

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: April 13-14, 2005

Reference No.: 2.4a.
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Brice D. Paris
Division Chief
Right of Way and Land Surveys

Ref: **RESOLUTION OF NECESSITY - APPEARANCE**

RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-19011, which is the subject of this Appearance. 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 owner have been advised that the Department is requesting a resolution at this time. Adoption of Resolution of Necessity C-19011 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-19011 - County of San Diego

11-SD-54 -KP 9.3 - Parcel 32160-1, 2, 3 - EA: 001969 - Certification Date: 01/27/05 - (Freeway - construct a freeway). Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, a temporary easement for highway construction, and a permanent easement for road. Located in the city of Bonita at 5821 Sweetwater Road, Bonita, California. APN 586-051-02.

SUMMARY OF ISSUES

The County of San Diego is the owner of Parcel 32160, addressed as 5821 Sweetwater Road and located on the west side of Sweetwater Road, just south of State Route 125, in the unincorporated county area of Bonita, in the County of San Diego. The parcel is 18.39 acres and is improved with the South County Animal Shelter. The improvements impacted by the project consist of irrigated mature landscaping, gate and various signs. The County of San Diego does not contest the need for the project; however, they have expressed concerns with the design of the project and allege that a valid offer of compensation has not been made. The County would also like to reserve the right to be treated as a "private property owner" in any eminent domain proceeding filed by the Department, rather than as a subdivision of the State.

The following is a detailed description of the concerns expressed the representatives of the County, followed by the Department's response.

Owner:

A request was made by the County to change the access control line on their property to allow a possible future widening of the entrance to the parcel.

Department Response:

To accommodate this request the grading and slope were revised and the access control changed so the entrance can be widened to sixty feet.

Owner:

The County noted that additional right of way was needed for the curb returns at the animal shelter entrance.

Department Response:

The Department modified the road easement as requested, although not standard practice, and added curb returns, sidewalks and gutters to be constructed at the Department's expense as an incentive to settlement. The appraisal was revised and a new offer was made.

Owner:

The County raised concerns about the grade of the slope to the east of the proposed animal shelter suggesting that the slope should be lessened with a brow ditch at the top.

Department Response:

The Department provided geotech reports and drainage information that supported the design. The County subsequently confirmed that the existing design was acceptable.

Owner:

The County raised a number of concerns regarding coordination with utility owners and the relocations needed on the parcel.

Department Response:

The County is being provided with information and documentation of the utility relocations as they become available. Additionally, there has been coordination with the County to place the utilities in a location on the Animal Shelter property that is acceptable to the County.

Owner:

A request was made by the County for erosion control and permanent landscaping plans.

Department Response:

Copies of all plans are being provided to the County as they become available. Since this is a design/build project, design is not yet complete even though construction has begun.

Owner:

The County requested noise contour maps and information about planned noise abatement for the parcel expressing concern that noise may affect the highest and best use of the property.

Department Response:

A copy of the Final Noise Study has been provided to the County. Noise abatement is not planned for the animal shelter property because it does not meet the federal guidelines that warrant a sound barrier. The Department is required to follow the Federal guidelines in determining whether a sound barrier will be constructed as part of the project.

Owner:

Requests that directional signs be placed within the Department's freeway right of way to replace the signs that are being lost near Sweetwater Road.

Department Response:

The requested signage does not meet the Federal or State criteria that would allow them to be placed within the right of way of an access-controlled freeway. This is not an instance where an exception could be made. The Department, however, continues to work with the County to solve their signage concerns and has offered to provide additional directional signs on local streets. In addition, an offer was made to compensate the County for the installation of a pole sign that could be seen from the adjoining freeway.

Owner:

Contends that the Department has not made a valid offer of compensation as required by Government Code Section 7267.2. In addition, the County would like to be granted the right to be treated as a "private property owner" in any eminent domain proceeding as opposed to a subdivision of the State. They also want the right to file a loss of goodwill claim, severance damages, and/or potentially seek a functional replacement for the animal shelter.

Department Response:

The Department is in full compliance with Government Code 7267.2, and a written offer for the full amount of the current appraisal has been made. The Department will continue to review new or additional information as it becomes available to update and revise the appraisal. The County has issue with the amount of compensation being offered. The County was notified that issues related to compensation are outside the purview of the Commission and will not be heard or considered by the Commission, and are instead an issue for the courts.

