

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: January 13, 2010

Reference No.: 2.4a.(1)  
Action Item

From: NORMA ORTEGA  
Chief Financial Officer

Prepared by: Tony Tavares  
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-20249 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 a written appearance before the Commission to challenge the outstanding issues. 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 the Commission's

January 13, 2010 meeting. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-20249 - Ryder Truck Rental, Inc., a Florida corporation

07-LA-5-PM 2.14 - Parcel 78261-1, 2 - EA 2159C9.

Right of Way Certification Date: 06/14/10; Ready to List Date: 06/17/10. Freeway - Carmenita interchange improvement. Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, together with all of those certain improvements which straddle the right of way line with an easement to enter the remaining ownership to remove such improvements, and a temporary easement for construction and grading purposes. Located in the city of Santa Fe Springs at 13630 Firestone Boulevard. Assessor's Parcel Number 7005-014-047.

Attachments:

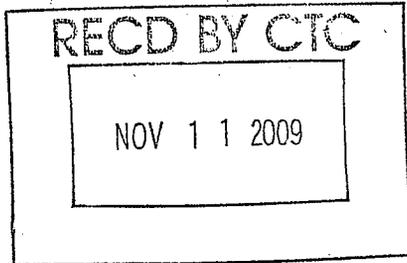
Attachment A - Owners Written Objections dated November 5, 2009

Attachment B - Department Response dated December 15, 2009

Attachment C - Fact Sheet

Exhibits A and B - Maps

1 copy to Stephen Maller  
to Right of Way 11-12-09



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West Palm Beach

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

November 5, 2009

**VIA FEDERAL EXPRESS**

Ms. Bimla Rhinehart  
Executive Director  
California Transportation Commission  
1120 N Street, Room 2221 (MS-52)  
Sacramento, CA 95814

**Re: Ryder Truck Rental, Inc.  
07-LA-5-PM 2.41; EA 2159C; Parcel 78261**

Dear Ms. Rhinehart:

By this letter Ryder Truck Rental, Inc. ("Ryder"), owner of the property in Los Angeles County described above, objects to the proposed Resolution of Necessity for the taking of this property by the California Department of Transportation ("CalTrans"). Ryder requests that this letter be considered at the Commission's hearing on the proposed Resolution of Necessity in lieu of a personal appearance or, in the alternative, requests to appear at the hearing in connection with the proposed Resolution of Necessity.

Ryder objects to the proposed Resolution of Necessity because the written appraisal statement that CalTrans sent Ryder on or about February 2, 2009 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.) 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’ written appraisal assumes that three items connected with the property’s fuel island, included as items pertaining to the realty, must be removed in connection with the taking of the property. These three items are (1) the fuel island canopy, (2) the fuel island service booth and (3) the diesel distribution system. They are structurally separate from the primary industrial building. The primary industrial building is located both on the part of the property to be taken and on the remainder and, according the written appraisal, should be removed in its entirety on the grounds of financial feasibility. By contrast, the items connected with the property’s fuel island are located on the remainder of Ryder’s property that will not be taken. According to the written appraisal, the fuel island must be razed, also on the grounds of financial feasibility, because the fuel island is not capable of independently sustaining itself in the after condition. This conclusion, however, ignores the possibility that the fuel island could continue to be used, including as an example, as a free-standing card-reading fueling facility.

**Second**, 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.

**Third**, 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.



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.

Ryder therefore requests that this letter be considered at the Commission's hearing on the proposed Resolution of Necessity in lieu of a personal appearance. Please advise if that would be acceptable to the Commission. In the alternative, Ryder requests to appear at the hearing in connection with the proposed Resolution of Necessity. Please advise me of the exact date, time and location of the hearing on this matter.

Very truly yours,

**AKERMAN SENTERFITT LLP**

A handwritten signature in cursive script that reads "Michael M. Mullins".

Michael M. Mullins

cc: James Marsella, Right of Way Agent

## DEPARTMENT OF TRANSPORTATION

District 7, Right of Way  
100 South Main Street, MS-6  
Los Angeles, CA 90012-3606  
Phone (213) 897-1901  
Fax (213) 897-8902  
TTY (213) 897-4937



*Flex your power!  
Be Energy efficient!*

December 15, 2009

Mr. Michael M. Mullins, Esq.  
Akerman Senterfitt LLP  
725 South Figueroa Street, 38<sup>th</sup> Floor  
Los Angeles, California 90017-5438

07-LA-5-PM 2.14  
E.A.: 2159C9  
Parcel: 78261-1,2  
Grantor: Ryder Truck Rental, Inc.

Dear Mr. Mullins:

This letter is in response to your letter dated November 5, 2009, addressed to the Executive Director of the California Transportation Commission (Commission). In your letter you addressed specific concerns and objections to the Commission's proposed action on several grounds regarding the above referenced parcel.

Per your written request, your letter will be submitted to the Commission in lieu of a personal appearance and will be part of the official record presented to the Commission.

The subject of the amount of compensation for your client's property is not an issue for the Commission and will not be considered by them. The California Department of Transportation's (Department) acquisition agent will continue to be available to you and your client to discuss project related issues and compensation in efforts to negotiate a settlement by contract.

