

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: December 9-10, 2009

Reference No.: 2.4a.(2)
Action Item

From: NORMA ORTEGA
Chief Financial Officer (Interim)

Prepared by: Tony Tavares
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 (Resolution) C-20216 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 owner is contesting the Resolution and has requested an appearance before the Commission. The property owner believes that the project, as proposed, is not compatible with the greatest public good and the least private injury, and that the acquisition of the property could be avoided by construction of a soundwall along State Route 76, on the eastern portion of the property. The owner's objections and the Department's responses are contained in Attachments A and 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 she 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.

Extensive discussions have been ongoing between the property owner and the Department to address and resolve the issues, but these efforts have proven unsuccessful. Based on the impasse, the Department is requesting that this appearance proceed to the December 9-10, 2009 Commission meeting. Legal possession will allow construction activities on the parcel to commence, thereby avoiding and/or mitigating considerable right of way delay costs that will continue to accrue if efforts to initiate the condemnation process are not taken immediately to secure timely legal possession of the subject property.

C-20216 - Sheryl A. Hailey, et al.

11-SD-76-PM 10.4 - Parcel 33141-1 - EA 080109

Right of Way Certification Date: 06/30/09; Ready to List Date: 07/22/09.

Conventional highway - construct four-lane conventional highway. Authorizes condemnation of land in fee for a State highway. Located in the town of Bonsall at 30673 Emerald Hill Road.

APNs 126-170-62, -63.

Attachments:

Attachment A - Project Information

Exhibit A1 through A2 - Project Maps and Photos

Attachment B - Parcel Panel Report

Exhibit B-1 through B2 - Parcel Maps and Photos

PROJECT INFORMATION

PROJECT DATA

11-SD-76-PM 7.5/13.0
EA: 080109

- Location: State Route (SR) 76 in the town of Bonsall, in San Diego County
- Limits: In and near Oceanside from 0.5 miles west of Melrose Drive to 0.5 miles east of East Vista Way
- Cost: Construction Cost: \$74,500,000
Right of Way Cost: \$55,000,000
- Funding Source: Federal (ARRA, HPP, DEMO, SAFETEA-LU, and TEA 21),
State Programs (RSTP and STP)
Local Programs (TRANSNET-1 and TRANSNET-2).
- Number of Lanes: Existing: two-lane
Proposed: four-lane
- Proposed Major Features: Widening from a two-lane conventional highway to a four-lane divided highway with a 16 foot median.

NEED FOR THE PROJECT

SR 76 is a heavily traveled two-lane conventional highway serving intraregional, interregional, commuter and recreational traffic from Interstate (I)-5 to I-15. Continued growth and development in northern San Diego County, coupled with substantial growth in Southern Riverside County has resulted in a higher than average annual increase in traffic on SR 76.

Operational and safety concerns within the project limits include:

- Traffic has increased from five to nine percent annually within the project limits.
- Traffic conflicts are generated by turning and merge/diverge movements from local road and driveway intersections, which lead to substantial delays.
- Long queues for traffic at signals at East Vista Way, Olive Hill Road and South Mission Road.
- Higher than average concentration of collisions throughout the project.
- Numerous uncontrolled access points.
- Inadequate local road circulation network.
- Lack of shoulders.
- Nonstandard geometric features.

Based on regional projections in the San Diego Association of Governments (SANDAG) 2030 Regional Transportation Plan, increases in growth and traffic are expected into the foreseeable future. SANDAG, the City of Oceanside, the County of San Diego, and the unincorporated communities of Bonsall and Fallbrook have all expressed an urgent desire to reduce congestion, promote greater regional mobility, and improve user safety while minimizing the project's effects on the environment and local communities.

The existing conventional highway consists of two 12-foot wide lanes, and shoulder widths that vary from zero to four feet. The right of way width throughout the project limits varies from 40 to 70 feet. The existing highway is no longer able to accommodate the increasing traffic volumes. By implementing current highway design standards, the proposed project would correct existing roadway deficiencies, improve motorist and worker safety, enhance mobility and relieve congestion.

