

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: May 28-29, 2008

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: **RESOLUTION OF NECESSITY - APPEARANCE**

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-19871 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, stipulating specific findings identified under Section 1245.230 of the Code of Civil Procedure, which are:

1. The public interest and necessity require the proposed project.
2. The proposed project is planned and located in a manner that will be most compatible with the greatest public good and 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 owners are contesting the Resolution and have requested an appearance before the Commission to challenge the outstanding issues. However, at the request of the property owner, objections to the Resolution have been submitted in writing in lieu of a personal appearance before the Commission. The owner's objections are included as Attachment A. The Department's responses to the owner's objections are contained in Attachment B.

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 an 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-19871 - Ryder Truck Rentals, Inc., a Florida Corporation, CBS Outdoor Advertising (Lessee)
03-Yol-50-PM 1.7 - Parcel 033423-1, 2 - EA 388009.

Right of Way Certification Date: 06/15/08; Ready to List Date: 06/15/08. Freeway - widen overcrossing and redesign of the eastbound ramps. Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, and a temporary easement for construction purposes. Located in the city of West Sacramento at 2599 Evergreen Avenue. APN 67-200-002.

Attachments:

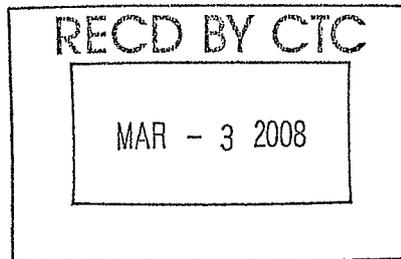
Attachment A - Owners Written Objections dated February 27, 2008

Attachment B - Department response dated April 29, 2008

Attachment C - Fact Sheet

Exhibits A and B - Maps

38th Floor
725 South Figueroa Street
Los Angeles, California 90017-5438
www.akerman.com
213 688 9500 *tel* 213 627 6342 *fax*



Fort Lauderdale
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Tysons Corner
Washington, DC
West Palm Beach

February 27, 2008

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

John F. Barna, Jr.
Executive Director
CALIFORNIA TRANSPORTATION COMMISSION
1120 N Street, Room 2221 (MS-52)
Sacramento, CA 95814

**Re: Ryder Services
03-YOL-50 PM 1.7, EA 388009, Parcel No. 033423-1,-2,-3**

Dear Mr. Barna:

By this letter Ryder Services ("Ryder"), owner of the property in Yolo County described above, objects to the proposed Resolution of Necessity for the taking of this property by the California Department of Transportation ("CalTrans"). This letter is submitted in lieu of a personal appearance at the hearing in connection with the proposed Resolution of Necessity. The request to personally appear at the hearing is hereby withdrawn.

Ryder objects to the proposed Resolution of Necessity because the written appraisal statement that CalTrans sent Ryder on or about August 28, 2007 is legally inadequate. CalTrans' sending Ryder a legally adequate written appraisal statement is a mandatory precondition for the adoption of a Resolution of Necessity.

The legal obligations imposed on CalTrans for sending Ryder an adequate written appraisal statement were summarized by the California Court of Appeal in *People ex rel. Dept. of Transportation v. Cole*, 7 Cal.App.4th 1281 (1992). The Court held:

Before initiating eminent domain proceedings, the governing body of the public entity must adopt a resolution of necessity. (*Code Civ. Proc.*, § 1245.220.)

ATTACHMENT A

Before adopting a resolution of necessity, the public entity must establish an amount it believes to be just compensation for the property and make an offer to the owner for that amount. (*Gov. Code*, § 7267.2, subd. (a).) The offer must be accompanied by a written statement of the basis for the amount established as just compensation. (*Ibid.*; see *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005, 1011-1013 [237 Cal.Rptr. 845].) The resolution of necessity must contain a declaration “[t]hat either the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.” (*Code Civ. Proc.*, § 1245.230, subd. (c)(4).)

Id. at 1284 (footnote omitted).

The Court of Appeal further held that, in matters pending before this Commission, the issue of the adequacy of CalTrans’ written appraisal statement is included in the issue of whether CalTrans has made the required written appraisal statement. It is an issue that must be raised before, and decided by, this Commission. The issue of whether CalTrans has furnished an adequate written appraisal statement is “distinct” from the issue of the amount of compensation. *Id.* at 1284-86.

