

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: April 25-26, 2007

Reference No.: 2.4a.
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 - APPEARANCE**

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-19596 summarized on the following page.

ISSUE:

Prior to initiating Eminent Domain proceedings to acquire needed right of way for a programmed project, the Commission must first adopt a Resolution of Necessity (RON), stipulating specific findings identified under Section 1245.230 of the Code of Civil Procedure, which are:

1. The public interest and necessity require the project.
2. The project is planned and located in a manner that will be most compatible with the greatest public good with the least private injury.
3. This property is necessary for the proposed project.
4. An offer to acquire the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property owner is contesting the RON and has requested an appearance before the Commission to discuss the outstanding issue, which is that the acquisition will impact potential second track expansion in the future.

BACKGROUND:

Discussions have taken place with the owner, who has been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which the owner may subsequently be entitled. Adoption of the resolution will not interrupt the Department's efforts to secure equitable settlement. In accordance with statutory requirements, the owner has been advised that 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-19596 - Union Pacific Railroad Company

05-SB-101-PM 11.9/12.5 - Parcel 8577-1, 2, 5, 6 - EA 447809.

Right of Way Certification Date: 07/02/07; Ready to List Date: 07/16/07. Freeway - reconstruct two interchanges, add lanes and ramp. Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, and a permanent easement. Located in the city of Santa Barbara between Milpas on-ramp and Hot Springs off-ramp. APNs 017-010-016, -017, -018, -019.

Attachments

SUMMARY OF ISSUES

The property owner, Union Pacific Railroad (UPRR), has expressed through their representatives, that they do not contest the purpose and need for the project. However, they have expressed concerns regarding potential impact to second track expansion in the future.

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

Owner:

The Department's project could be designed to avoid this parcel.

Department Response:

Construction of the proposed project will require additional right of way. Several alternatives were considered early in the project development process. This proposal meets the project need and has the least impact on the existing residential properties adjacent to the highway and to the environment. The proposed project is constrained by the UPRR parcel to the south and a residential neighborhood to the north. The fee purchase is necessary for the construction of the Milpas Street southbound on-ramp and widening of the southbound lanes. The easements are required for drainage and storm water treatment. The Department has evaluated the project design to minimize the required area from UPRR. This parcel cannot be avoided.

Owner:

The proposed acquisition will prohibit future track expansion, specifically, the addition of a second track to the north side of the existing single track. No specific plans for such expansion are under way at this time, but general requirements for track expansion would be a 15-foot standard spacing between track centerlines, plus an additional 15 feet for grading, plus a 2:1 slope. An additional five feet for drainage and ten feet for a maintenance road may be needed.

Department Response:

The Department's proposed acquisition provides an area primarily for drainage and storm water treatment, which will also benefit the UPRR property. The proposed acquisition north of the tracks does not constrain the addition of a second track. Should a second track be added in the future, in some short stretches, retaining walls would be required. The Department has committed to contribute funds for future retaining walls.

Owner:

Modifications to Sycamore Creek by the Department will create a potentially hazardous situation in that UPRR's existing culvert will not be able to accommodate the volume of water resulting from the proposed project.

Department Response:

The replacement of the Department's culvert at Sycamore Creek will not increase surface runoff flow to the UPRR culvert. Maximum flow to this section of the creek is controlled by upstream limitations (primarily city street bridges) that divert higher flows out of the channel. UPRR withdrew this concern during the October 19, 2006 site visit with Department representatives.

Owner:

Increased surface runoff flow at UPRR's culvert into the Andree Clark Bird Refuge resulting from additional paved area on State Route (SR) 101.

Department Response:

The Department has provided UPRR with information about the minimal increase in drainage that may occur through their culvert, in relation to the overall flow from the upstream watershed. UPRR also withdrew this concern during the October 19, 2006 site visit.

Owner:

Reduction of the 50-foot "safety" and "buffer" zones alongside the track intended to provide a refuge for personnel on foot to avoid moving trains and to reduce the risk of errant vehicles colliding with trains.