The proposed project can be broken down into five segments. All five segments of the project corridor operate below Level of Service "C" with two of the segments currently operating at a Level of Service "F". 2030 volume projections indicate the route will continue to deteriorate.

LOCATION	Level of Service				
	2005 LOS	No Build		4-lane Highway	
		2011 LOS	2030 LOS	2011 LOS	2030 LOS
Melrose Drive to Singh Way	F	F	F	C	D
Singh Way to East Vista Way	F	F	F	C	D
East Vista Way to North River Road	D	F	F	B	C
N. River Road to Via Montellano	D	F	F	B	C
Via Montellano to Olive Hill Road	D	F	F	B	C
Olive Hill Road to South Mission Road	F	F	F	B	C

The accident history for this section of the highway for the most current three-year period between June 2004 and May 2007 indicates the fatal accident rate and total accident rate are below State average for similar facilities.

PROJECT PLANNING AND LOCATION

This project proposes to convert a 5.5 mile segment of SR 76 from a two-lane conventional highway to a four-lane barrier-divided conventional highway with median and outside shoulders, and minor alignment adjustments to improve curve transitions from Melrose Drive in Oceanside to South Mission Road in Bonsall. The project will improve safety along SR 76 by improving traffic flow and reducing congestion through the corridor, while preserving critical habitat in and along the San Luis Rey River. This project has been assigned Project Development Processing Category One because it requires substantial new right of way and increases traffic capacity. The project is fully funded through the construction phase.

SR 76 was added to the State Highway System in 1933. On January 22, 1963, the portion of the route between I-5 and I-15 was added to the Freeway and Expressway system by the California Highway Commission. In 1983 an alternative analysis was conducted in response to environmental concerns over SR 76 improvements. The freeway proposal was dropped from consideration due to cost concerns and environmental impacts to the San Luis Rey River Valley. In 1992 and 1993 further studies concluded that there were no plans for freeway conversion in the future and the SR 76 was denominated to a Controlled Access Highway. The current project is identified as a conventional highway.

Construction was completed on the first 7.7 miles of widening and realignment of SR 76 from I-5 to one mile west of the Oceanside City boundary in 1996. An Initial Project Report was completed for the remainder of the study area to I-15 in 1989. A Supplemental Project Studies Report was then completed in October 1998 to update the cost, scope and schedule of the project. The Draft Project Report was completed in September 2007.

The project has been identified in the 2030 Regional Transportation Plan approved by SANDAG in 2007, and the project had previously been identified as a needed improvement in regional transportation plans dating back to 1994. The project was listed as a commitment in the 1988 TRANSNET Sales Tax measure passed by voters and again was listed as an Early Action Project by SANDAG when they asked voters to extend the sales tax measure again in 2004. With the approval of the sales tax extension in 2004, SANDAG committed to delivering the SR 76 project as one of five "Early Action Project" that had not been completed as part of the 1998 commitment.

Public meetings have been held throughout the corridor with various community groups and elected officials dating back to 1999. More than two dozen meetings have been held in the past ten years including the initial public scoping meeting that was held October 18, 2006, to gather input from the public regarding their concerns and to help refine the scope of the environmental

studies. In conformance with the National Environmental Policy Act, a public hearing was held November 14, 2007, providing the public the opportunity to provide comment and response to the project's Draft Environmental Document. All comments are recorded in the Executive Summary Record of Public Information Meeting.

The Project Report and Final Environmental Impact Report/Study were approved on November 26, 2008.

The project was approved by the Department to use the design sequencing method of project delivery and in March 2009 the project was identified to receive \$109.3 million in Federal American Recovery and Reinvestment Act funding. The project was "Ready to List" August 5, 2009, and the contract is anticipated to be awarded in December 2009. Due to limiting environmental breeding windows, the project is scheduled to begin construction in December 2009 and be completed by December 2012.