Attachments

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA: 11-SD-125-KP 16.7 / 17.9, EA 001969
11-SD-54-KP 8.1 / 10.7

Location: State Route (SR)-125 & SR-54 in the County of San Diego

Limits: In San Diego County on SR-125 from 0.6 to 0.5 kilometers (KM) South of Jamacha Boulevard and on SR-54 from 1.1 KM West of Worthington/Sweetwater Road.

Cost: Current construction cost estimate \$31,728,000
Current right of way cost estimate \$3,246,000

Funding Source: TransNet/SANDAG

Number of Lanes: Existing: 4 lanes mixed flow on SR-54
Proposed: 6 lanes mixed flow on SR-54
Connector ramps between SR-54 and SR-125

Proposed Major Features Removal of stoplight at Sweetwater Road; grade separation at Sweetwater Road/Worthington Street; retaining walls.

Traffic: Existing (year 2003): 93,000
Proposed (year 2030): 162,000

PARCEL DATA:

Property Owner: County of San Diego

Parcel Location: Assessor's Parcel Number (APN) 586-051-02. Located just south of SR-54 and west of Sweetwater Road.

Present Use: Animal shelter

Zoning: Rural Residential 2 (RR2)

Area of Property: 18.39 acres

Area Required: Parcel 32160-1 = 22,067 square meters (sq m) (5.45 acres) in fee
Parcel 32160-2 = 575 sq m (0.14 acres) a permanent road easement
Parcel 32160-3 = 10,396 sq m (2.57 acres) a temporary easement
Total = 8.16 acres

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Resolution of Necessity Review Panel (Panel) met January 12, 2005 in San Diego. The Panel members consisted of Vern Rhinehart, Department of Transportation (Department) Headquarters (HQ's) Right of Way; John Frederick Smith, Department San Diego Legal Division; Linda Fong, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Right of Way, was Secretary to the Panel. The representatives appearing on behalf of the County of San Diego (County) were Mr. John Kross, Director Real Estate Services; Judith A. McDonough, Office of County Counsel; John McTighe, Director Department of General Services; Carl Harry, County Real Estate Division; and Mikel Haas, Director County Animal Services.

The County's objection is based on the opinion that the offer made by the Department does not meet the requirements of California Government Code Section 7267.2, as an offer of just compensation. The County does not contest the need for the project.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Chief Engineer.

NEED FOR THE PROJECT

Benefits to the regional highway facilities include a reduction in traffic congestion on Interstate (I) - 805 and I-5 through State Route (SR)-125 South providing an alternative means to SR-905 and the South bay region. The route will also serve to provide a connection to the Otay Mesa Point of Entry via SR-905. The addition of access points from the local road system to the regional system will serve to reduce traffic congestion on the existing local road systems within the City of Chula Vista as well as the surrounding communities of Bonita/Sunnyside and Spring Valley. The elimination of the signalized intersection on SR-54 at Sweetwater Road/Worthington Street and the upgrade to a six-lane facility on SR-54 will also improve traffic operations. It is anticipated that these local streets will experience a reduction in traffic upon completion of construction due to the severed access with SR-54.

PROJECT PLANNING AND LOCATION

Planned since 1959, this segment of SR-125 is a component of the San Diego Regional Outer Loop consisting of SR-905, SR-125, and SR-56. The SR-125 South project will connect SR-125 to SR-905 with an ultimate eight-lane facility with a High Occupancy Vehicle (HOV) lane in each direction.

The project is phased into three components. The "Gap" will consist of improvements on SR-54 and Sweetwater Road as part of the SR-125/SR-54 interchange design. The interchange will consist of direct connectors and SR-54 main lane improvements aligned above a new realigned Sweetwater Road/Worthington Street. The "Connector" includes the direct connectors of this interchange and a portion of the SR-125 mainline alignment from the SR-125/SR-54 interchange to the San Miguel Road Overcrossing, multi-use trails, and local streets and improvements.

The "Toll Road" will include all other improvements proposed for the SR-125 corridor from San Miguel Road to SR-905.

Construction completion for the Gap is anticipated in 2005 with the Connector completed in 2006. A fifteen-month closure of Sweetwater Road is anticipated to allow for the construction of improvements to Sweetwater Road along with other structures of the Gap and Connector.

NEED FOR SUBJECT PROPERTY

Based on the approval of the Geometric Approval Drawing for both the highway and local road alignments, right of way requirements have been revised for this subject parcel. Right of way impacts will require fee acquisition along the northern property line to accommodate the construction of the eastbound SR-54 to the southbound SR-125 connector. The permanent roadway easement fronting Sweetwater Road has been revised to accommodate revisions to the design of Sweetwater Road. In addition, temporary construction and slope easements have been defined to accommodate required grading for a realigned driveway and the staged construction of the driveway.

