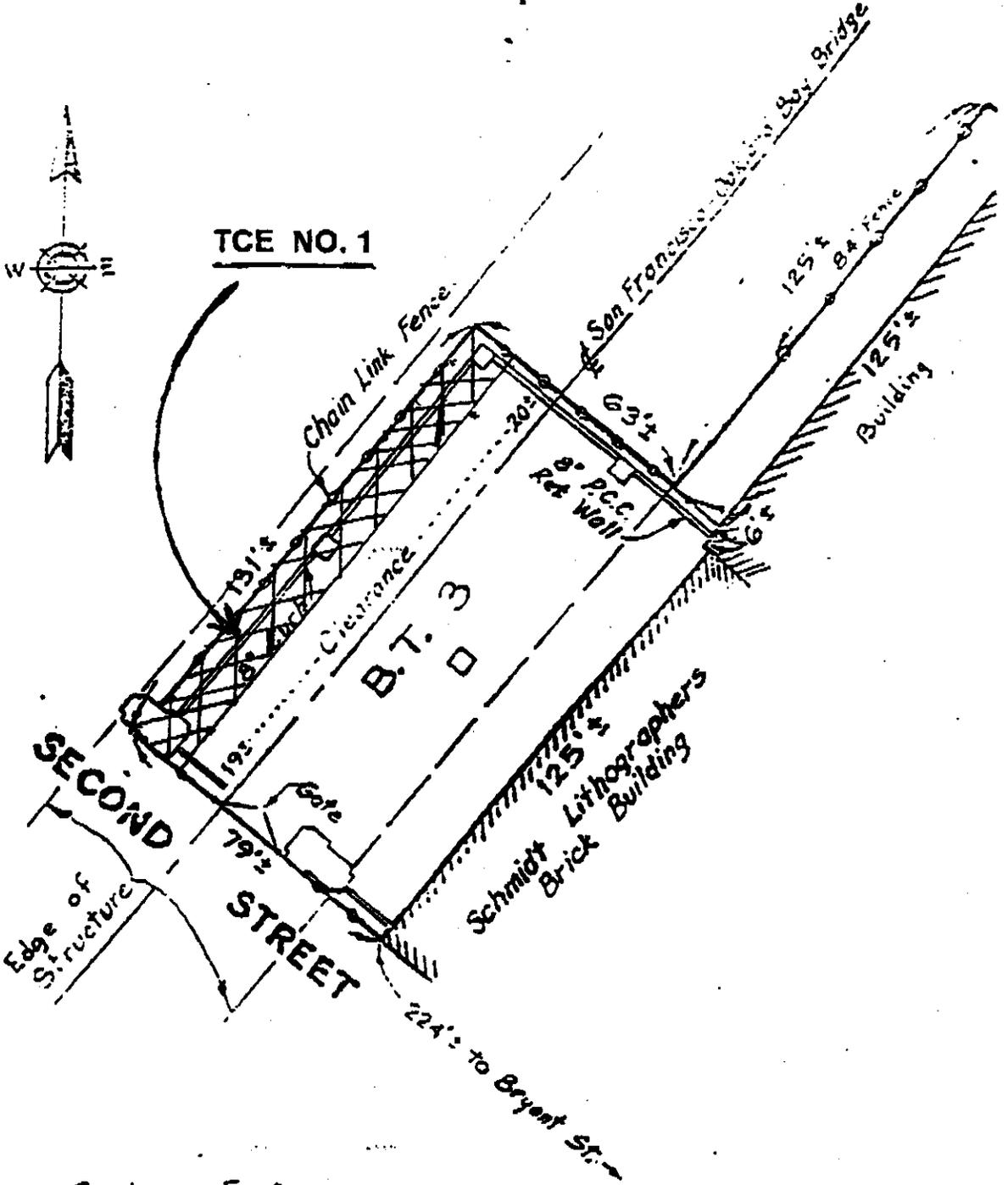


EXHIBIT 1



**TCE NO. 1**



Scale in Feet



Dimensions and clearances are approximate where an accuracy is required an engineer's field survey is suggested.