Project Location

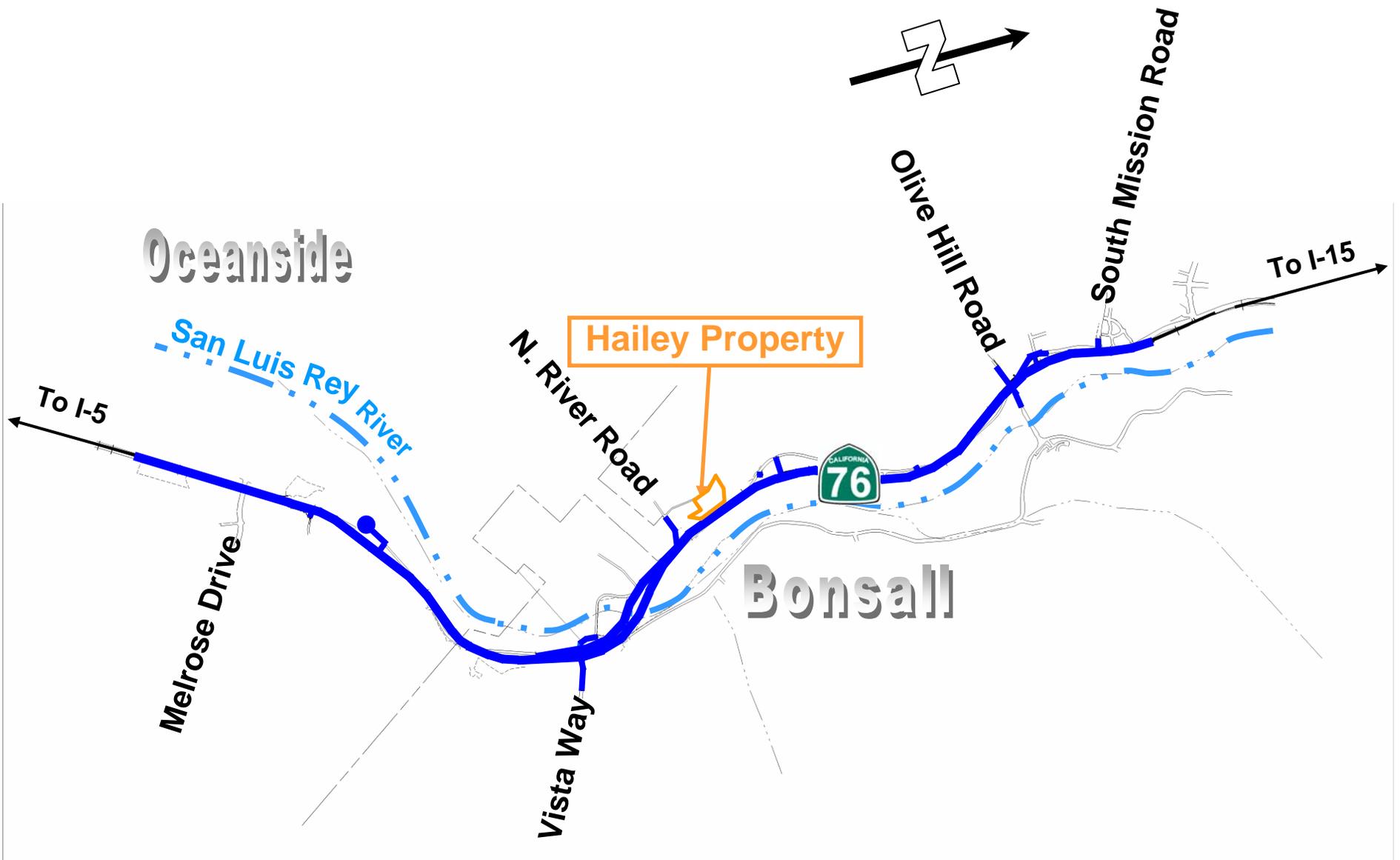


Exhibit A1

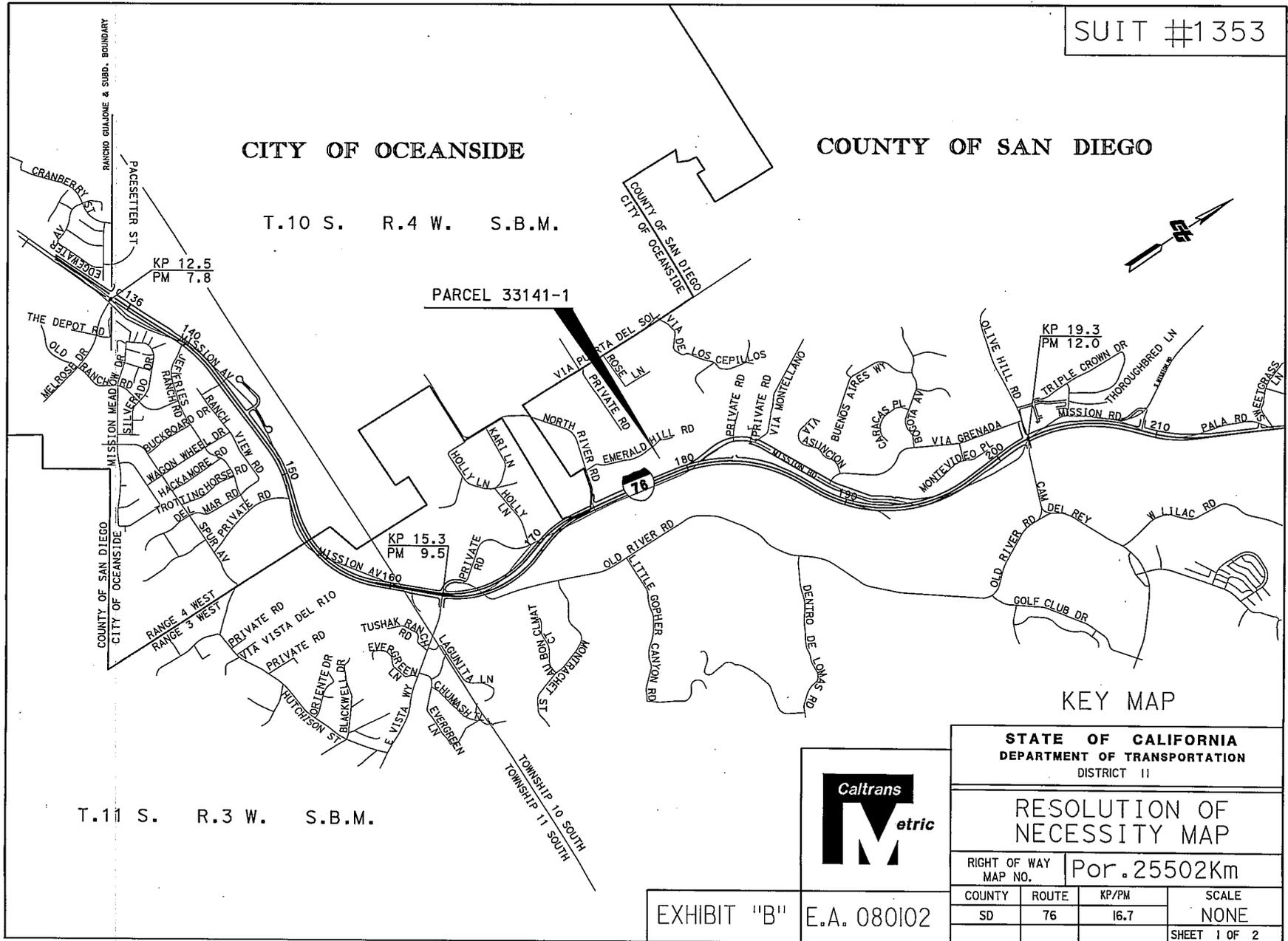
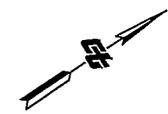
SUIT #1353

CITY OF OCEANSIDE

COUNTY OF SAN DIEGO

T.10 S. R.4 W. S.B.M.

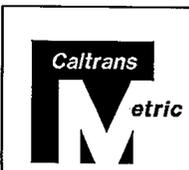
PARCEL 33141-1



T.11 S. R.3 W. S.B.M.