The following is a description of the concern, which the County has expressed, and the Department's response.

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Department Response:

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PARCEL DESCRIPTION

The subject parcel is identified as Assessor's Parcel Number (APN) 586-051-02 the city of San Diego, in San Diego County. The parcel consists of 18.39 acres of land located at 5821 Sweetwater Road, San Diego CA 91902. The parcel is zoned Rural Residential 2 (RR2), with half-acre minimum lot size. A Special Permit, approved in 1974 for the existing animal shelter, provided that: 1) dog kennels be screened on all sides by topographic features and landscaping; 2) two-thirds of the site remain in a natural state; 3) kennels be designed to minimize barking and attenuate noise generated from the kennels; and 4) odor control measures be taken. An additional Modification of a Major Use Permit was approved November 9, 2000 for a Sprint Cell Site (P74-132W). The general plan designation is currently 22 (Public/Semi-public Use). The property is encumbered by numerous utility easements in favor of San Diego Gas & Electric and Otay Municipal Water District for public utilities originating in 1976, the year the property was developed.

The improvements consist of a landscaped and paved driveway to a graded area containing a fenced and paved compound with three buildings and kennels, including animal and storage enclosures. The administration building is 3,428 square feet; the cattery is 1,470 square feet; and the service building is 2,185 square feet. Additional improvements include 184 kennels, four dog runs, four horse corrals, a 432 square feet three-sided metal shed, a public parking area with asphalt paving containing 38 spaces, separate employee parking area, and irrigated landscaping along both sides of the entrance driveway. All buildings and animal enclosures are within a compound with chain-link fence with three-strand barbed wire and the top rail. In addition to periphery fencing, there is also chain link partition fencing within the compound. There is an automatic security gated employee entrance to the compound from the access. Concrete walkways surround each of the buildings and kennels.

The eastern portion of the subject site slopes up from Sweetwater Road frontage to a mostly level graded area, consisting of 6.49 acres. The north side of the developed area is sloped upward. To the west of the swale, the property slopes up to the west to an area that is relatively level. At the extreme western end of the property is a steep down slope. Access is provided from Sweetwater Road, a two lane county road within a 60-foot right of way. The pavement width varies within the project limits accommodating an exclusive right turn lane to the driveway traveling southbound. An asphalt concrete curb along the frontage with Sweetwater Road addresses on-site drainage at the base of existing slopes with no provisions for any pedestrian sidewalks or paths.

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record as required by Government Code Section 7267.2.

PANEL RECOMMENDATION

The Panel concludes that the Department's design complies with Section 1245.230 of the Code of Civil Procedure in that:

- 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 least private injury.
- The property to be condemned is necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

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

BARRY COWAN, Acting Chief
Office of Project Delivery
Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

RICHARD D. LAND
Chief Engineer

**PERSONS ATTENDING SECOND LEVEL REVIEW PANEL
HEARING ON JANUARY 12, 2005**

Vern Rhinehart, Headquarters Right of Way, Panel Chair
John Frederick Smith, San Diego Legal Office Attorney, Panel Member
Linda Fong, Headquarters Design, Panel Member
Deborah Gebers, Headquarters Right of Way, Panel Secretary