Rev. 10-83

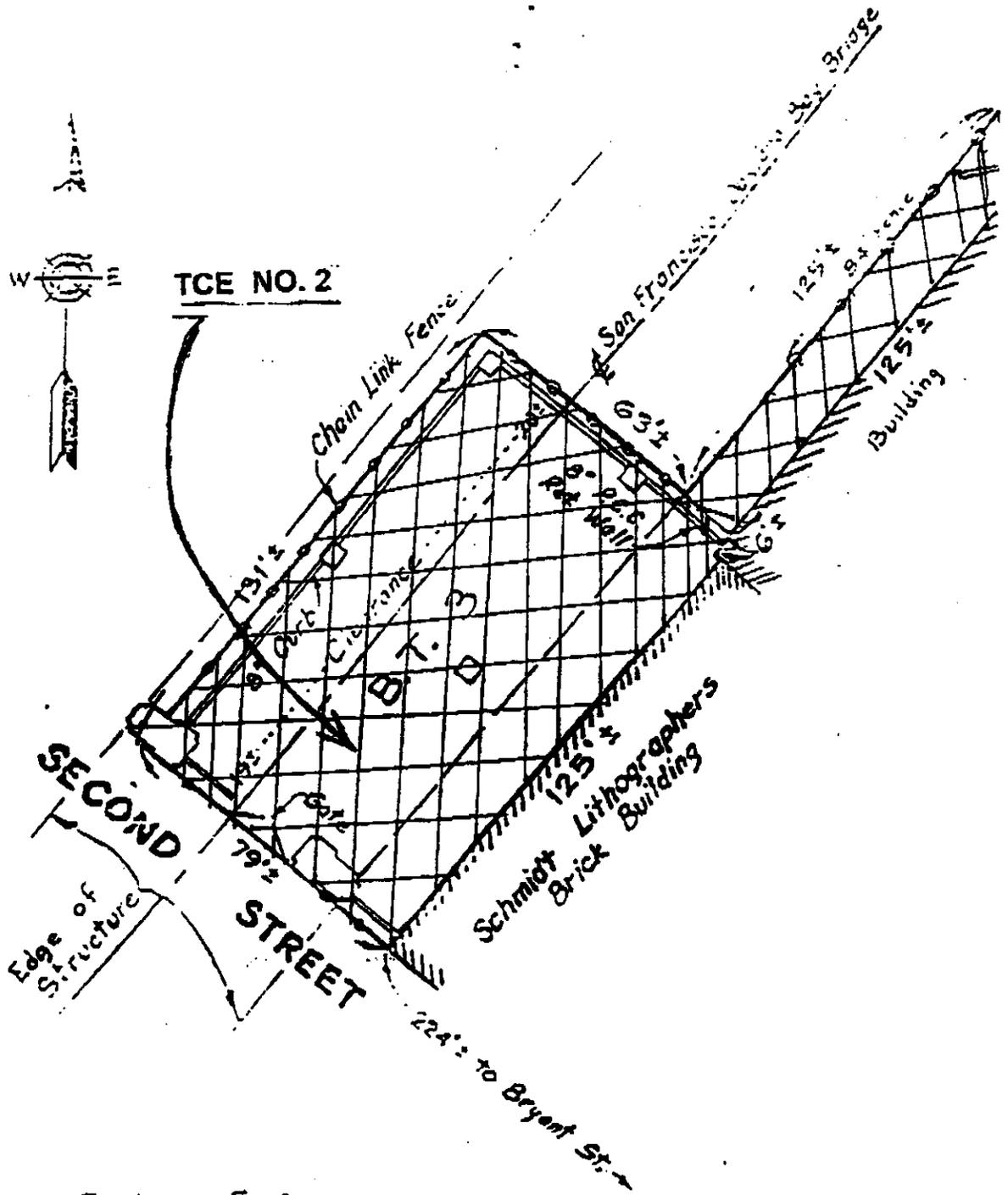
Rev. 7-81 - Rev. 10-82

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
TOLL BRIDGE AUTHORITY

**LEASE AGREEMENT  
B.T. 3**

DATE OF FILING	DATE
CLASS OF	SCALE

EXHIBIT 1



**TCE NO. 2**



Edge of Structure

**SECOND STREET**

**STREET**

Schmidt Brick Lithographers Building

125'5"

224'5" to Bryant St.