Department Response:

The "safety" zone on UPRR property would be reduced to 32 to 35 feet, providing a large refuge area for personnel on foot. The freeway lanes in the after condition will be in excess of 50 feet from the track, keeping a 50-foot "buffer" zone between trains and errant vehicles.

Owner:

Growth of proposed trees will overhang the right of way fence and require maintenance.

Department Response:

The Department has agreed to take responsibility for maintaining the trees and other vegetation planted within the drainage easement area. The Department's personnel will maintain the trees and vegetation at least once a year. Maintenance access will be from the highway side of the fence; the fence will be located along the Department's proposed easement boundary.

Owner:

The offer and the accuracy and adequacy of the appraisal summary statement required by Government Code Section 7267.2 and the Code of Civil Procedure Section 1245.230 was not properly made.

Department Response:

A written offer for the full amount of the Department's approved appraisal and a copy of the Appraisal Summary Statement was mailed to UPRR on January 23, 2006. A revised offer, for the full amount of the Department's approved revised appraisal, and a revised Appraisal Summary Statement were mailed on March 29, 2007. Said offers are in full compliance with Government Code Section 7267.2 and the Code of Civil Procedure Section 1245.230.

Owner:

The owner objects and alleges that the Notice of Intent (NOI) itself is defective because, among other reasons, it does not correctly describe the property or clearly describe the property interest that the Department seeks to acquire. Further, the NOI does not describe the proposed project or the public use for which the property is to be taken.

Department Response:

The NOI mailed to UPRR on July 21, 2006, included the legal description of the property sought to be acquired and included maps of the UPRR parcel needed for this project. A subsequent NOI was mailed on March 29, 2007, representing changes to the acquisition areas based on negotiations and agreements reached between the Department and UPRR. The NOI's were not defective and are in full compliance with the Code of Civil Procedure Sections 1245.230 and 1245.235.

Owner:

The Department or some other public agency may have failed to comply with California's Environmental Quality Act (CEQA) in approving the project.

Department Response:

The Department has followed all environmental guidelines of both CEQA and National Environmental Protection Act (NEPA). An Environmental Assessment to make operational improvements to SR 101 between Milpas Interchange and the Hot Springs/Cabrillo Interchange, in the city of Santa Barbara, in Santa Barbara County, was approved by the Federal Highway Administration on March 5, 2004. Project Approval was reached on March 11, 2004. The Supplemental Project Report was approved on November 9, 2006.

The project is located in the Coastal Zone and is subject to the City of Santa Barbara's Local Coastal Plan. The City issued a Coastal Development Permit for the project on December 16, 2004.

Attachments

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA 05-SB-101-PM 10.8/12.8
Expenditure Authorization (EA) 447809

Location: State Route (SR) 101 in Santa Barbara County

Limits: In the city of Santa Barbara, from 0.25 PM west of Olive Mill Road
Overcrossing to Milpas Street Undercrossing.

Cost: Programmed construction cost: \$47,531,000
Current right of way cost estimate: \$10,276,000

Funding Source: State: 2007/08 STIP
Local: Santa Barbara County Measure D

Number of Lanes: Existing: four-lane
Proposed: six-lane

Proposed
Major Features: Three Interchanges: Milpas Street, Salinas Street, Hot Springs Road
Sycamore Creek Bridge

Traffic: Existing (year 2005): 94,000 Average Annual Daily Traffic (AADT)
Proposed (year 2030): 141,000 AADT

PARCEL DATA

Property Owner: Union Pacific Railroad

Parcel Location: South of SR 101, east of Milpas Street
Assessor's Parcel Numbers 017-010-016, -017, -018, and -019

Present Use: Operational Transportation Corridor

Area of Property: Not Applicable

Area Required: Parcel 8577-1 = 29,742 square feet in fee
Parcel 8577-2 = 185 square feet in underlying fee
Parcel 8577-5 = 23,672 square feet in easement
Parcel 8577-6 = access rights

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met at the Department of Transportation's (Department) San Luis Obispo District office on November 28, 2006. The Panel members consisted of Donald Grebe, Department Headquarters (HQ) Division of Right of Way and Land Surveys; Daniel Weingarten, Department's San Francisco Legal Division; Linda Fong, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property owner, Union Pacific Railroad (UPRR), were Jeff Asay, Attorney for UPRR, and representatives included Garry Malmberg, Gary Riddle, Dan Miller and Freddy Cheung.