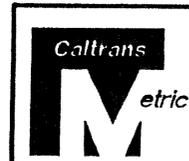
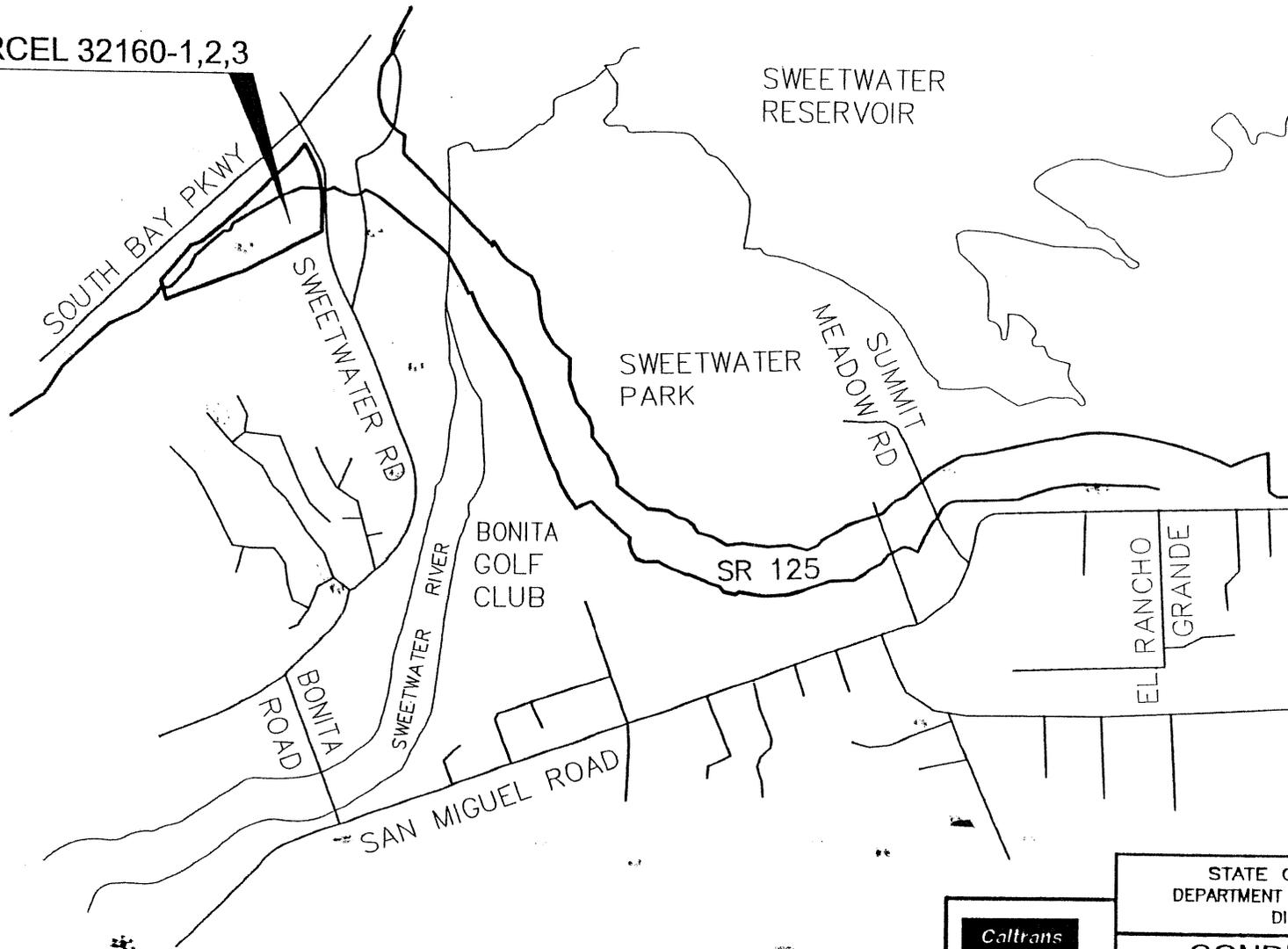
John Kross, County of San Diego, Director Real Estate Services
Judith A. McDonough, County of San Diego, Office of County Counsel
John McTighe, County of San Diego, Director Department of General Services
Carl Harry, County of San Diego, Real Estate Division
Mikel Haas, County of San Diego, Director of County Animal Services

Pedro Orso-Delgado, District 11, District Director
Amy Lamott-Vargas, District 11, Senior Right of Way Agent
Laurie Berman, District 11, Project Manager
Ramon Martinez, District 11, Transportation Engineer
Cheryl Revell, District 11, Senior Right of Way Agent
Anastasia Hunter, District 11, Right of Way Agent
Luis Betancourt, Headquarters, Design
Kelly McBride, Otay River Constructors
Angus Murray, Otay River Constructors
Lorenzo Garrido, California Transportation Ventures

COUNTY OF SAN DIEGO

SUIT # 1122

PARCEL 32160-1,2,3



STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DISTRICT 11

CONDEMNATION

RIGHT OF WAY
MAP NO.