Building

63'4"

125'5"

Chain Link Fence

63'4"

B.T. 3

Clearance

Dimensions and elevations are shown where accuracy is required otherwise field notes to supplement

Rev. 10-83

Cal. 7-51 - Rev. 10-1

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
TOLL BRIDGE AUTHORITY

**LEASE AREA**  
**B.T. 3**

PLANNED BY: J.L.L. DATE: 10/10/83  
DRAWN BY: J.L.L. DATE: 10/10/83

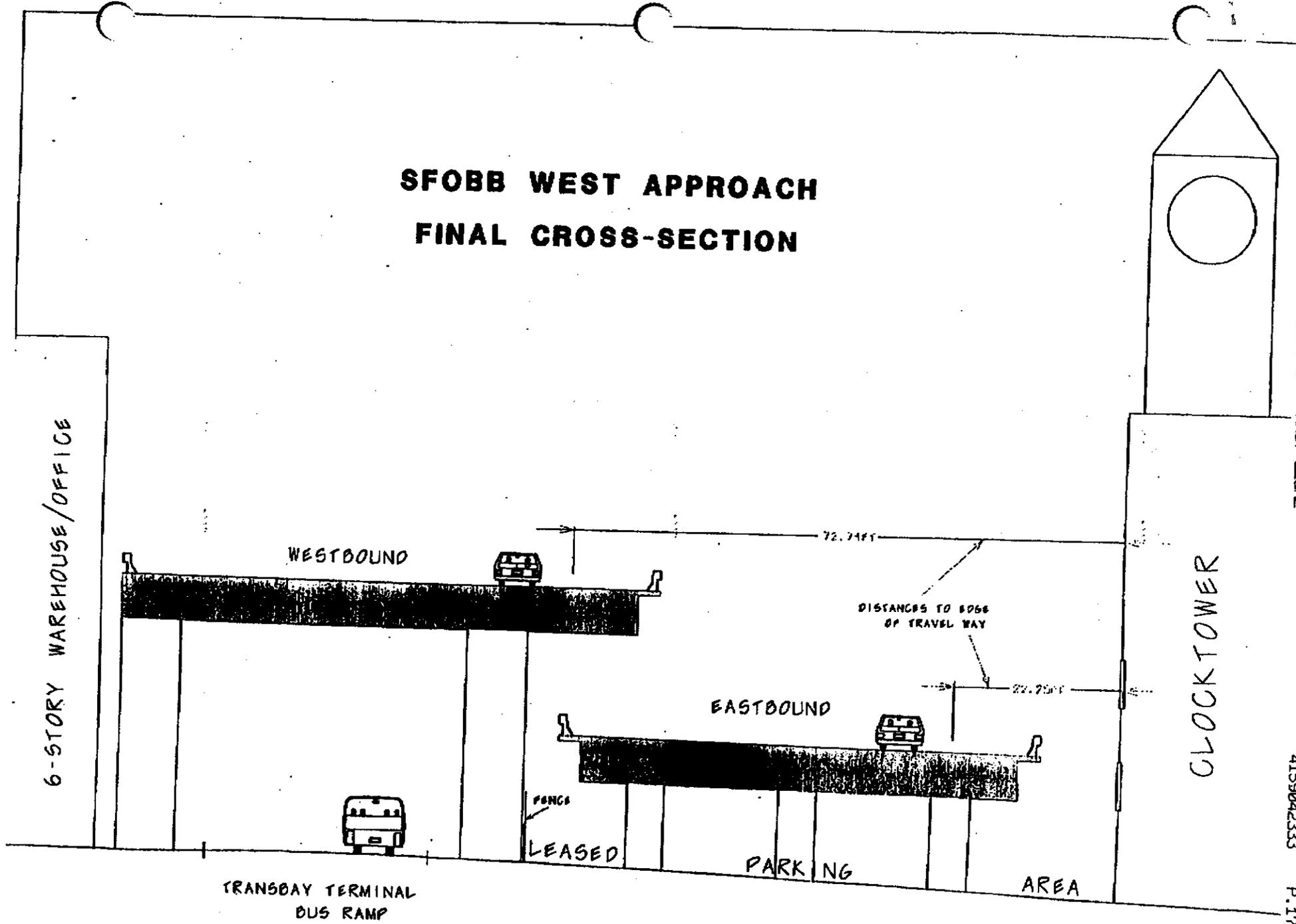
# SFOBB WEST APPROACH FINAL CROSS-SECTION