The following is the Department's response to the concerns and objections that appeared in your letter to the Commission.

**Owner:**

"Ryder objects to the proposed Resolution of Necessity because the written appraisal statement that CalTrans sent Ryder on or about February 2, 2009 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.) 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).)

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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."

**Department:**

A written offer for the full amount of the Department's approved appraisal in the form of an Appraisal Report was personally delivered by the Department's acquisition agent on August 10, 2009 to Ryder's representative, Bryce Kinsley, and Ryder's legal counsel, Mr. Nowland Hong, in full compliance with Government Code § 7267.2 (a) and Code of Civil Procedure § 1245.230(c)(4).

**Owner:**

"CalTrans' written appraisal statement is inadequate for the following reasons:

First, CalTrans' written appraisal assumes that three items connected with the property's fuel island, included as items pertaining to the realty, must be removed in connection with the taking of the property. These three items are (1) the fuel island canopy, (2) the fuel island service booth and (3) the diesel distribution system. They are structurally separate from the primary industrial building. The primary industrial building is located both on the part of the property to be taken and on the remainder and, according the written appraisal, should be removed in its entirety on the grounds of financial feasibility. By contrast, the items connected with the property's fuel island are located on the remainder of Ryder's property that will not be taken. According to the written appraisal, the fuel island must be razed, also on the grounds of financial feasibility, because the fuel island is not capable of independently sustaining itself in the after condition. This conclusion, however, ignores the possibility that the fuel island could continue to be used, including as an example, as a free-standing card-reading fueling facility."

**Department:**

The fuel island, as detailed in the Appraisal Report, is comprised of the canopy, the service booth and the diesel distribution system including three, 12,000 gallon underground diesel storage tanks. The fuel island is located at the rear of the subject property. The fuel is utilized only for fleet service and is not accessible to the general public. It is the appraiser's opinion that, once the primary improvement is razed, the highest and best use of the remainder is as vacant for industrial development. Utility as a fuel facility does not represent the maximum productivity of the site since it utilizes only a minor portion of the remainder. Redevelopment of the entire remainder as an industrial facility would produce the highest net return and is therefore considered the highest and best use of the remainder. However, in accordance with the Right of Way Manual, Section Number 8.06.04.00, the property owner may retain the fuel island if desired.

**Owner:**

"CalTrans' written appraisal statement is inadequate for the following reasons:

Second, 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."

Mr. Michael M. Mullins, Esq.

December 15, 2009

Page 3

**Department:**

*Severance Damages as defined by the Dictionary of Real Estate Appraisal, are: in a partial taking a decline in market value of the remainder that arises as a result of the taking and/or construction of the proposed improvements.*

As detailed on page 72 of the appraisal analysis, the subject's remainder is sufficient in size at 85,748 square feet, with adequate frontage to allow intense redevelopment. (It is important to note that the lineal feet of frontage does not change in the after condition.) An analysis of competitive market data indicated that the value of the remainder property would not decline but would remain commensurate with the surrounding area. Therefore there is no evidence of Severance Damages and as stated, Severance Damages have not been assessed against the subject property.

**Owner:**

"CalTrans' written appraisal statement is inadequate for the following reasons:

Third, 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."

**Department:**

As stated on page 74 of the appraisal analysis, this appraisal report is an estimate of the value of the real property. Compensation for a loss of goodwill was not included. Also as noted, the Eminent Domain Law under the California Code of Civil Procedures states that it is the obligation of the business owner to establish that a loss of goodwill will be incurred as a result of the State's proposed acquisition. As noted in the appraiser's diary, the subject property's representatives were given a Loss of Goodwill package at the time of the appraiser's field inspection. To date, a claim has not yet been filed.

**Owner:**

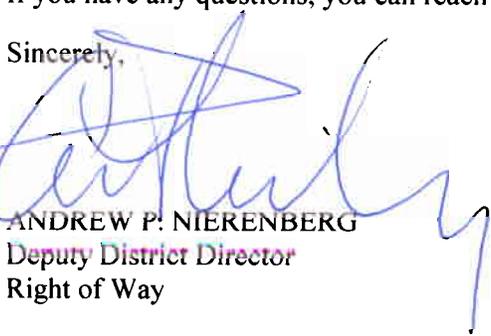
"For the reasons stated above, CalTrans' written appraisal statement is so inadequate that CalTrans has failed to furnish Ryder with a legally adequate written appraisal statement that complies with the requirements of Government Code § 7267.2 (a) and Code of Civil Procedure § 1245.230(c)(4). Because 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."

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If you have any questions, you can reach James Marsella at (213) 897-0799.