KEY MAP

COUNTY	ROUTE	KILOMETER POST
SD	54	9.3

SCALE

NO SCALE

EXHIBIT "A" E.A. 001962

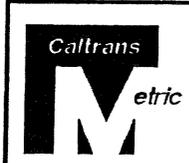
SHEET 1 OF 6

COUNTY OF SAN DIEGO

SUIT # 1122



STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DISTRICT 11



CONDEMNATION MAP

RIGHT OF WAY MAP NO. **POR. CLO 52054m**

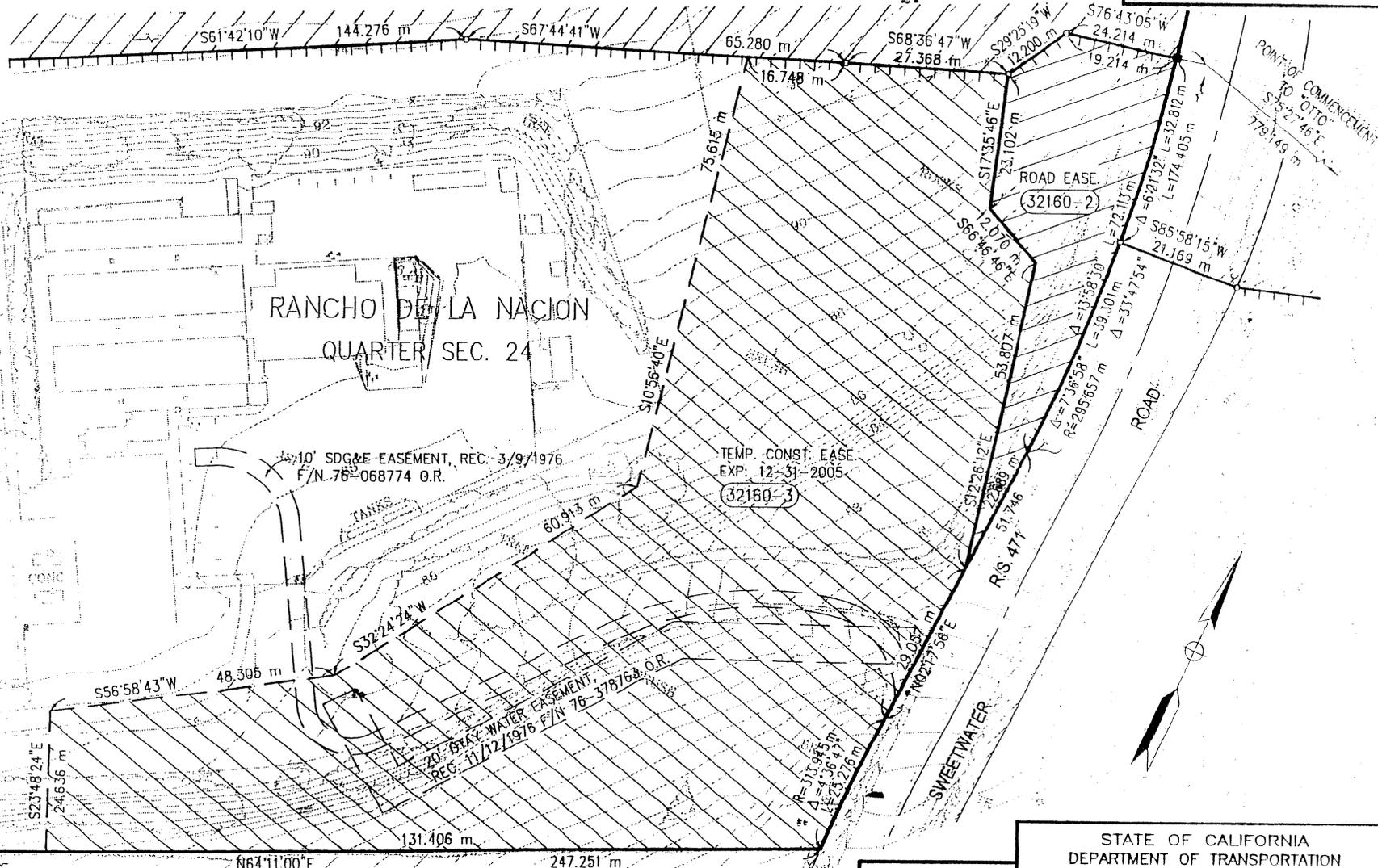
COUNTY	ROUTE	KILOMETER POST	SCALE
SD	54	9.3	NO SCALE

EXHIBIT "B" E.A. 001962

COUNTY OF SAN DIEGO

SUIT # 1122

SEE SHEET 4 OF 6



PARCEL NUMBER	VESTEE	① AREAS (SQ. M. OR NOTED)			① AREAS (SQ. FT. OR NOTED)			ACQUIS. CODE ③
		R/W	EXC. ②	REM. ②	R/W	EXC. ②	REM. ②	
32160-1	COUNTY OF SAN DIEGO	21,278		53,116	229,035		571,733	F
32160-2	COUNTY OF SAN DIEGO	1,279			13,768			E
32160-3	COUNTY OF SAN DIEGO	10,481			112,818			E