OCT-18-2000 17:14

DEPT OF TRANS, LEGAL

4159042333

P.17



Legal (transportation) dept. Oct. 18, 2000 17:14:17

## EXHIBIT 3

OCT-11-2000 14:38

DEPT OF TRANS, LERR

4159842333 P.16

# CALTRANS STAGING CROSS-SECTION (TCE \* 2)

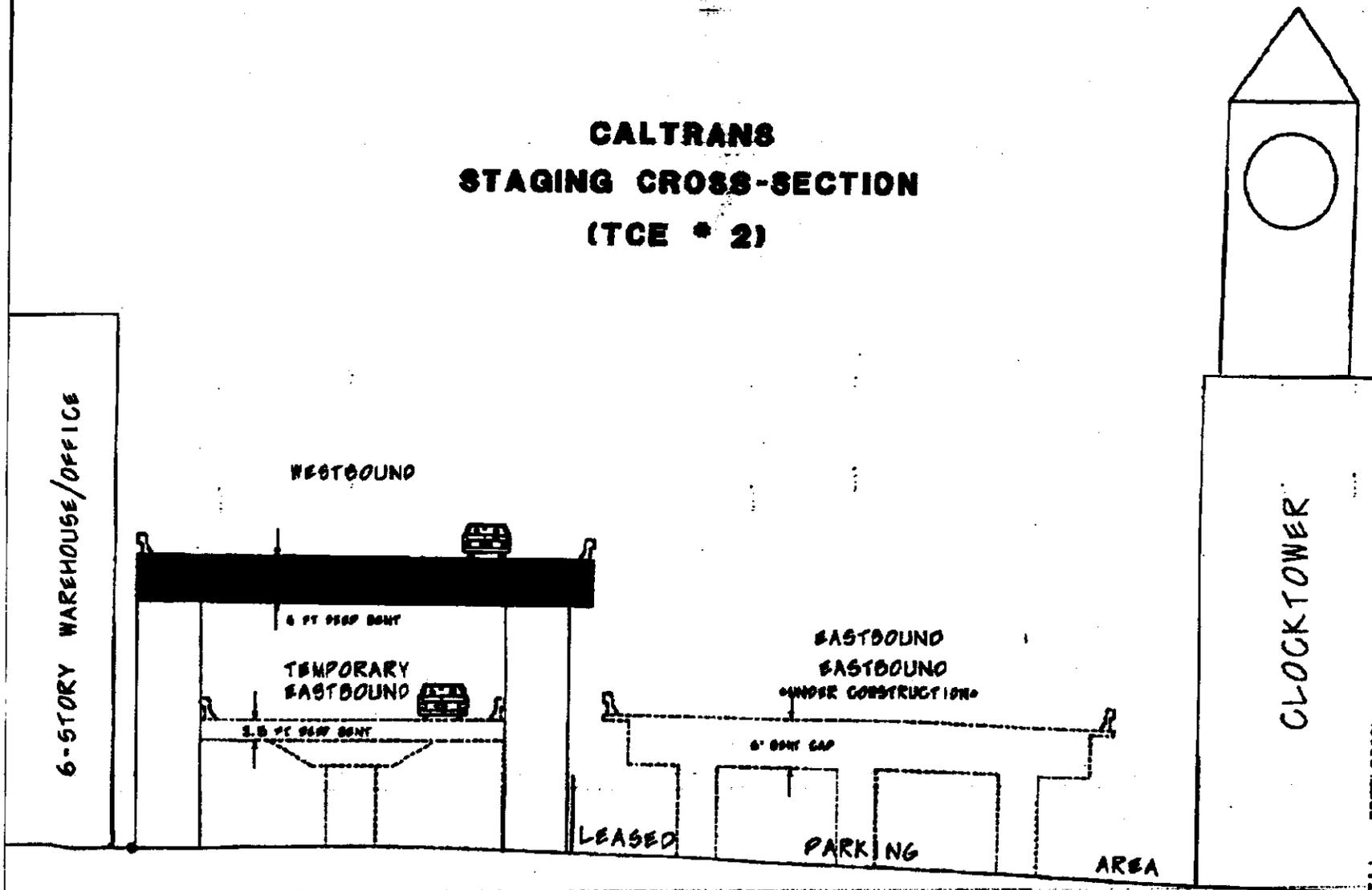
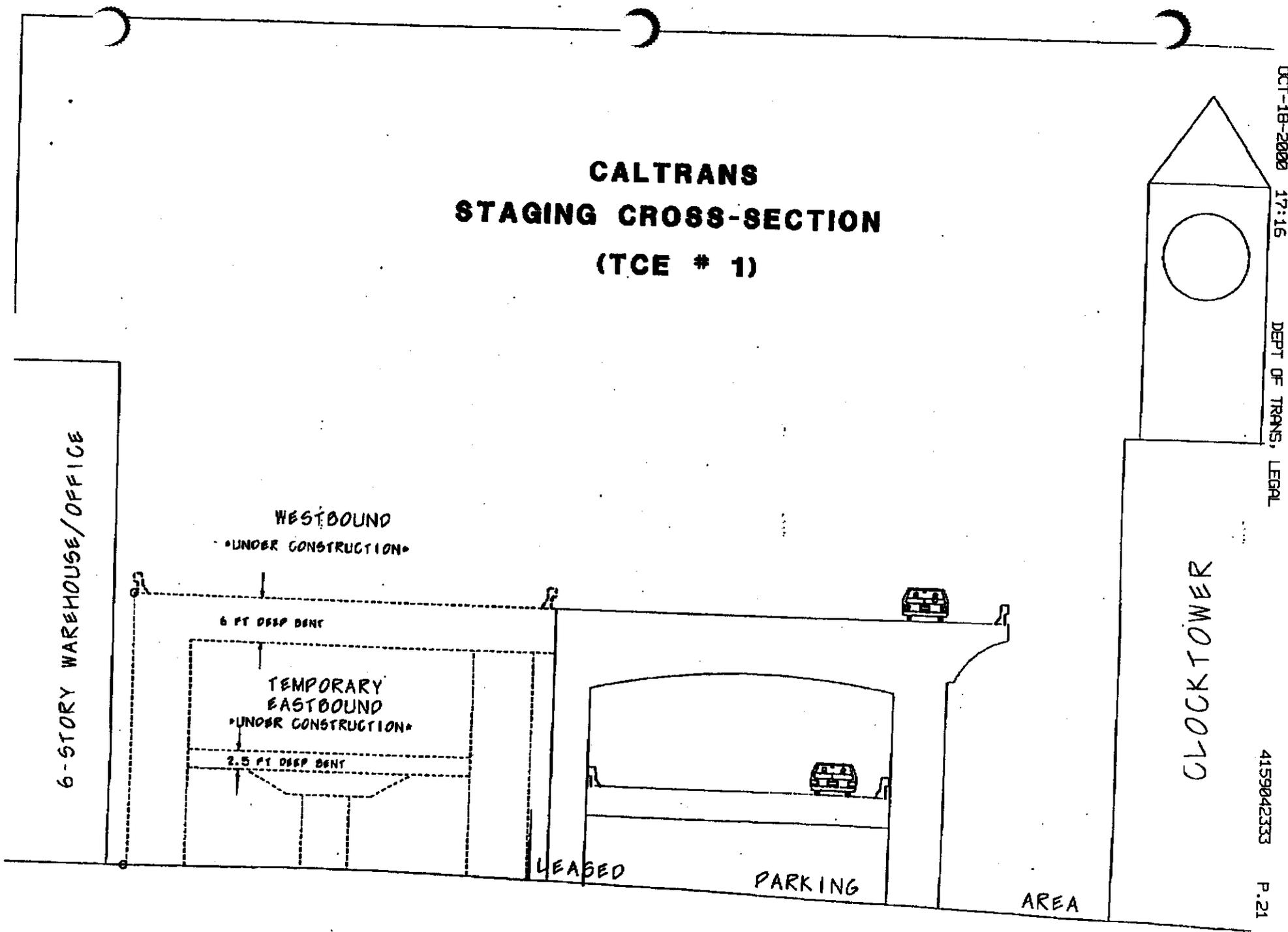