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 Department's Chief Engineer. The property owner does not contest the purpose and need for the project. The outstanding concern of UPRR is that the acquisition will impact potential second track expansion in the future.

NEED FOR THE PROJECT

This project is needed to address several transportation problems and deficiencies on the State Route (SR) 101 mainline and access ramps, local interchanges, and parallel arterials. These problems and deficiencies include:

- Traffic congestion during weekday and weekend evening peak hours.
- High collision concentrations and safety issues on SR 101 due to congestion, merging conflicts, short weaving distances, and non-standard on-ramps.
- Congestion/poor operations and safety issues at the Milpas Interchange, the Cabrillo/Hot Springs Interchange, and ramps, due to merging conflicts and high traffic volumes.
- Poor access for all travel modes between lower eastside area and waterfront area.
- Congestion/poor operations and safety issues at the SR 101/Cabrillo/Hot Springs Interchange due to non-standard ramp geometry, high volumes of northbound on-ramp traffic merging onto SR 101, and Los Patos off-ramp geometry.

The Average Annual Daily Traffic (AADT) for year 2005 was 94,000, causing the freeway to operate at Level of Service (LOS) E/F during peak hours. The LOS will worsen substantially by the 2030 design year with a projected AADT of 141,000.

The Santa Barbara County Association of Governments (SBCAG) has consistently supported this project as its top priority.

PROJECT PLANNING AND LOCATION

The project is to construct operational improvements to the existing four-lane freeway to relieve congestion and congestion-related accidents within the project limits. The approved project was referred to as Alternative P in the original Project Report and subsequently in the Final Environmental Impact Report and Supplemental Project Report. The Project Development Team

selected the preferred alternative on May 29, 2003, based on input received during the comment period. The Project Development Team determined that this alternative best met the project needs and community desires, with the least environmental consequences.

The approved project combined features of the viable alternatives presented in the Draft Environmental Impact Report and included some unique features added as a result of input from the public and local agencies.

The approved project includes the following features:

- Construct a third southbound lane from Milpas Street to the Cabrillo/Hot Springs Interchange, add a northbound and southbound lane over Milpas Street, and construct a new southbound loop off-ramp at Milpas Street.
- Shift freeway alignment to the south at Milpas Street to accommodate a three-lane northbound bridge.
- Construct the Cacique Street Undercrossing to connect Cacique Street between Milpas Street and Alisos Street.
- Replace the Sycamore Creek Bridge at SR 101.
- Close the Cabrillo Boulevard southbound inside on-ramp. The Cabrillo Boulevard southbound inside off-ramp and Los Patos off-ramp will remain open. Should safety concerns develop in the future regarding the Los Patos off-ramp, the Department maintains the ability to close this ramp permanently.
- Construct a consultant-designed (Moffatt and Nichol) roundabout at the intersection of Cabrillo Boulevard with Hot Springs Road, Coast Village Road, and Old Coast Highway.
- Modify/realign the stop controlled intersection of Cabrillo Boulevard with the northbound and southbound ramps.
- Provide a pedestrian/bicycle facility through the Cabrillo Boulevard interchange.
- Realign the entrance to the northbound Cabrillo off-ramp to decrease vehicle speeds, and add a pedestrian crossing/connection to Old Coast Highway.
- Continue the third southbound lane by replacing railings on the existing Cabrillo Boulevard Undercrossing, ending the lane just prior to the Olive Mill Road off-ramp.
- Construct a northbound auxiliary lane from the Cabrillo Boulevard on-ramp to the Salinas Street off-ramp.
- Replace the Milpas Street Bridge.