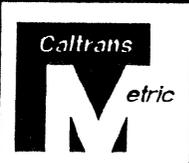


EXHIBIT "C" E.A. 001962

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DISTRICT 11

CONDEMNATION MAP

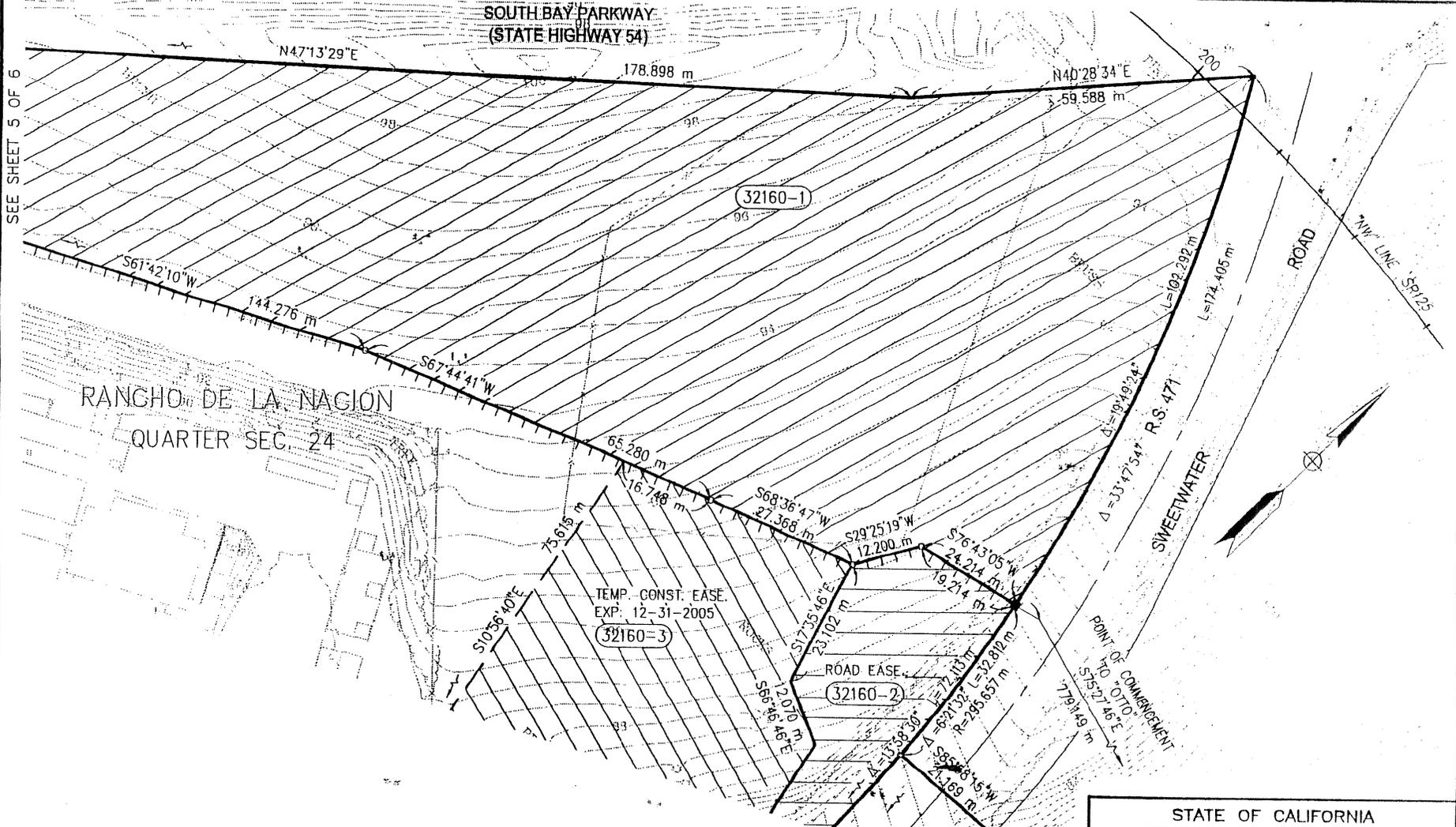
RIGHT OF WAY MAP NO. POR. CLO 52054m

COUNTY	ROUTE	KILOMETER POST	SCALE
SD	54	9.3	1:1000

SHEET 3 OF 6

