

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: December 13-14, 2006

Reference No.: 2.4a.(3)
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Bimla G. Rhinehart
Chief
Division of Right of Way and
Land Surveys

Subject: **RESOLUTIONS OF NECESSITY**

RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-19527, summarized on the following page.

ISSUE:

Prior to initiating Eminent Domain proceeding to acquire needed right of way for a programmed project, the Commission must first adopt a Resolution of Necessity, stipulating specific findings identified under Section 1245.230 of the Code of Civil Procedure.

1. The public interest and necessity require the project.
2. The project is planned to provide the greatest public good with the least private injury.
3. This property is required for the proposed project.
4. An offer to purchase the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property owners are contesting the RON and have requested a written appearance before the Commission to address the outstanding issues. The remaining issues with the property owners are that they believe the project is not planned in a manner that is most compatible with producing the least private injury and that the acquisition of this property is not necessary for the project.

BACKGROUND:

Discussions have taken place with the owners, each of whom has been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which the owners may subsequently be entitled. Adoption of the resolution will not interrupt our efforts to secure equitable settlement. In accordance with statutory requirements, each owner has been advised the Department is requesting the resolution at this time. Adoption will assist the

Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-19527 - George W. Powers, et ux.

11-SD-125-PM 9.4 - Parcel 32088-1, 2 - EA 232309.

Right of Way Certification Date: 06/20/03. Freeway - construct a freeway. Authorizes condemnation of temporary easements for construction purposes. Located in the unincorporated area of Bonita at 6654 San Miguel Road. APN 585-112-45.

Attachments

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA: 11-SD-125-PM 1.7/10.4

Expenditure Authorization: 232309 (Toll Road)

Location: State Route (SR) 125 in the cities of San Diego and Chula Vista in the county of San Diego.

Limits: In and near San Diego and Chula Vista, from Otay Mesa Road to south of San Miguel Road overcrossing.

Cost: Current construction cost estimate: \$255,000,000
Current right of way cost estimate: \$33,000,000

Funding Source: Toll Road developer (South Bay Expressway) and TIFIA.

Number of Lanes: Existing: N/A
Proposed: segments of two to three mixed-flow lanes in each direction.

Proposed Major Features: Construct new freeway, interchanges, entrance and exit ramps, ten bridges and a toll plaza.

Traffic: Opening (year 2007): 63,000
Proposed (year 2022): 119,000

PARCEL DATA:

Property Owner: George W. Powers and Diane E. Powers

Parcel Location: Assessor's Parcel Numbers 585-112-45.
6654 San Miguel Road, Bonita.

Present Use: Single Family Residence

Zoning: Residential

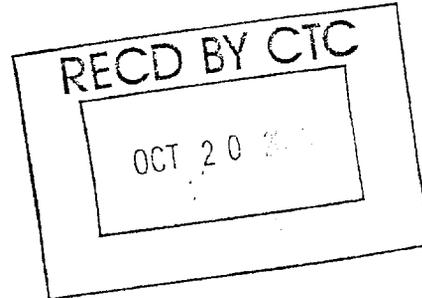
Area of Property: 1.23 acres

Area Required: Parcel 32008-1 = 0.03 acres temporary construction easement (TCE)
Parcel 32008-2 = 0.01 acres (TCE)
Total = 0.04 acres (TCE)

LUCE FORWARD
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October 18, 2006

26515-00001

VIA U.S. MAIL

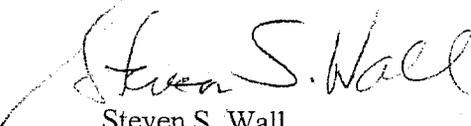
Executive Director of the California Transportation Commission
P.O. Box 942873
Sacramento, CA 94273-00001

Re: George W. Powers and Diane E. Powers – Notice of Errata

Dear Executive Director,

Enclosed please find the executed Errata for the above-referenced matter. If you have any questions, please give us a call.