A Supplemental Project Report was approved on November 9, 2006, to incorporate the following scope changes into the project:

- Add a continuous third northbound lane from the Salinas Street on-ramp to the Milpas Street on-ramp in place of the second northbound auxiliary lane.
- Replace the northbound Milpas Street Bridge structure.
- Replace the existing 12-foot planted median with a new 10-foot planted median.
- Add a sidewalk along Old Coast Highway from Hot Springs Road to Park Place.
- Incorporate design work by an SBCAG consultant (Moffatt and Nichol) as part of the Department's contract Plans, Specification and Estimates (PS&E) to be advertised as a single bid package.

The additional northbound and southbound lanes and northbound auxiliary lane will improve SR 101 traffic flow and merging at on- and off-ramps. The new southbound loop off-ramp will improve southbound access to Milpas Street, and closing the Cabrillo inside off-ramp will eliminate one of three non-standard ramps and improve operations at Cabrillo Boulevard. The project also provides a number of local street bicycle and pedestrian improvements.

The Department conducted three formal community meetings and two informal open houses for this project between October 2002 and January 2003. The environmental document for this project was approved on March 5, 2004, and Project Approval and Environmental Document (PA&ED) was reached on March 11, 2004. The Supplemental Project Report was approved on November 9, 2006.

NEED FOR SUBJECT PROPERTY

This portion of the freeway runs in an east-west direction and is tightly constrained in a corridor bounded by the railroad property to the south and dense housing to the north. Construction of the proposed project will require additional right of way. The project is designed to avoid displacement and relocation of residents to the north; therefore, any right of way needs must be acquired from the railroad property to the south.

Construction of the additional southbound lane will require the purchase of additional right of way from the adjoining rail corridor paralleling SR 101. Right of way impacts will require a longitudinal fee acquisition of approximately 29,742 square feet for on-ramp reconstruction and widening of the southbound lanes; an underlying fee acquisition of a small triangular parcel, approximately 185 square feet, that is detached from the rail corridor and within the existing freeway right of way; an easement of 23,672 square feet for drainage and storm water treatment; and access rights along the southbound on-ramp at Milpas Street.

The following is a description of the concerns expressed by representatives of UPRR, followed by the Department's response:

Owner:

The Department's project could be designed to avoid this parcel.

Department Response:

Construction of the proposed project will require additional right of way. Several alternatives were considered early in the project development process. This proposal meets the project need and has the least impact on the existing residential properties adjacent to the highway and to the environment. The proposed project is constrained by the UPRR parcel to the south and a residential neighborhood to the north. The fee purchase is necessary for the construction of the Milpas Street southbound on-ramp and widening of the southbound lanes. The easements are required for drainage and storm water treatment. The Department has evaluated the project design to minimize the required area from UPRR. This parcel cannot be avoided.

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Administration on March 5, 2004. Project Approval (PA&ED) was reached on March 11, 2004. The Supplemental Project Report was approved on November 9, 2006.

The project is located in the Coastal Zone and is subject to the City of Santa Barbara's Local Coastal Plan. The City issued a Coastal Development Permit for the project on December 16, 2004.

PARCEL DESCRIPTION

The subject parcel is identified as Assessor's Parcel Number 017-010-016 through 017-010-019 in the city of Santa Barbara, in Santa Barbara County. The parcel use is an Operational Transportation Corridor. The rail line subject to the proposed acquisition is improved with a single-track "main" line that provides through passage to both freight and passenger markets along the Pacific Coast of California and beyond.

There are no compensable improvements in the proposed purchase area.

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 project 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 rights to be condemned are 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.