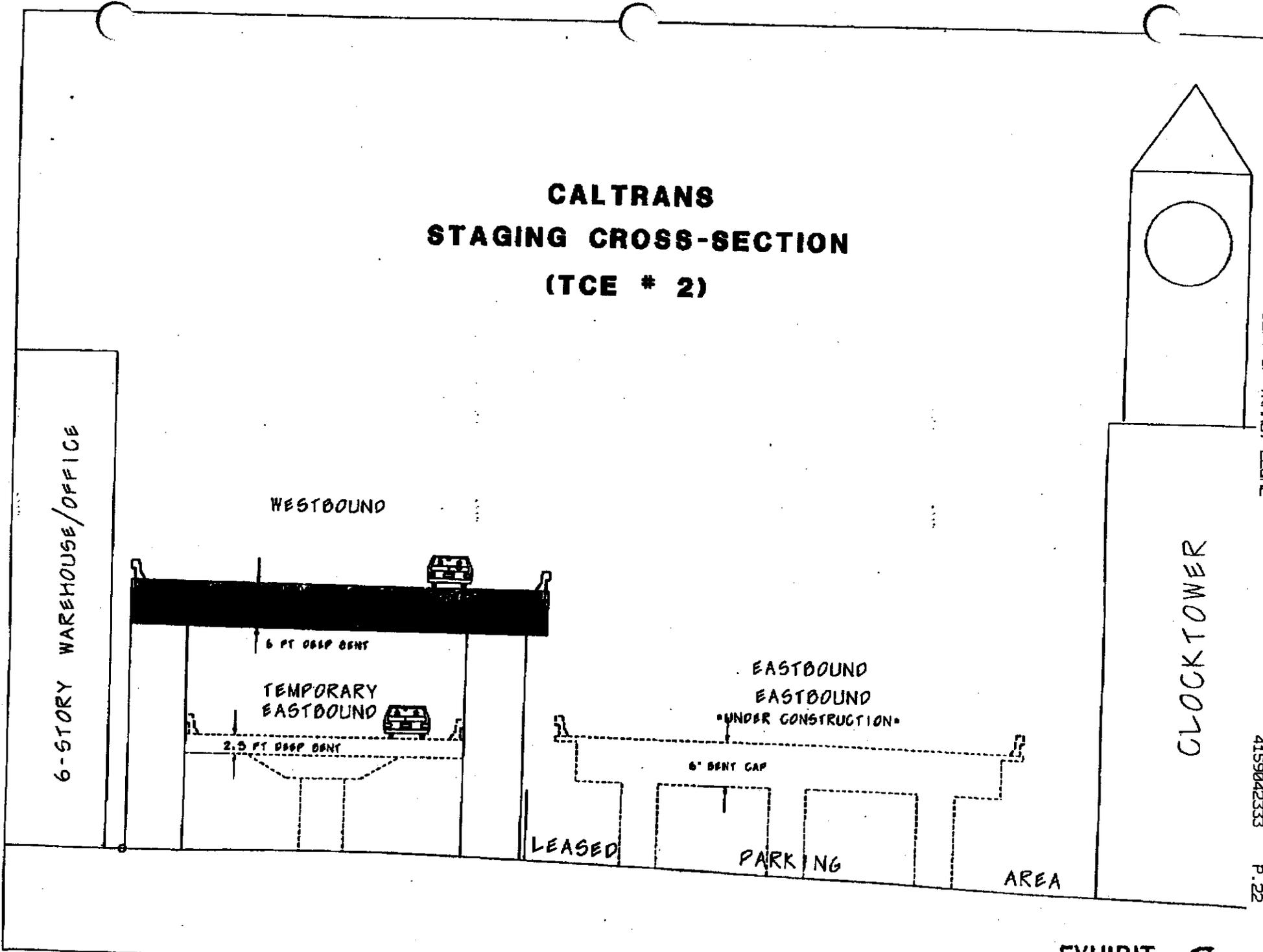
EXHIBIT 4

11/20/00 10:00 AM

# CALTRANS STAGING CROSS-SECTION (TCE # 1)



# CALTRANS STAGING CROSS-SECTION (TCE # 2)



CLOCKTOWER

EXHIBIT 6

## TRAFFIC MANAGEMENT: STAGE CONSTRUCTION

Limited space and high traffic volumes make the West Approach a very complex project. The footprint of the new structures and the work windows for construction are extremely constrained by the following criteria: right-of-way, traffic capacity during peak hours, and access for local residents and businesses. Certain operations can only be performed during the day, while others must be done at night and on weekends (off-peak hours). The bulk of the demolition and construction above, below, or adjacent to moving traffic will occur between 7 a.m. and 8 p.m. while using temporary structures and periodic weekend closures of city streets and ramps. However, the demolition and reconstruction of the westbound structure from the San Francisco Anchorage to Rincon Hill, approximately 800 feet, will require more complex, continuous, and consecutive weekend closures.

After consulting with the City and County of San Francisco and numerous local, regional, public, and private parties Caltrans believes that the following stage construction plan can best balance and address the myriad of concerns and constraints while maintaining the existing peak hour traffic configurations for the daily commuters.