Very truly yours,


Steven S. Wall
of
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

SSW/MI
Encl

3754962.1

**NOTICE OF ERRATA TO WRITTEN APPEARANCE AND STATEMENT AT
HEARING REGARDING PROPOSED RESOLUTION OF NECESSITY OF
CALIFORNIA TRANSPORTATION COMMISSION TO EXERCISE THE RIGHT OF
EMINENT DOMAIN TO ACQUIRE CERTAIN REAL PROPERTY INTERESTS
DESCRIBED AS PARCELS 32088-1 AND 32088-2**

The Written Appearance and Statement at Hearing Regarding Proposed Resolution of Necessity of California Transportation Commission to Exercise the Right of Eminent Domain to Acquire Certain Real Property Interests inadvertently listed parcel numbers "32088-2 and 32008-2". The correct parcel numbers are as follows:

32088-1

and

32088-2

Sorry for any inconvenience this may have caused. Please correct the Powers' appearance.

Dated: October 13, 2006

George W. Powers and Diane E. Powers

BY LUCE, FORWARD, HAMILTON & SCRIPPS, LLP



Steven S. Wall, Attorneys for George W. Powers and
Diane E. Powers

REC'D BY CTC

WRITTEN APPEARANCE AND STATEMENT AT HEARING
REGARDING PROPOSED RESOLUTION OF NECESSITY
OF CALIFORNIA TRANSPORTATION COMMISSION
TO EXERCISE THE RIGHT OF EMINENT DOMAIN
TO ACQUIRE CERTAIN REAL PROPERTY INTERESTS
DESCRIBED AS PARCELS 32088-2 AND 32008-2

The undersigned legal counsel for property owners, George W. Powers and Diane E. Powers, husband and wife, as joint tenants (the "Powers"), hereby appears by written appearance at the hearing being held by the California Transportation Commission on November 8 & 9, 2006, in Amador County, California and on behalf of the Powers, and states the following:

1. The California Department of Transportation ("CalTrans") is not authorized to exercise the power of eminent domain for the purpose stated in its proposed Resolution of Necessity ("Proposed Resolution") in that the Proposed Resolution does not state facts sufficient to constitute a right to take land for the construction of the that certain project known as the Freeway 125 Project (the "Project").
2. The stated purpose is not a public use in that CalTrans has not stated in the Proposed Resolution facts sufficient to constitute or show a right to so construct the Project.
3. The public interest, convenience and necessity do not require the Project.
4. The Project as planned and located, is not planned and located in the manner that will be the most compatible with the greatest public good and the least private injury including, without limitation, the fact that the Project has not adequately addressed drainage issues such that there is a reasonable probability that at some time in the near future, after the construction of the Project, it is highly likely that the Project will result in the flooding of the Powers' property.
5. The property sought to be acquired is not necessary for the Project for the reasons stated elsewhere herein and for other good and sufficient reasons.
6. Compliance has not been made with California Government Code Section 7267.2; an adequate written statement of the basis of CalTrans' offer for the property has not been made and furnished to the undersigned; an offer in compliance with Government Code Section 7267.2 has not been made.
7. There is no reasonable probability of use of the said real property for the said purpose within the applicable period of time.
8. Adoption of the Proposed Resolution will constitute a gross abuse of discretion within the meaning of California Code of Civil Procedure Section 1245.255 for the reasons stated elsewhere herein, for the reason that the Environmental Impact Report for the Project is fatally flawed in that water drainage impacts, among others, have not been adequately addressed, and for other good and sufficient reasons.

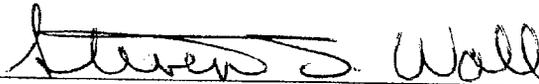
9. All other grounds provided or allowed by law.

CalTrans' offer of compensation to the Powers failed to comply with the California Government Code and other requirements of law in that, among other things, it failed to include an explanation as to why the comparable sales identified are relevant to the determination of the value of the property sought to be acquired, failed to include an adequate explanation of the reasons why CalTrans' offer is fair and reasonable, and failed to address compensation for future probable water drainage damages, failed to address loss of easements including horse trail easements, and failed to consider the specific impacts of traffic safety and vehicular headlight intrusion.