KEY MAP

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DISTRICT II



RESOLUTION OF
NECESSITY MAP

RIGHT OF WAY
MAP NO. Por. 25502Km

COUNTY	ROUTE	KP/PM	SCALE
SD	76	16.7	NONE
			SHEET 1 OF 2

EXHIBIT "B" E.A. 080102

EXHIBIT A2

PARCEL PANEL REPORT

PARCEL DATA

Property Owner: Sheryl Hailey

Parcel Location: West side of State Route 76 at 30673 Emerald Hill Road, Bonsall
Assessor Parcel Numbers: 126-170-62, -63

Present Use: Single family home and vacant residential lot

Zoning: 126-170-62: R1 Single Family Residential (North Parcel)
126-170-63: RR5, Rural Residential (South Parcel)

Area of Property: North Parcel - 5.73 acres
South Parcel - 5.81 acres
Total - 11.54 acres

Area Required: North Parcel - 1.72 acres in fee and access rights
South Parcel - 3.12 acres in fee and access rights
Total - 4.84 acres in fee and access rights

PARCEL DESCRIPTION

The subject property is located west of State Route (SR) 76 at 30673 Emerald Hill Road, in the town of Bonsall, in San Diego County. The larger parcel has an area of 11.54 acres, with approximately 552 feet of the eastern boundary adjacent to SR 76. The two zones of value of the larger parcel include:

- Assessor parcel number 126-170-62 is zoned R1, Residential. The parcel is 5.73 acres and is improved with a single-family home. The parcel is irregular in shape, with the home located at the top of the hill; has a panoramic view; and has a downward slope on the western portion of the parcel to access Emerald Hill Road.
- Assessor parcel number 126-170-63 is zoned RR, Rural Residential. The 5.81 acre site is vacant and irregular in shape with access off of Emerald Hill Road. A portion of the parcel is level with the remainder sloping southward towards SR 76. The vacant parcel is higher in elevation to 126-170-62, and is developable.

The proposed project requires the acquisition of 4.84 acres of fee land and includes all abutter's rights of access, broken down as follows:

- North Parcel - 1.72 acres in fee and access rights
- South Parcel - 3.12 acres in fee and access rights

There are no improvements in the proposed acquisition area.

NEED FOR SUBJECT PROPERTY

The project will widen the existing facility (a two-lane road with no shoulders) to a four-lane facility with both median and outside shoulders. There is also a planted clear recovery zone to the outside that doubles as a drainage swale (for water quality enhancement) and a corridor for the many utilities. The new roadbed alignment is shifted as far away from the subject parcel as environmentally possible. Further shifts to the south would impact the critical habitat in and along the San Luis Rey River. The new roadway features impact the parcel mainly with the cut required to construct the 1.5:1 side slope. This side slope rate has been steepened to the maximum extent possible to minimize the right of way requirement from the property.

No other reasonable methods are available to allow the Department of Transportation (Department) to avoid the subject property. The Department has exhausted all alternatives including considering realignment, retaining walls, and revised cut slope designs. The Department has attempted to work with the property owner to reduce the impacts with an innovative non-standard design solution. This revised design provides for an interim mid-slope bench on which the right of way line would be placed. By placing the right of way on the bench approximately half an acre of the parcel would no longer be acquired. The bench is strategically placed to more easily facilitate the future improvements the owner states she wishes to make. This proposed revision failed to satisfy the property owner's desires.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met in San Diego on September 1, 2009. The Panel members included Donald Grebe, Panel Chair, Department Headquarters (HQ's) Division of Right of Way and Land Surveys; Glenn Mueller, Department San Diego 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 was Sheryl Hailey.

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 issue of the property owner is the impact of the design to her property. She has proposed a design change to incorporate a retaining wall along the east side of the property, along the westbound lanes of SR 76.

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

Owner:

If the project incorporated a retaining wall along the westbound lanes of SR 76, on the eastern border of my parcel, it would save the buildable home site on the vacant parcel and would allow the property to retain the highest possible land value.