CalTrans’ written appraisal statement is inadequate for the following reasons:

First, CalTrans has advised Ryder that the scope of the property that CalTrans has proposed to acquire has significantly changed. In addition, CalTrans has advised that it intends to acquire a temporary construction easement. The written appraisal statement no longer accurately reflects the property that CalTrans has proposed to acquire.

Second, CalTrans’ written appraisal statement is based on sales of four allegedly comparable parcels of property. The sales dates for these four parcels range from two years ago to almost four years ago. CalTrans’ written appraisal statement is thus outdated.

Third, the appraisal methodology used in the written appraisal statement is so significantly flawed that it does not reflect what could be reasonably deemed to be just compensation for Ryder’s property.

The Ryder land that CalTrans proposes to take does not include building improvements. Nonetheless, three of the parcels in CalTrans’ written appraisal statement are not unimproved land but improved land. CalTrans used the assessed value of the land without the improvements, determined for property tax purposes, as the supposed comparable value of unimproved land.

This “extraction” method used in CalTrans’ written appraisal statement is not a proper method of determining the value of unimproved land. Persons who assess land for tax purposes are not appraisers and do not make full property appraisals in determining assessed values for “improvements” and “land” in making their assessments. Even for the most highly trained

appraisers, making full property appraisals, trying to separate the value of "improvements" from the value of "land", is extremely difficult. No highly trained appraiser would use the "extraction" method used in CalTrans' written appraisal statement except as an absolute last resort where there were no unimproved parcels that could be used as comparables. That is not the case here.

In addition to the improper methodology for three of the supposed comparable properties described above, CalTrans has listed a sales value for the fourth property that is not accurate.

Fourth, CalTrans' written appraisal statement does not include any severance damages for the loss of value to the portion of Ryder's property remaining after CalTrans' proposed taking of part of Ryder's property.

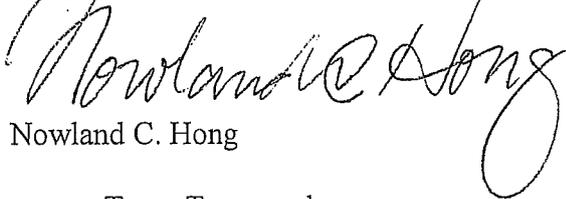
Fifth, CalTrans' written appraisal statement does not include any damages for the loss of good will to Ryder's business resulting from CalTrans' proposed taking of part of Ryder's property.

Sixth, CalTrans' written appraisal statement does not include any damages for the loss of income from the billboard on the property that is leased by Ryder to CBS. The billboard will have to be removed in connection with CalTrans' proposed taking of part of Ryder's property.

For the reasons stated above, CalTrans' written appraisal statement is so inadequate that CalTrans has failed to furnish Ryder with a legally adequate written appraisal statement that complies with the requirements of *Government Code* § 7267.2 (a) and *Code of Civil Procedure* § 1245.230(c)(4). Because sending Ryder an adequate written appraisal statement is a necessary precondition to the adoption of a Resolution of Necessity, this Commission should not adopt a Resolution of Necessity for the Ryder property in this matter.

Very truly yours,

AKERMAN SENTERFITT LLP



Nowland C. Hong

cc: Tarey Townsend,
Right of Way Agent

ATTACHMENT A

DEPARTMENT OF TRANSPORTATION

DISTRICT 3
703 B STREET
P. O. BOX 911
MARYSVILLE, CA 95901-0911
PHONE (530) 741-4499
FAX (530) 741-4490
TTY (530) 741-4509



*Flex your power!
Be energy efficient!*

April 29, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ryder Truck Rentals, Inc., a Florida Corporation
C/O Akerman Senterfitt LLP
Wickwire Gavin
Attention: Nowland C. Hong
725 S. Figueroa Street, 38th Floor
Los Angeles, CA 90017-5438