Dated: October 2, 2006

George W. Powers and Diane E. Powers

By LUCE, FORWARD, HAMILTON & SCRIPPS, LLP



Steven S. Wall, Attorneys for George W. Powers and
Diane E. Powers

3749806.1

DEPARTMENT OF TRANSPORTATION

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*Flex your power!
Be energy efficient!*

November 13, 2006

Steven S. Wall, Esq.
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
600 West Broadway, Suite 2600
San Diego, California 92101

VIA HAND DELIVERY

Re: Proposed Resolution of Necessity – San Diego Right-of-Way Parcel 32088
-1 & 2

Dear Mr. Wall:

This is in response to your Written Appearance and Statement at Hearing dated October 2, 2006, addressed to the California Transportation Commission. The purpose of this letter is to respond to your objections to the adoption of the Proposed Resolution of Necessity and to be incorporated into the record of the December 13-14, 2006, CTC meeting in San Francisco, California.

For ease of discussion, I will present the Department's response to each of your objections in the same order in which you offered them in your Written Appearance.

1. Department Response:

The legislature has provided statutory authorization to condemn property for the purpose of SR 125. This project is one of four public/private partnership projects that the Department selected as a result of Assembly Bill 680 (AB680). That statutory authorization establishes a public use. California Code of Civil Procedure Section, 1240.010.

2. Department Response:

The Proposed Resolution has been drafted in compliance with Code of Civil Procedure Section 1245.230. It contains a general statement that the property is to be acquired for State Highway purposes, namely for SR-125, pursuant to Streets and Highways Code Section 102; it provides a description of the property with corresponding maps.

"Caltrans improves mobility across California"

3. Department Response:

The public interest convenience and necessity support reduction in traffic congestion. The Project will aid in the reduction of traffic congestion on I-805 and I-5, as well as on the local road system. SR-125 will provide an alternative means to SR-905 and the SouthBay region of San Diego County. SR-125 will provide access points from the local road system to the regional system which will serve to reduce congestion on the existing local roads in the City of Chula Vista and the communities of Bonita, Sunnyside and Spring Valley. Further the public interest will be served by improved traffic operations because of the elimination of the signalization at the intersection of SR-54 and Sweetwater/Worthington Street and the upgrade to six lanes of SR-54. The public interest will also be served because SR-125 will serve to provide a connection to the Otay Mesa Point of Entry via SR-905. Planned since 1959, this segment of SR-125 is a major 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 HOV lane in each direction.

4. Department Response:

As part of the Project, offsite hydrology and hydraulics of SR-125-South were analyzed. This analysis specifically included an analysis of the subject property. The SR-125 Drainage Team analyzed the hydrology of eleven main watershed basins between Sweetwater Reservoir, Conduit Road and San Miguel Road (the road on which the subject property abuts). USGS Quadrangle topographic maps and local topographical survey data were utilized to delineate the watersheds. Additionally, field investigations were conducted to further confirm the extent of each watershed.

The analysis also included a Q100 (100-yr storm event) drainage study of the subject property, the Powers' property. The Q100 was calculated to be 0.329 cfs (cubic feet per second) in front of the Power's property. This amount of drainage will produce a flow depth of only 0.81 inches along the dike, just upstream of the property driveway. If the driveway to the Power's property ('DW4') is constructed per planned profile shown in construction sheet C-49, no flow should enter the property since the detail shows there is approximately a 3 inch difference between the flowline and the high-point on the driveway. Upstream of the subject property, the proposed drainage will flow from the San Miguel Bridge to an access road labeled 'AC1' line, which is east of the Power's property. The designer's drainage maps also show that the pre-project drainage flowing towards the Power's property was greater in the before condition than what is being proposed in the after condition.