Department:

It remains the Department's responsibility to plan and locate our project in a manner that will be most compatible with the greatest public good and the least private injury while adhering to regulatory mandates, guidelines and restrictions. The proposed project was re-evaluated and it was determined that:

- The Department cannot move the roadway alignment any further south due to the presence of the San Luis Rey River and environmentally sensitive areas and critical habitat comprised of riparian and wetland habitat as well as jurisdictional waters of the United States.
- The Department's design standards typically recommend 1:4 cut slopes, but due to the geotechnical setting of the project, the Department was able to minimize impacts to the parcel and environmentally sensitive areas by increasing the slope rate to 1:1.5. The slope rate cannot be steepened any further.
- The Department studied the possibility of installing a Type 1 standard retaining wall in this area. To achieve the request of the property owner, a wall approximately 650 feet long and 15 to 50 feet high (at its highest point) would be required. Using recent project bids, the cost of the wall was estimated to be over \$3 million.
- The Department reviewed the concept of a wall and expressed concern that a large concrete wall in this rural setting would create a significant visual impact in the rural river valley.
- The construction of a significant wall at this location was not addressed in the approved environmental document.
- It was determined by the Department that the installation of a retaining wall is not reasonable in this location.
- It is the Department's opinion that the remaining home site is a buildable lot.

Owner:

The loss of land value was not covered by the appraisal and was excluded from the offer. The loss of land value includes:

- The property currently has a 360-degree view from the highest elevation and would continue to have this view if the property is developed at its greatest potential. The market value of this view would be lost, as well as the enjoyment of the view from a home. The loss of this view is not fully compensated in the offer.
- In the "after" condition, the remainder of the vacant parcel, 2.64 acres, may not have enough land to have a legal building site due to the steep sloping nature of the property. There will not be sufficient land to place the home, requisite septic and leach lines, and have a safe driveway slope. Building plans have not been submitted to the town of Bonsall to determine if the site is buildable in the after condition.
- The value of the improved property would decrease in the after condition if the site is buildable, due to close proximity of the two homes. The loss of privacy would reduce the value of the site.

Department:

The concerns expressed by the property owner are compensation issues. The Department has appraised the subject property and offered the full amount of the appraisal to the owner as required

by Government Code Section 7267.2. The property owner has been notified that issues related to compensation are outside the purview of the California Transportation Commission (Commission).

After a discussion with the property owner, the Department investigated moving the right of way line and creating a temporary construction easement (TCE) area that would reduce the slope slightly. This, coupled with the property owner's development would allow the property owner to retain approximately 0.5 acres of land and would retain most of the 360-degree view. The property was staked to show the property owner exactly where the new right of way line and the TCE area would be. The proposed change was presented to the property owner and she was not interested in the proposed change. It is the Department's opinion that in either scenario the remaining parcel is a buildable lot.

An offer for the full amount of the Department's appraisal has been made to the property owner in compliance with Government Code Section 7267.2.

DEPARTMENT'S CONTACTS

The following contacts have been made with the property owner:

Type of Contact	Number of Contacts
Mailing of information	8
E-Mail of information	13
Telephone contacts	18
Personal / meeting contacts	6

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. The property owner has been notified that issues related to compensation are outside the purview of the Commission.

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 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:

MALCOLM DOUGHERTY
Acting Chief Engineer

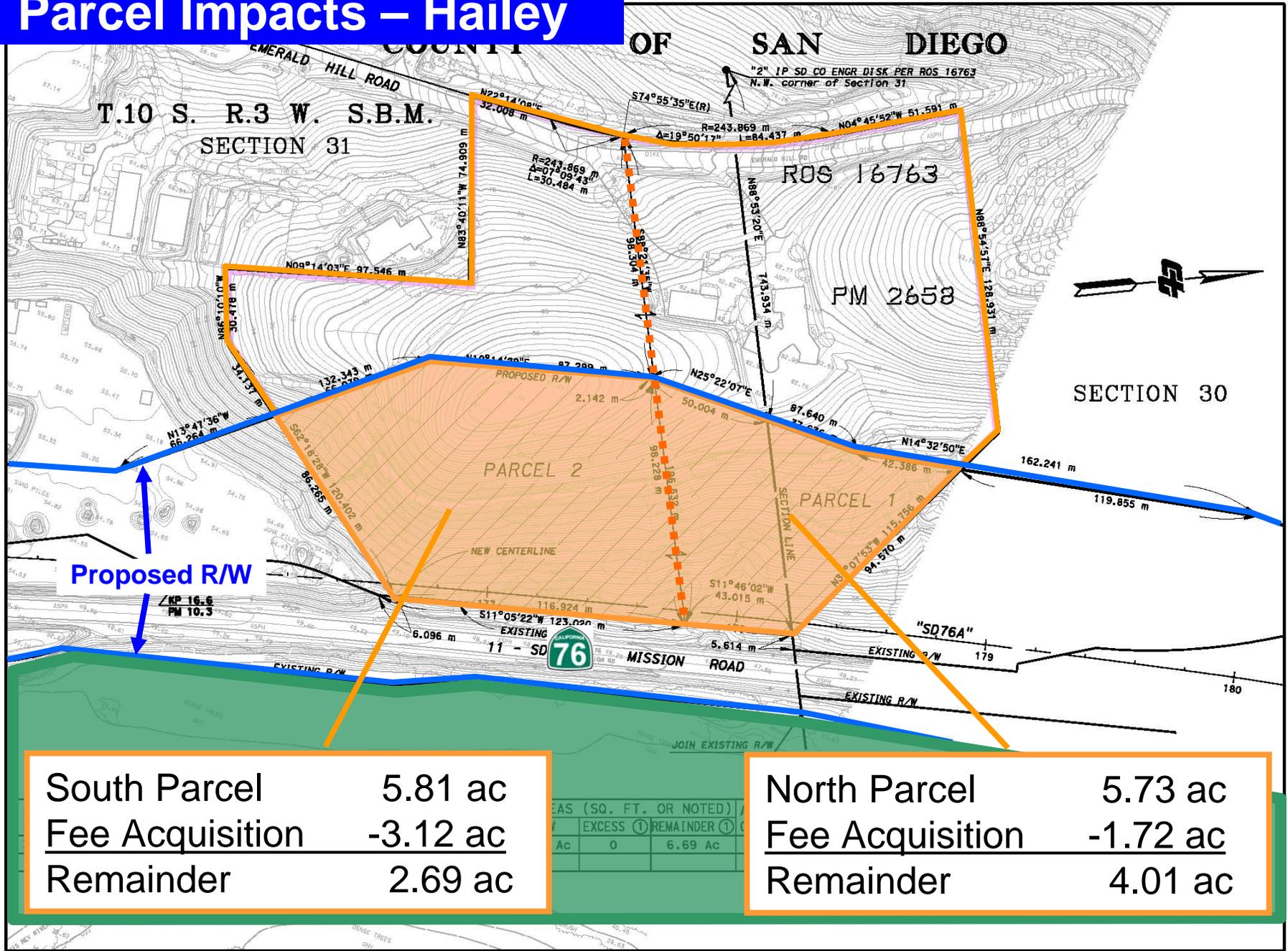
**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING
HEARING ON SEPTEMBER 1, 2009**

Donald Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair
Glenn Mueller, San Diego 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

Sheryl Hailey, Property Owner

Bob Pieplow, Interim District 11 Director
Laurie Berman, District 11 Capital Delivery
Carl Savage, District 11 Design
Mark Phelan, District 11 Project Delivery
Luis Betancourt, HQ Design
Janet Schaffer, District 11 Right of Way
Steve Aragon, District 11 Right of Way