COUNTY OF SAN DIEGO

SUIT # 1122



SEE SHEET 5 OF 6

SEE SHEET 3 OF 6

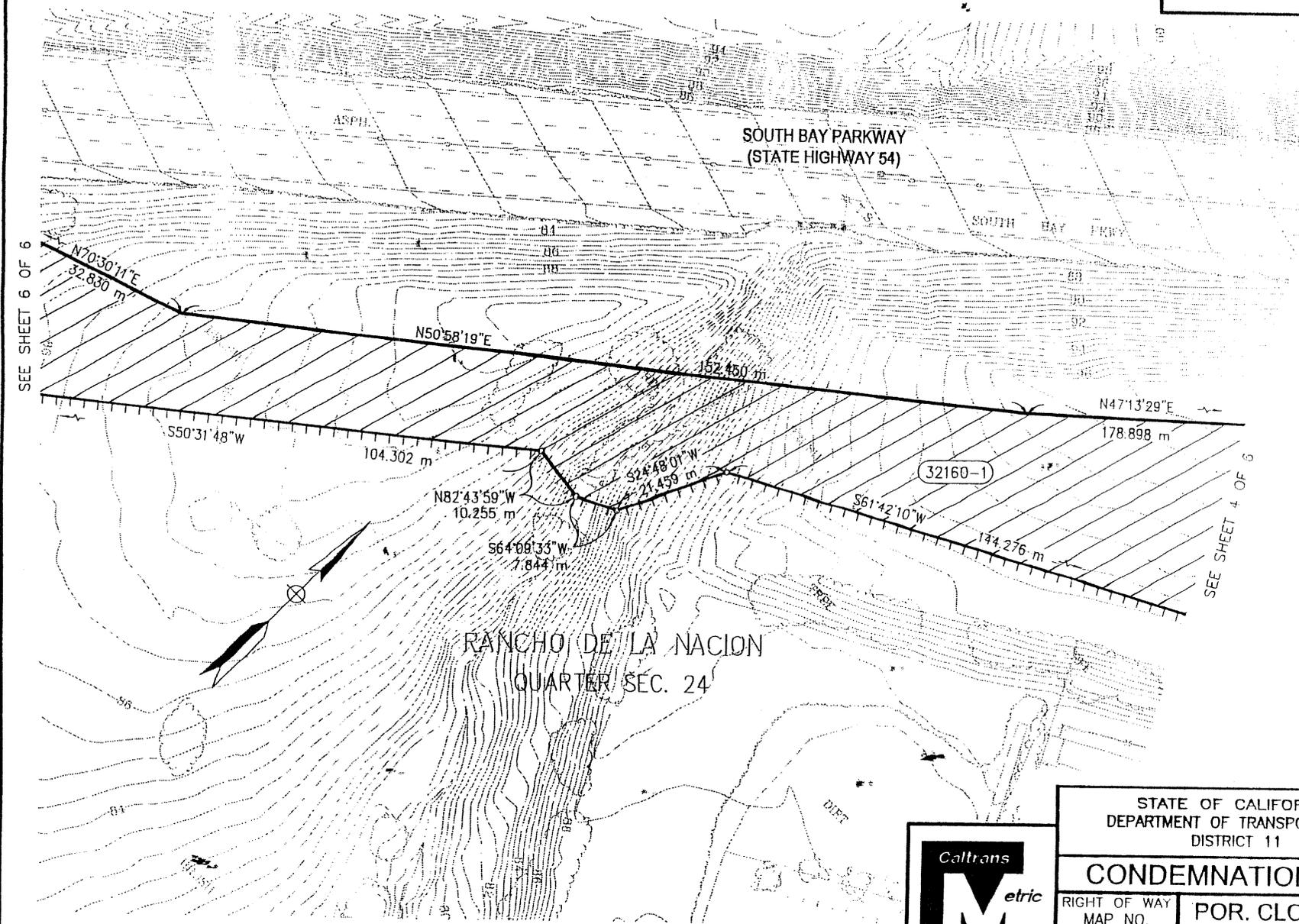


STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 11			
CONDEMNATION MAP			
RIGHT OF WAY MAP NO.		POR. CLO 52058m	
COUNTY	ROUTE	KILOMETER POST	SCALE
SD	54	9.3	1:1000
			SHEET 4 OF 6