5. Department Response:

The subject property is necessary for temporary construction easement rights. The two TCEs are located along the subject's north property line and will allow the Department to complete construction of the future access road (an extension of San

Miguel Road) which will extend in a southeasterly direction and thereby provide access to the adjoining properties that are located to the east.

6. Department Response:

A formal written offer was made on July 17, 2006, in compliance with the Government Code Section 7267.2. The offer was presented in person to Mr. & Mrs. Powers by Department of Transportation Right of Way Agents, Paul Solosky & Carol Vu. The offer included a copy of an Appraisal Summary Statement. At the time of the July 17, 2006 meeting, the Powers were given an opportunity to review the complete appraisal which formed the basis of the offer. Mr. Solosky & Ms. Vu explained the basis of the written offer. The Department is in full compliance with Government Code Section 7267.2 as a written offer for the full amount of the appraisal has been made.

The appraisal was prepared by Ted G. Hendrickson, Member of the Appraisal Institute (MAI), California Certified General Appraiser, Certificate No. AG004974. The appraisal was made after two on-site inspections where Mr. & Mrs. Powers were afforded an opportunity to be present. Personal field inspections were also performed of all the comparable sales. The appraisal report was prepared in full compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and the requirements and guidelines of the Department of Transportation. The appraiser used the definition of Fair Market Value provided by California Code of Civil Procedure Section 1263.320.

7. Department Response:

Construction has already begun for the Project. The TCE is for a twelve month period which the Department has carefully planned with the contractor. There is every reason to believe that the subject property will be used during the period of time specified in the TCE.

8. Department Response:

The Environmental Impact Report (EIR) was signed by Federal Highway Administration (FHWA) in June, 2000. The EIR was circulated in compliance with National Environmental Protection Act (NEPA) and the California Environmental Quality Act (CEQA). Further, public scoping meetings were held prior to final approval by FHWA. The EIR addressed all environmental impacts.

9. Department Response:

The Department provided the owners with an Appraisal Summary Statement which included the date of value, highest and best use, zoning, principal transactions, cost method supporting the valuation, and a breakout of severance damages. These are the elements required by Government Code Section 7267.2. In addition, the Appraisal Summary Statement contained a list of the comparable sales. Further, the

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Mr. Steve Wall, Esq.
November 13, 2006
Page 4

Powers were given the opportunity to review the complete appraisal report, and Mr. Powers did so review it. The offer was explained in detail when it was presented in person on July 17, 2006.

The appraisal specifically explains why the comparable sales were selected, i.e. their relevance, including, in terms of geography, site area & size, gross living area, floorplan, the detached garage, the utilities, including septic system, and horse facilities. The appraisal also discusses each comparable sale in detail and relates it to the subject property.

As discussed in detail above, the Department did a drainage study of the subject property. The Department has explained to the owners that the proposed drainage has been designed according to Chapter 800 of the Highway Design Manual and is designed to not adversely impact the subject property. Furthermore, because the plans touch upon local roads, the plans have been approved by the County of San Diego in accordance with local rules.

A detailed severance damage analysis was undertaken by the appraiser. It dealt with the loss of easements and the proximity of the subject property to the freeway. The appraisal specifically addressed the loss of access to an existing horse trail easement and explains that there will be access to a new access trail under construction. Furthermore, the appraisal does specifically address the proximity of the subject property to the freeway including the potential for negative impacts from traffic. In fact, the appraisal provides for severance damages for the difference in value of the subject property in the before condition versus the value after construction. These severance damages specifically discuss traffic and the re-routing of equestrian trails.

In summary, the appraisal in its discussion of severance damages carefully considered all damages to the property as a result of the project, including those claimed by the owners for loss of horse trail easements and the impact of the proximity of the subject property to the freeway.

Finally, it should be noted that if there is an underlying issue with the amount of compensation being offered, that issue is properly left to the Courts.