DONALD E. GREBE
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 CONDEMNATION PANEL REVIEW MEETING
HEARING ON NOVEMBER 28, 2006**

Donald Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair
Dan Weingarten, San Francisco Legal Office Attorney, Panel Member
Linda Fong, HQ's Division of Design, Panel Member
Deborah Gebers, HQ's Division of Right of Way and Land Surveys, Panel Secretary

Jeff Asay, Attorney for the Owner
Garry Malmberg, UPRR Senior Manager - Real Estate
Gary Riddle, UPRR Program Manager
Freddy Cheung, UPRR Manager Industrial Project Program
Dan Miller, UPRR Manager Industrial Project Program

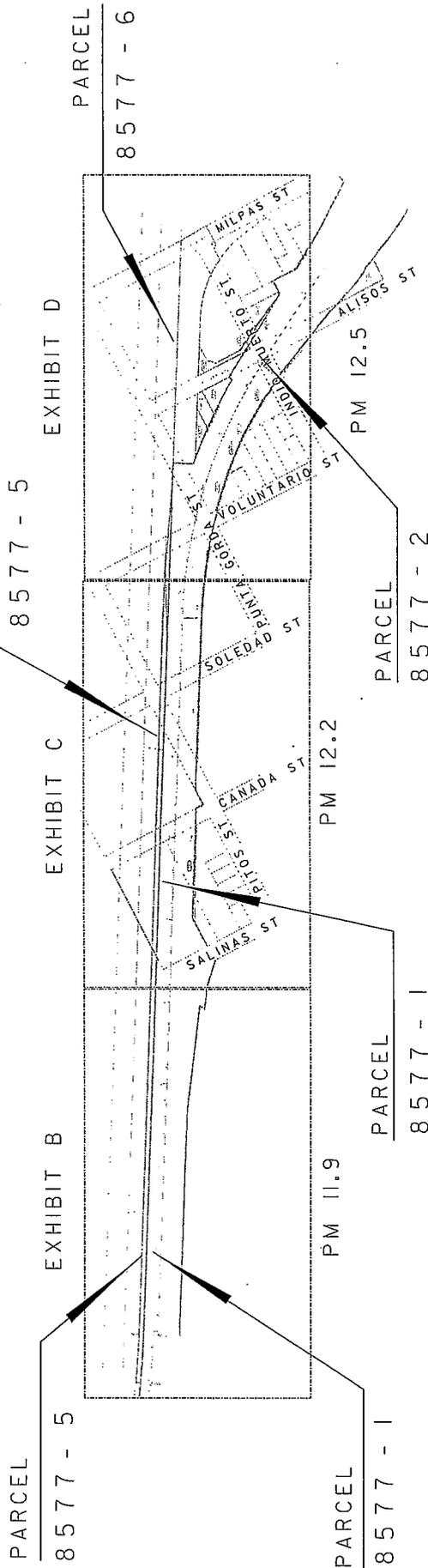
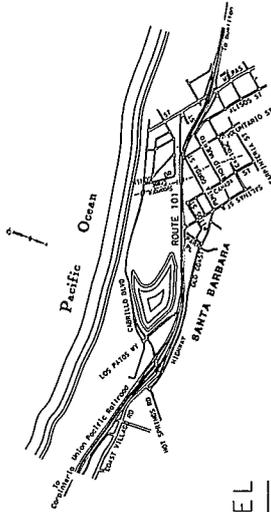
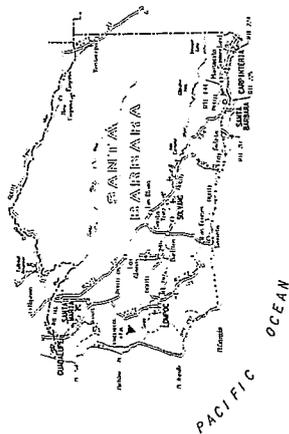
Richard Krumholz, District 5 District Director
Michael Janzen, Central Region Design
David Beard, Central Region Design
David Fapp, Central Region Design
Tim Gubbins, District 5 Project Management
Scott Eades, District 5 Project Management
Jamie Lupo, Central Region Right of Way

Fred Luna, Santa Barbara County Association of Governments

DEPARTMENT OF TRANSPORTATION

STATE HIGHWAY
ROUTE 101
IN SANTA BARBARA COUNTY

CITY OF SANTA BARBARA



STATE OF CALIFORNIA BUSINESS, TRANSPORTATION AND HOUSING AGENCY DEPARTMENT OF TRANSPORTATION			
RESOLUTION OF			
NECESSITY MAP INDEX			
"EXHIBIT A"			
DIST.	COUNTY	ROUTE	POST MILE
05	SB	101	11.9 / 12.5