EXHIBIT "D" E.A. 001962

COUNTY OF SAN DIEGO

SUIT # 1122

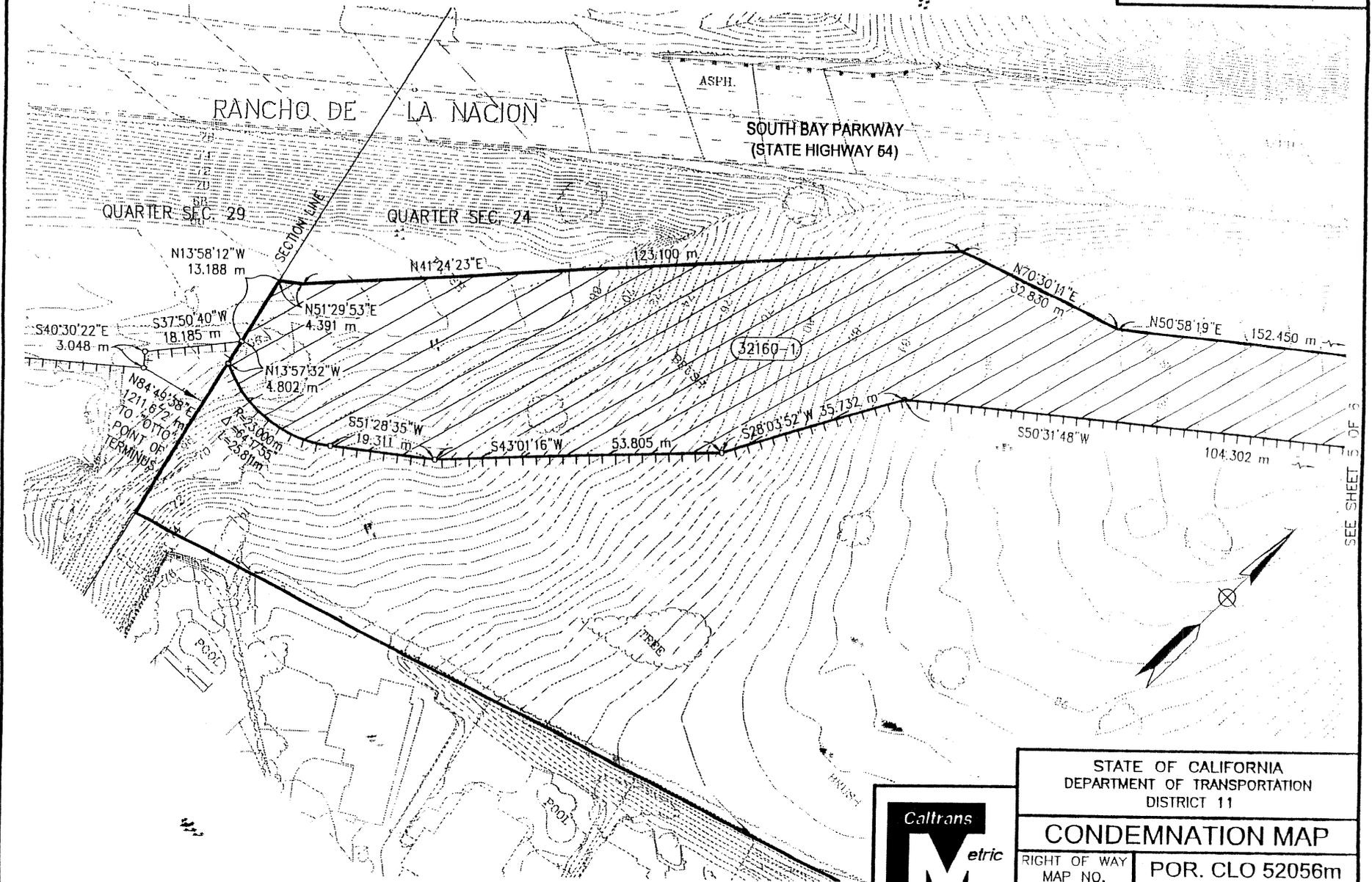


STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 11			
CONDEMNATION MAP			
RIGHT OF WAY MAP NO.		POR. CLO 52057m	
COUNTY	ROUTE	KILOMETER POST	SCALE
SD	54	9.3	1:1000
			SHEET 5 OF 6

EXHIBIT "E" E.A. 001962

COUNTY OF SAN DIEGO

SUIT # 1122



SEE SHEET OF 6

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 11			
CONDEMNATION MAP			
RIGHT OF WAY MAP NO.		POR. CLO 52056m	
COUNTY	ROUTE	KILOMETER POST	SCALE
SD	54	9.3	1:1000
			SHEET 6 OF 6



EXHIBIT "F" E.A. 001962