Very truly yours,


JULIE A. JORDAN
Deputy Attorney

:lao

Mr. Steve Wall, Esq.
November 13, 2006
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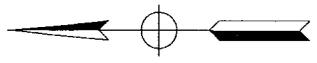
Cc:
Bimla Rhinehart
Don Grebe
Linda Fong
Debbie Gebers
Bob Dauffenbach
Cheryl Revel
Paul Solosky
Jeffrey Benowitz

"Caltrans improves mobility across California"

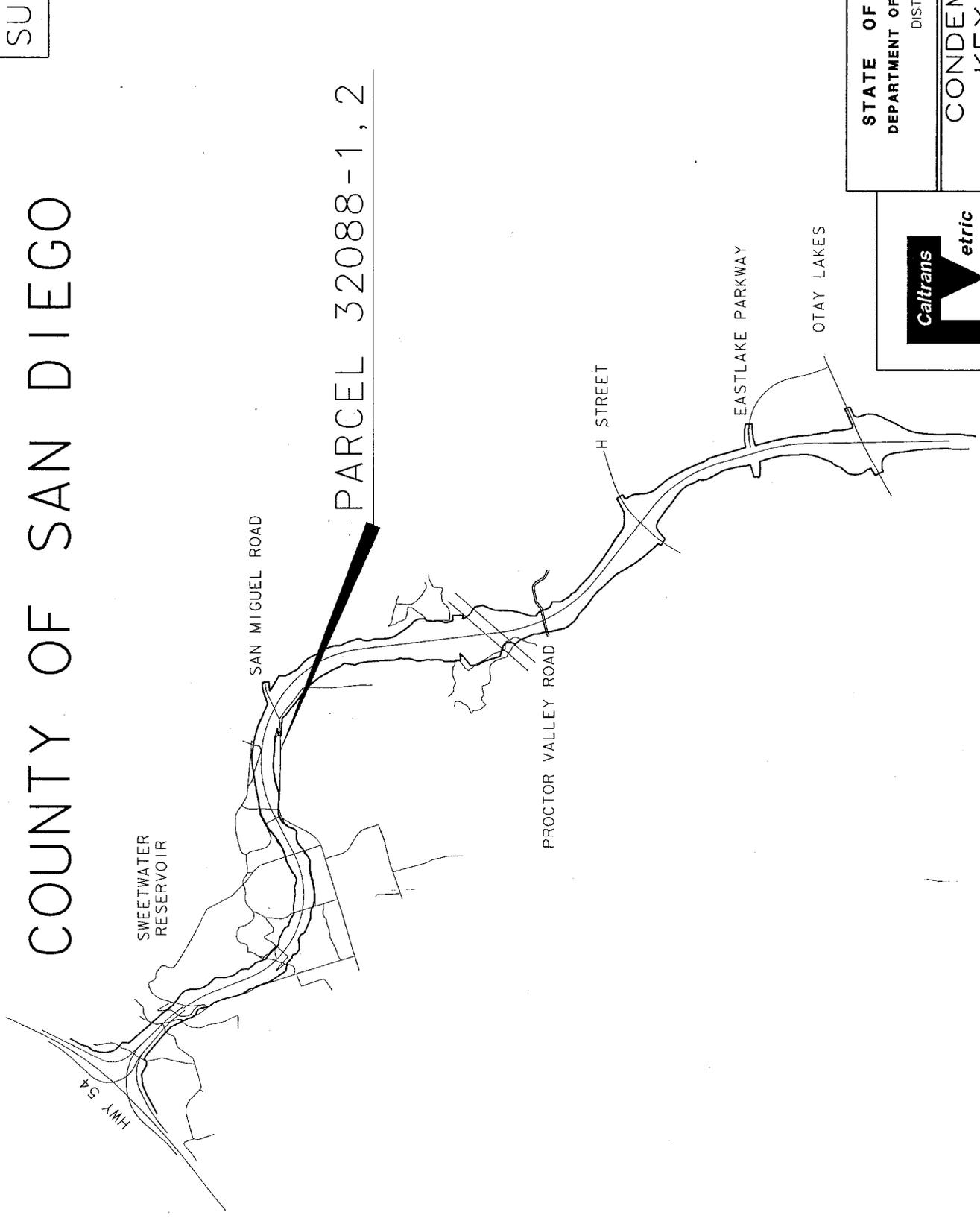