03-YOL-50 PM 1.7
E.A. 388009
No. 033423-1,2
RYDER

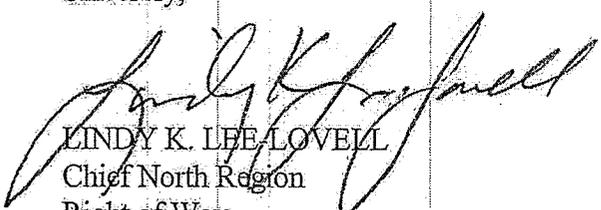
Dear Mr. Hong:

The California Transportation Commission (Commission) scheduled a hearing to consider adoption of a Resolution of Necessity on Ryder property in West Sacramento. That hearing was deferred and will now be heard at the Commission's May 28-29, 2008 meeting in San Diego, California. You submitted a letter dated February 27, 2008 in lieu of a personal appearance at the Commission hearing in connection with that proposed Resolution of Necessity.

Attached is the Department of Transportation's response to your concerns and/or issues as to whether it has furnished an adequate written appraisal statement.

The revised acquisition area, together with the corresponding appraisal revision and offer addresses your client's issues. If you agree that your concerns have been adequately addressed, please sign the attached withdrawal letter.

Sincerely,



LINDY K. LEE LOVELL
Chief North Region
Right of Way

Enclosure

ATTACHMENT B

Ryder Truck Rentals, Inc. CONCERNS	Department of Transportation RESPONSE
<p>First, CalTrans has advised Ryder that the scope of the property that CalTrans has proposed to acquire has significantly changed. In addition, CalTrans has advised that it intends to acquire a temporary construction easement. The written appraisal statement no longer accurately reflects the property that CalTrans has proposed to acquire.</p>	<p>Per Ryder's request, to minimize the impacts to the parcel, the State has reduced the proposed fee acquisition area by moving the proposed right of way 3 meters (10 feet) toward Route 50. This will be accomplished by placing a concrete barrier at the edge of the shoulder of the ramp with the right of way fence directly on top of it. This will reduce the acquisition area by 500 square meters (5400 square feet) and will result in 10 fewer parking spaces being affected. A revised appraisal has been completed and corresponding revised offer made. A small, additional temporary construction easement has since been found to be necessary. The value of this temporary right has been addressed in the latest offer.</p>
<p>Second, CalTrans' written appraisal statement is based on sales of four allegedly comparable parcels of property. The sales dates for these four parcels range from two years ago to almost four years ago. CalTrans' written appraisal statement is thus outdated.</p>	<p>The value of the subject site was determined by direct comparison with actual market data. In the process of valuation, a search was made for sales of parcels of land with characteristics similar to those of the subject property that were available for development for light industrial development. Five more recent closed sales (recorded from January 2007 to May 2007) were included in revised analysis and subsequent revised offer.</p>
<p>Third, the appraisal methodology used in the written appraisal statement is so significantly flawed that it does not reflect what could be reasonably deemed to be just compensation for Ryder's property.</p> <p>The Ryder land that CalTrans proposes to take does not include building improvements. Nonetheless, three of the parcels in CalTrans' written appraisal statement are not unimproved land but improved land. CalTrans used the assessed value of the land without the improvements, determined for property tax purposes, as the supposed comparable value of unimproved land.</p> <p>This "extraction" method used in CalTrans' written appraisal statement is not a proper method of determining the value of unimproved land. Persons who assess land for tax purposes are not appraisers and do not make full property appraisals in determining assessed values for "improvements" and "land" in making their assessments. Even for the most highly trained appraisers, making full property appraisals, trying to separate the value of "improvements" from the value of "land", is extremely difficult. No highly trained appraiser would use the "extraction" method used in CalTrans' written appraisal statement except as an absolute last resort where there were no unimproved parcels that could be used as comparables. That is not the case here.</p>	<p>The current appraisal and offer utilizes bare land sales. Regardless of the method of valuation, any dispute over the amount of compensation is outside the purview of a Resolution of Necessity and would appropriately be handled by the court in a condemnation action.</p>
<p>Fourth, CalTrans' written appraisal statement does not include any severance damages for the loss of value to the portion of Ryder's property remaining after CalTrans' proposed taking of part of Ryder's property.</p>	<p>After full consideration, the State Appraiser has determined that because of the loss in parking spaces a damage payment for the remainder parcel is appropriate. This amount is included in the revised offer.</p>
<p>Fifth, CalTrans' written appraisal statement does not include any damages for the loss of goodwill to Ryder's business resulting from CalTrans' proposed taking of part of Ryder's property.</p>	<p>The valuation of Goodwill requires the establishment of income and expenses. A goodwill package, which requests this data was provided to the grantor. Any loss of goodwill will be addressed once a completed goodwill package is returned.</p>
<p>Sixth, CalTrans' written appraisal statement does not include any damages for the loss of income from the billboard on the property that is leased by Ryder to CBS. The billboard will have to be removed in connection with CalTrans' proposed taking of part of Ryder's property.</p>	<p>No compensation was given for the sign site lease. According to Caltrans' Outdoor Advertising Section and Yolo County, this is a non-conforming sign that can be relocated to the remainder. The sign can be moved and the Grantor will continue to receive sign site lease payments.</p>