1. No noise limits during daytime hours 7:00 A.M. to 8:00 P.M. – seven days/week.
2. Night – 8:00 P.M. to 7:00 A.M. – seven days/week – not to exceed 86 dBA @ 50 ft. subject to specified exceptions:

Note: This general rule will prevent high "impact" noise (hoe-rams, jackhammers, jetting), associated with demolition, after 8:00 P.M.

### Exceptions

- A. Demolition over City streets. This work must be done on weekends and will be conducted on Saturday and Sunday from 7:00 A.M. to 10:00 P.M. Hours may extend past 10:00 P.M. if unexpected problems arise.
- B. Raising and removing falsework over City streets. This work must be done on weekends and will be conducted on Saturday and Sunday from 7:00 A.M. to 10:00 P.M. Hours may extend past 10:00 P.M. if unexpected problems arise.
- C. Demolition at Anchorage (between 1<sup>st</sup> & Beale [300 ft.± to 1,000 ft.± east of Sterling St.]).  
7:00 A.M. to 12:00 Midnight 25-30+ weekends in middle of project. The 25-30+ weekends will not be continuous – will be spread over 2± years. The 25-30+ weekends will occur in 3 separate "spurts" when there will be weekend work on successive weekends. During some weekends for special demolitions – due to traffic and/or structural safety during demolition, the demolition will proceed continuously 24 hours/day until completed. Current estimate of these special demo's is 20%± of the 25-30+ weekends.

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**APPRAISAL SUMMARY STATEMENT**

**CONFIDENTIAL**

This document contains personal information and pursuant to Civil Code 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

PAGE 1 of 3

Dist.	Co.	Rte.	P.M.	Parcel No.	Date
04	SF	I-80	5.2	58058	September 13, 2000

Owner: State (Fee Interest)  
 Tenant: Clocktower Loft Owner's Association

Date Acquired: 1935

Property Address: Airspace Lease B.T.E. east side 2nd Street between Bryant & Harrison

Property To Be Acquired: Two temporary construction easements over Airspace Lease of ground surface under I-80 viaduct

Locale: San Francisco

Total Property Area: 12,219- s.f.

BASIS OF APPRAISAL

The offer for the temporary construction easements over the leased area is based upon an appraisal prepared in accordance with accepted appraisal principles and procedures.

The appraisal considered the terms of the lease between State and Lessee/Clocktower Loft Owner's Association and the rights and obligations of the State as Lessor and Lessee/Clocktower Loft Owner's Association under Lease Right of Entry Clause and the Lease Condemnation Clause. The cost of reproducing Lessee-owned improvements on the Leasehold Premises was considered; the terms and conditions of the temporary construction easements were considered, including State's offer of substitute parking during the duration of the Temporary Construction Easements. The leasehold rent, and the existing use of the Leasehold Premises for parking were also considered. A legal opinion regarding the Lease Right of Entry Clause and the Condemnation Clause was considered.

Value of the property being acquired including the following improvements:

First Valuation Approach:	\$	<u>Nominal Value</u>	<u>1,000.00</u>
Second Valuation Approach:	\$		<u>63,500.00</u>
Improvements: Tenant owned paving, gates, fencing, and lighting			
The amount of damages (cost to cure):	\$		<u>0.00</u>
The amount of special benefits:	\$		<u>0.00</u>
The amount of any other compensation:	\$		<u>0.00</u>

**JUST COMPENSATION FOR ACQUISITION:**

First Valuation Approach:	\$	<u>Nominal Value</u>	<u>1,000.00</u>
Second Valuation Approach:	\$		<u>63,500.00</u>
Offer:	\$		<u>63,500.00</u>

**APPRAISAL SUMMARY STATEMENT (Cont.)**

**BASIS OF APPRAISAL**

**BASIC PROPERTY DATA**

The subject property is owned by Caltrans and is leased to Clocktower Loft Owner's Association on a long-term lease for parking lot purposes; the leasehold Premises contains 25 parking stalls used by Lessee's members.

Interest Valued:

Caltrans is acquiring Temporary Construction Easement #1 over 20% of the Premises (4 parking stalls) for approximately 2 years. Caltrans is also acquiring Temporary Construction Easement #2 over the entire Premises (all 25 stalls) for approximately 4 more years. TCE #1 & TCE #2 will run consecutively. TCE #1 will commence no sooner than June 1, 2001; TCE #2 will expire no later than September 1, 2009. The exact duration of both TCEs is spelled out in their parcel description.