EXHIBIT 2E

COUNTY OF SAN DIEGO

SUIT # 1302



PARCEL 32088-1, 2



STATE OF CALIFORNIA			
DEPARTMENT OF TRANSPORTATION			
DISTRICT 11			
CONDEMNATION KEY MAP			
RIGHT OF WAY MAP NO.	Por. 52038m		
COUNTY	ROUTE	PW/KP	SCALE
SD	125	9. 4/15. 1	NONE
			SHEET 1 OF 2

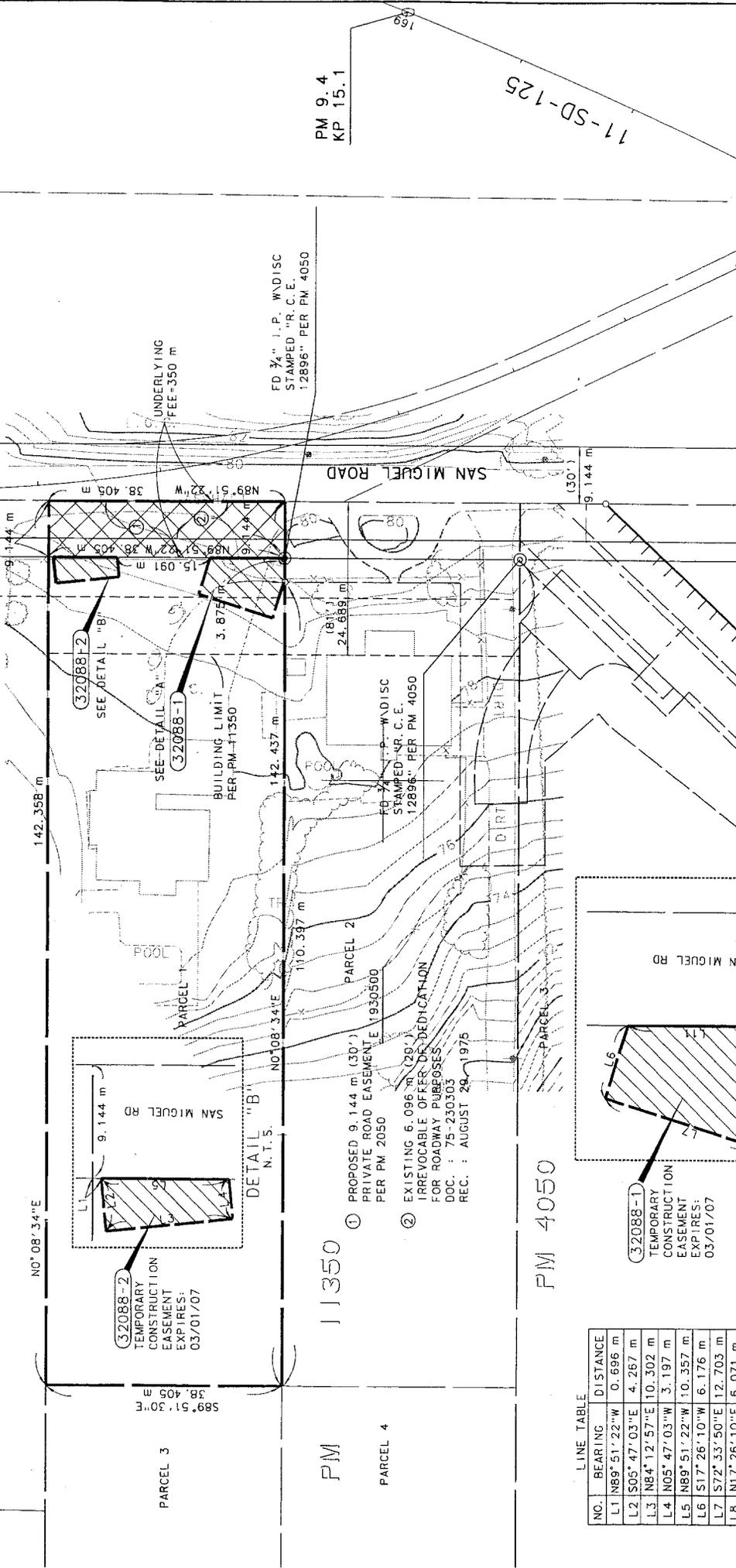
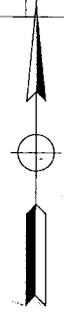
EXHIBIT "A" E.A. 232302