DEPARTMENT OF TRANSPORTATION

DISTRICT 3
703 B STREET
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PHONE (530) 741-4499
FAX (530) 741-4490
TTY (530) 741-4509



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April 30, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ryder Truck Rentals, Inc., a Florida Corporation
C/O Akerman Senterfitt LLP
Wickwire Gavin
Attention: Nowland C. Hong
725 S. Figueroa Street, 38th Floor
Los Angeles, CA 90017-5438

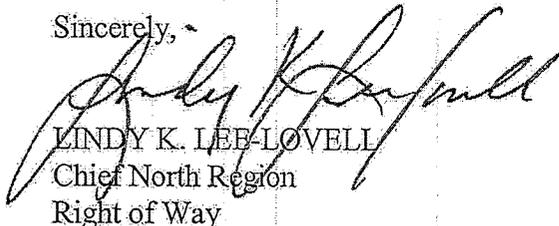
03-YOL-50 PM 1.7
E.A. 388009
No. 033423-1
RYDER

Dear Mr. Hong:

Department of Transportation presented revised offer via email, April 18, 2008. All design concerns have been addressed. Any remaining issues would be a compensation matter.

If you feel that those concerns have indeed been adequately addressed, eliminating the need for even your letter being included in the record, please sign the written withdrawal below.

Sincerely,



LINDY K. LEE-LOVELL
Chief North Region
Right of Way

WITHDRAW APPEARANCE REQUEST: Department of Transportation has addressed design concerns. Any remaining issues would be compensation concerns. There's no need to continue with an appearance request. Please withdraw Ryder Truck Rentals, Inc., a Florida Corporation's Request to Appear at the The California Transportation Commission (CTC) meeting May 28-29, 2008.

RYDER TRUCK RENTALS, INC., a Florida Corporation

Date

ATTACHMENT B

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA: 03-Yol-50-PM 1.7
Expenditure Authorization (EA) 388009

Location: Route 50 in Yolo County

Limits: In Yolo County, 0.81 miles west of the Harbor Boulevard overcrossing, to 0.87 miles east of Harbor Boulevard overcrossing.

Cost: Right of Way Cost: \$7,500,000
Construction Cost: \$26,000,000

Funding Source: 2008 State Transportation Improvement Program, Local Funds

Number of Lanes: Existing: Harbor Boulevard-Four Lanes
Proposed: Harbor Boulevard-Six Lanes

Proposed Major Features: Reconfigure existing Route 50 and Harbor Boulevard interchange.

Traffic: Route 50 Existing (2006): Average Daily Traffic (ADT) – 137,400
Route 50 Proposed (2031): ADT – 219,800

PARCEL DATA:

Property Owner: Ryder Truck Rentals, Inc., a Florida Corporation

Lessee: CBS Outdoor Advertising

Parcel Location: Assessor's Parcel Number 067-200-002
Located at 2599 Evergreen Avenue