Parcel Impacts – Hailey



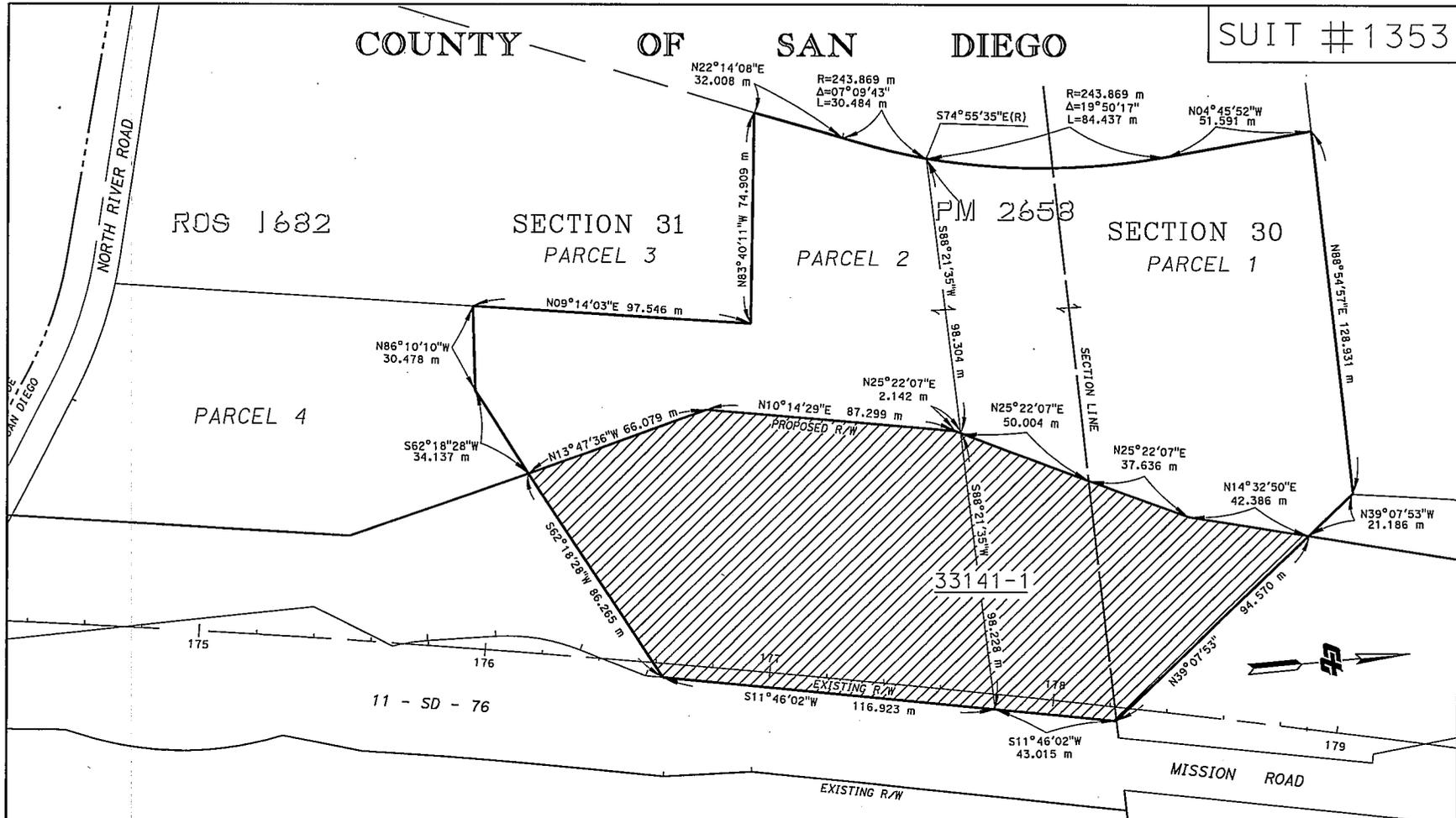
South Parcel	5.81 ac
Fee Acquisition	-3.12 ac
Remainder	2.69 ac

North Parcel	5.73 ac
Fee Acquisition	-1.72 ac
Remainder	4.01 ac

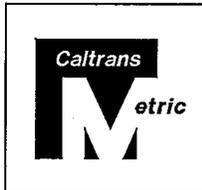
Exhibit B1

COUNTY OF SAN DIEGO

SUIT #1353



NE 1/4 NW 1/4
ROS 18204



STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT II			
RESOLUTION OF NECESSITY MAP			
RIGHT OF WAY MAP NO.		Por. 25502.13m	
COUNTY	ROUTE	KILOMETER POST	SCALE
SD	76	16.7	NONE
			SHEET 2 OF 2

PARCEL NUMBER	VESTEE	① AREAS (SQ. M. OR NOTED)		① AREAS (SQ. FT. OR NOTED)		ACQUIS. CODE ②
		R/W	EXCESS ①	REMAINDER ①	R/W	
33141-1	HAILEY ET UX.	1.962 Ha		2.698 Ha	4.85 Ac	F

EXHIBIT "B" E.A. 080102

EXHIBIT B2