SUIT # 1302

COUNTY OF SAN DIEGO

T. 17 S. R. 1 W. S.B.M.

LIMIT OF PROPOSED STREET WIDENING PER PM 11350 & 4050



PM 9.4
KP 15.1

11-SD-125

FD 3/4" I.P. WADISC
STAMPED "R. C. E."
12896" PER PM 4050

UNDERLYING
FEE=350 m

(32088-2)
SEE DETAIL "B"

(32088-1)
SEE DETAIL "A"

BUILDING LIMIT
PER PM 11350

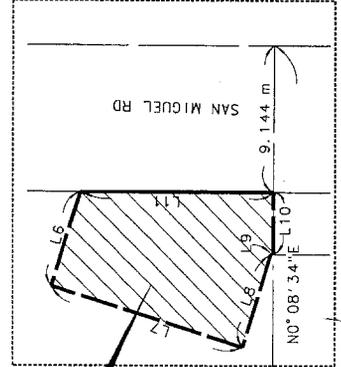
FD 3/4" I.P. WADISC
STAMPED "R. C. E."
12896" PER PM 4050

11350

PM 4050

(32088-2)
TEMPORARY
CONSTRUCTION
EASEMENT
EXPIRES:
03/01/07

(32088-1)
TEMPORARY
CONSTRUCTION
EASEMENT
EXPIRES:
03/01/07



DETAIL "A"
N.T.S.

LINE TABLE

NO.	BEARING	DISTANCE
L1	N89° 51' 22" W	0.696 m
L2	S05° 47' 03" E	4.267 m
L3	N84° 12' 57" E	10.302 m
L4	N05° 47' 03" W	3.197 m
L5	N89° 51' 22" W	10.357 m
L6	S17° 26' 10" W	6.176 m
L7	S72° 33' 50" E	12.703 m
L8	N17° 26' 10" E	6.071 m
L9	S90° 00' 00" E	0.163 m
L10	N00° 08' 34" E	3.875 m

- ① PROPOSED 9.144 m (30') PRIVATE ROAD EASEMENT E 1930500 PER PM 2050
- ② EXISTING 6.096 m (20') IRREVOCABLE OFFER OF DEDICATION FOR ROADWAY PURPOSES DOC. : 75-230303 REC. : AUGUST 29, 1975

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DISTRICT 11

CONDEMNATION MAP

RIGHT OF WAY MAP NO. Por. 52038m

COUNTY ROUTE PM/KP SCALE
SD 125 9.4/15.1 1:500

SHEET 2 OF 2

EXHIBIT "B" E.A. 232302

PARCEL NUMBER	VESTEE	AREAS (SQ. M. OR NOTED)	AREAS (SQ. FT. OR NOTED)	ACQUIS. REMAINDER	EXCESS	EXCESS	REMAINDER	REMAINDER CODE
32088-1	GEORGE & DIANE POWERS	102	0.03 AC	0.03 AC	1.23 AC	TCE		
32088-2	GEORGE & DIANE POWERS	38	0.01 AC	0.01 AC		TCE		