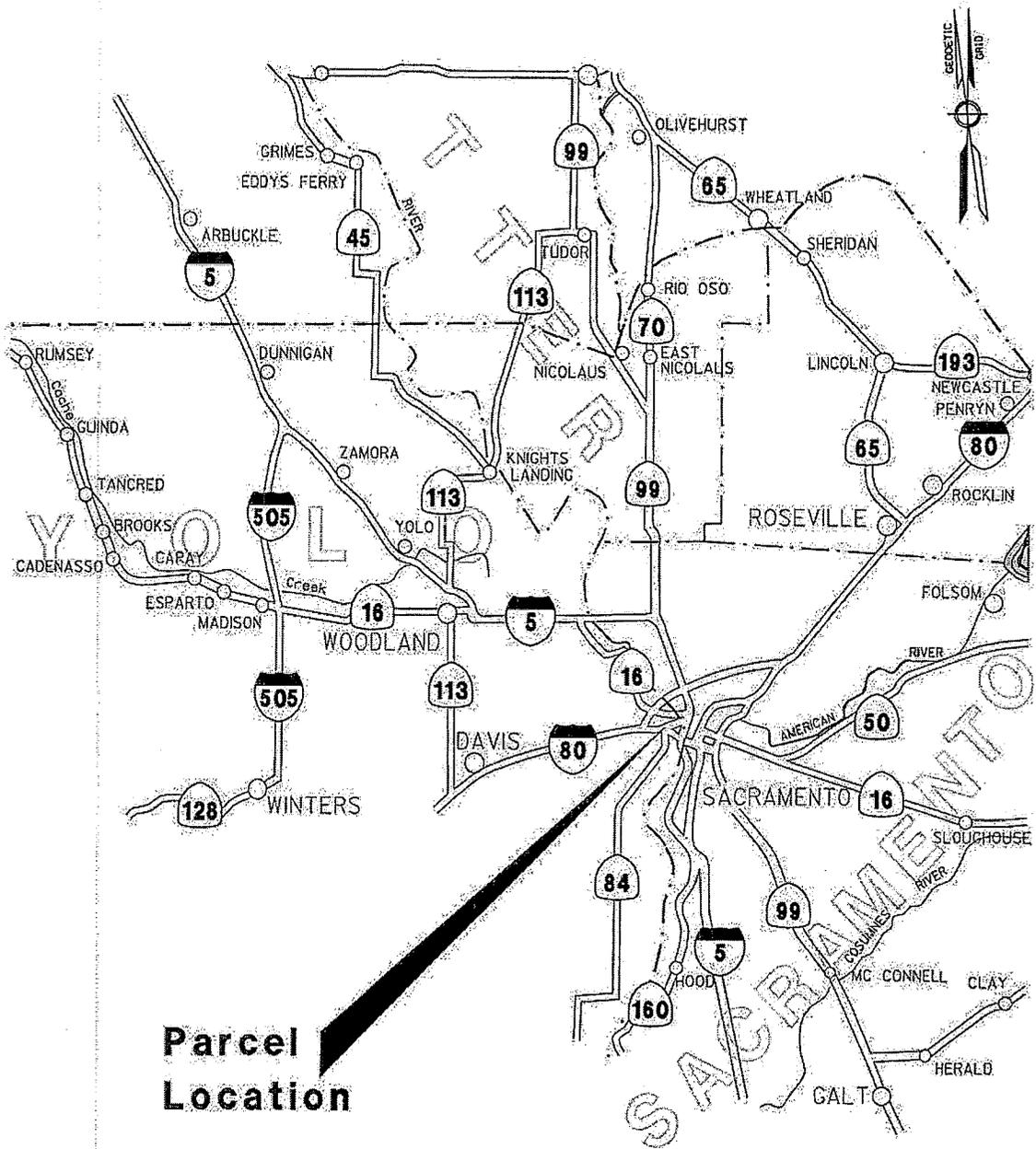
Present Use: Industrial

Zoning: M-1 Industrial

Area of Property: 192,969 Square Feet (SF) (4.43 acre)

Area Required: Parcel 033423-1 – 8327 SF (Fee)
Parcel 033423-2 – 4775 SF (Temporary Construction Easement)