STANDARD CHANGES E. A. 44/802

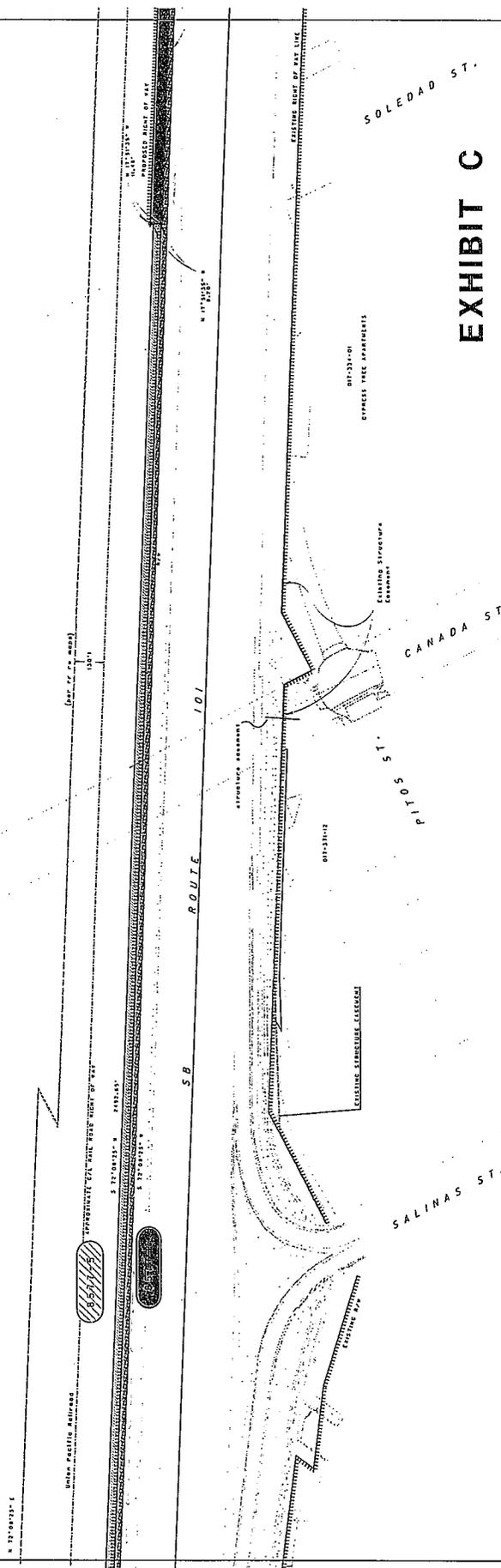
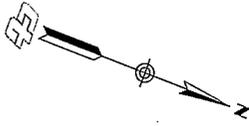


EXHIBIT C

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION

RESOLUTION OF NECESSITY MAP

GRANTOR NOTES	NOTES
<p>① ALL PARCEL AREAS EXCLUDE EXISTING PUBLIC ROAD RIGHT OF WAY UNLESS OTHERWISE NOTED.</p> <p>② ACQUISITION CODES: A Access Rights Only B Easement C Easement D Other</p>	<p>COORDINATES AND BEARINGS ARE ON CCS BY ZONE 5 DISTANCES AND STATIONING ARE GRID DISTANCES. MULTIPLY BY 10000739 TO OBTAIN GROUND DISTANCES. TO CONVERT METERS TO U.S. SURVEY FEET MULTIPLY DISTANCES BY .3037800.</p> <p>LEGEND</p> <p> Access Prohibited --- Access Previously used ■ Access Opening () Record Date</p>

PARCEL #	GRANTOR	REMARKS	GRANTOR NOTES	NOTES
	F UNION PACIFIC RAILROAD	FEE		
	E UNION PACIFIC RAILROAD	EASEMENT		

DIST.	COUNTY	ROUTE	POST MILE
05	SB	101	12.2

SOURCE: 06... CHANGI 05... I. A. 447802