Area to be Acquired

TCE #1 covers approximately 1965 sq. ft. TCE #2 covers +12,219 sq. ft.

Date of Valuation:

Current -- August 25, 2000

Applicable Zoning:

Within boundary of M-1 zoning area

Highest and Best Use:

Parking -- Per Lease Term

Current Use:

Parking -- Per Lease Term

The existing double-deck I-80 freeway viaduct, directly over the Leasehold, is seismically deficient. The State proposes to tear down the existing structure, construct temporary detours, and reconstruct new, stronger side by side viaducts over the premises. The construction work is now estimated to take place between August 1, 2001 and August 1, 2008; these are approximate dates.

The Lease contains a Right of Entry Clause which gives the State the Right of Entry for the doing of any and all acts necessary or proper on the leasehold premises in connection with the protection, maintenance, reconstruction, and operation of the freeway structures and its appurtenances.

The Lease also contains a Condemnation Clause which provides that the only just compensation the tenant receives is the present value of tenant owned improvements on the Leasehold premises.

Based on this Right of Entry Clause, and a Legal Opinion from Caltrans Legal Office, in Valuation Approach #1, the appraiser concluded that the State has the legal right to impose the temporary construction easements on Leasehold Premises, without payment of compensation. In Valuation Approach #1 the appraiser concluded that the just compensation was a nominal value of \$1000.

In Valuation Approach #2 the appraiser ignored the Right of Entry Clause but considered the Condemnation Clause, which provides that the only just compensation the tenant receives is the value of tenant owned improvements. The cost new to replace tenant owned fencing, gates, and pavement, with no depreciation taken was the basis for the second valuation of \$63,500.

**This summary of the basis of the amount established as just compensation is presented in compliance with applicable law and has been derived from a formal appraisal prepared by the State Department of Transportation.**

## APPRAISAL SUMMARY STATEMENT (Cont.)

PAGE 3 of 3

The California Department of Transportation is proposing to improve the seismic safety of I-80 in San Francisco, the west approach to the Bay Bridge, by tearing down the existing viaduct structure and constructing a new stronger viaduct which meets current seismic standards.

The property you lease from the State - Airspace Lease B.T.3, is within the project area and is under the existing I-80 viaduct structure.

Title 1, Division 7, Chapter 16 of the California Governmental Code include Government Code §7276.2 and the California Relocation Assistance and Real Property Acquisition Guidelines requires that each owner from whom the Department of Transportation purchases real property or an interest therein or each tenant owning improvements on said property be provided with a summary of the appraisal of the real property or interest therein, as well as the following information:

1. You are entitled to receive full payment for any compensable real property interest you own prior to vacating the real property being purchased unless you have heretofore waived such entitlement. You are not required to pay recording fees, transfer taxes, or the pro rate portion of real property taxes which are allocable to any period subsequent to the passage of title or possession.
2. If the State considers any remnant property contiguous to the property interest being conveyed to be an uneconomic unit, the State will offer to purchase such remnant.
3. All building structures and other improvements affixed to the land described in the referenced document(s) covering this transaction and owned by the grantor(s) herein or, if applicable, owned by you as a tenant are being conveyed unless other disposition of these improvements has been made. The property being purchased comprises two temporary construction easements over your leasehold tenancy. The first temporary construction easement is approximately 1,965 sq. ft. in size and constitutes about 16% of the Leasehold Premises. The second and subsequent temporary construction easement constitutes approximately 12,219 sq. ft. and is the entire Leasehold Premises.
4. The offer for the property being purchased is based upon a market value appraisal which is summarized herein.
  - a. Represents the full amount of the appraisal of just compensation for the property to be purchased;
  - b. Is not less than the approved appraisal of the fair-market value of the property as improved;
  - c. Disregards any decrease or increase in the fair-market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired or by the likelihood that the property would be acquired for such public improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant; and
  - d. Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which the owner is entitled to receive under an agreement with the Department of Transportation.
5. If you ultimately elect to reject the State's offer for your property, you are entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California.
6. You are entitled to receive all benefits that are available through donation to the State of California of all or any part of our interest in the real property sought to be acquired by the Department of Transportation as set out in Streets and Highway Code Sections 104.2 and 104.12.