ATTACHMENT C



**Parcel
Location**

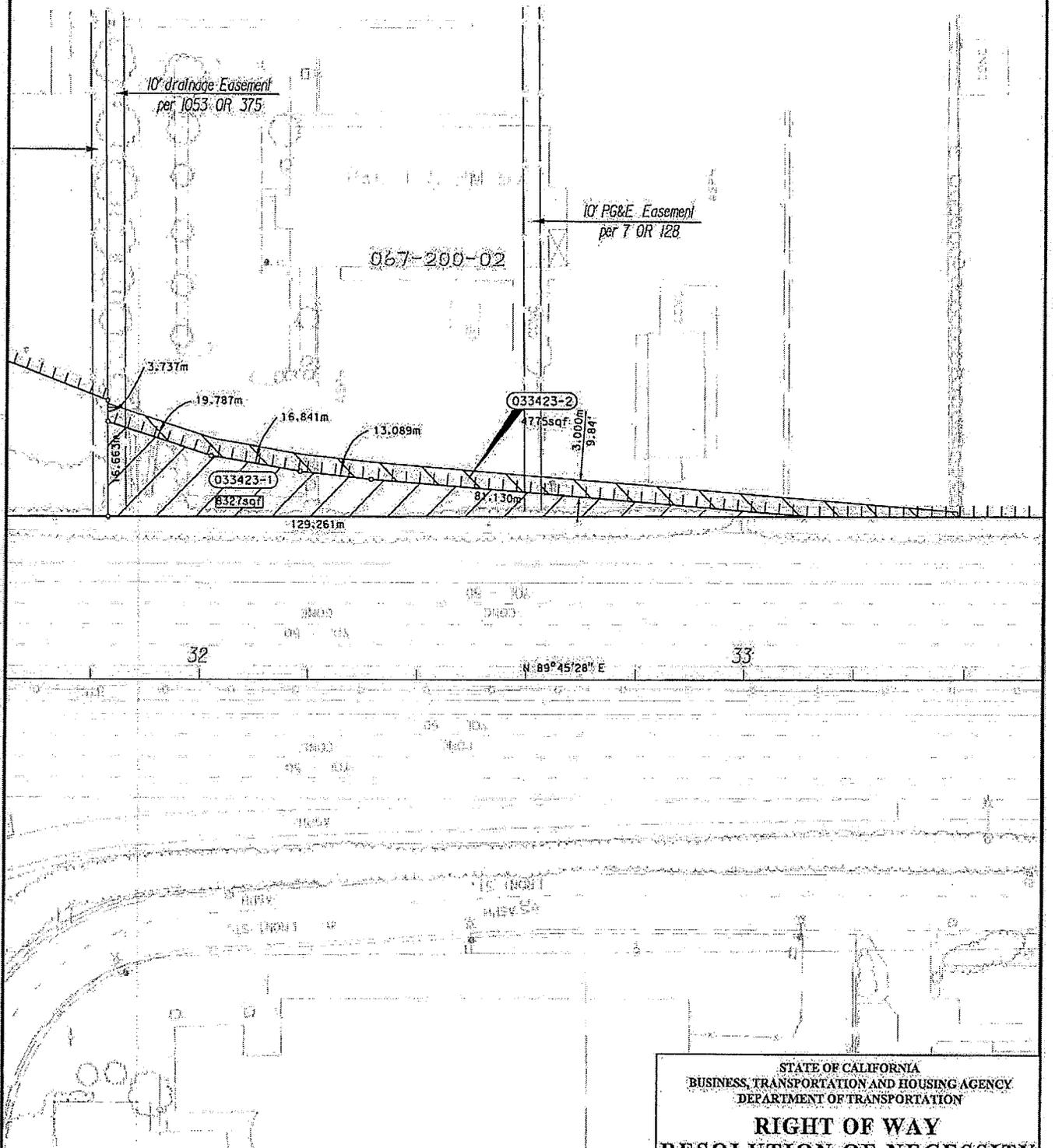
STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION

**RIGHT OF WAY
RESOLUTION OF NECESSITY**

EXHIBIT A

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET	KP/PM	SHEET NO.	TOTAL SHEETS
03	YOL	50	1.841.1		1	2



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

**RIGHT OF WAY
RESOLUTION OF NECESSITY**

EXHIBIT B

METERS 0 10 25 50
FEET 0 25 50 100 150

DISTRICT	COUNTY	ROUTE	SHEET KP/PM	SHEET NO.	TOTAL SHEETS
03	YOL.	50	2.3/1.4	2	2

EXHIBIT B