Sincerely,

  
ANDREW P. NIENBERG  
Deputy District Director  
Right of Way

## Resolution of Necessity Appearance Fact Sheet

<b>PROJECT DATA</b>	07-LA-5-PM 1.8/3.1 Expenditure Authorization 2159C9
<u>Location:</u>	Interstate 5 (I-5) in Los Angeles County in the cities of Santa Fe Springs and Norwalk
<u>Limits:</u>	Between Alondra Boulevard Overcrossing and Shoemaker Avenue Overcrossing
<u>Cost:</u>	Programmed construction cost: \$160,600,000 Current right of way cost estimate: \$168,330,000
<u>Funding Source:</u>	Transportation Congestion Relief Program, Congestion Mitigation and Air Quality, Grand Fathered Regional Improvement Program, State Local Transportation Participation Program, Interregional Improvement Program (State-Cash), Interregional Improvement Program (Surface Transportation Program Enhancement-State), Federal Demonstration Fund, Transportation Equity Act for the 21st Century, and Local Proposition C
<u>Number of Lanes:</u>	Existing: three mixed-flow lanes in each direction Proposed: four mixed-flow lanes in each direction plus one high occupancy vehicle lane in each direction
<u>Proposed Major Features:</u>	Diamond interchange at Carmenita Road; replace two-lane Carmenita Road overcrossing with ten-lane overcrossing structure that also provides for railroad grade separation; re-align Firestone Boulevard and Freeway Drive frontage roads; re-align and reconstruct local streets
<u>Traffic:</u>	Existing I-5 (year 2005): 96,130 Annual Daily Traffic (ADT) Proposed I-5 (year 2030): 156,655 ADT
<b>PARCEL DATA</b>	
<u>Property Owner:</u>	Ryder Truck Rental, Inc., a Florida corporation
<u>Parcel Location:</u>	1360 Firestone Boulevard, Santa Fe Springs Assessor Parcel Number 7005-014-047
<u>Present Use:</u>	Commercial truck rental, leasing and maintenance facility Zoned M-2 General Industrial
<u>Area of Property:</u>	107, 235 Square Feet (SF)
<u>Area Required:</u>	Parcel 78261-1 - 21,487 SF - Fee Parcel 78261-2 - 1,045 SF - Temporary Construction and Grading Easement

COUNTY OF LOS ANGELES  
CITY OF SANTA FE SPRINGS

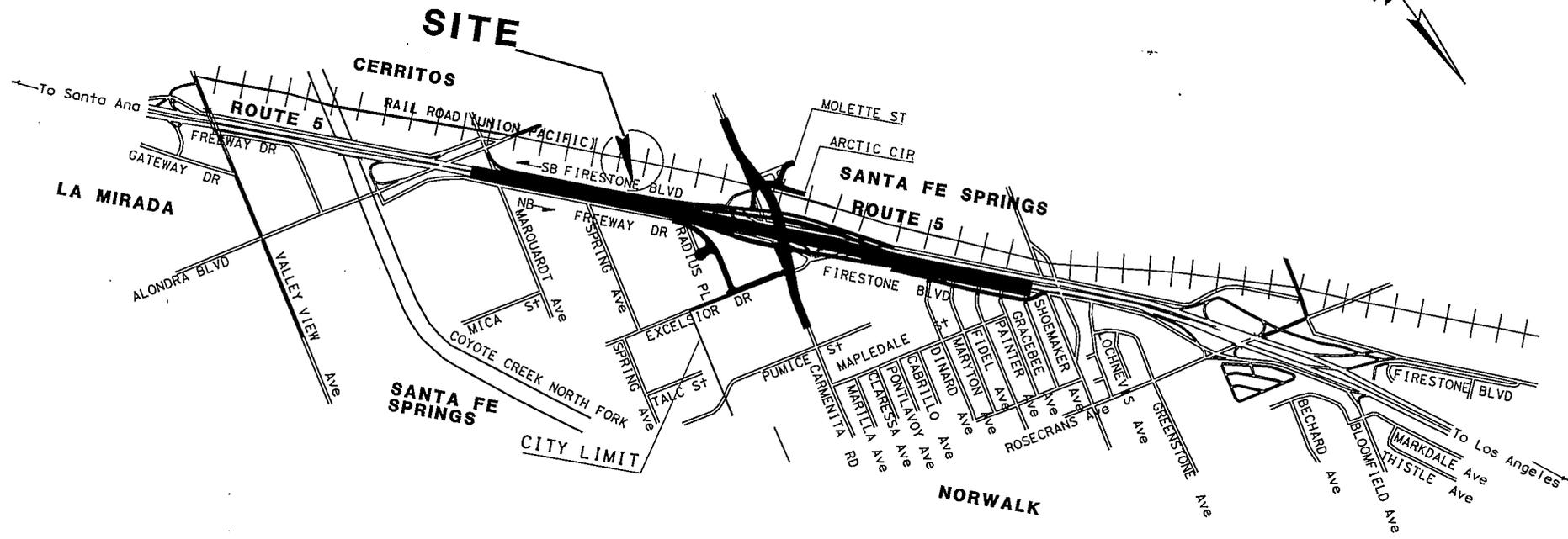
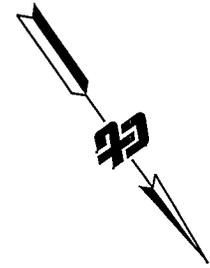


EXHIBIT "A"  
VICINITY MAP  
PARCEL 78261  
07-LA-5-PM. 2.14  
NO SCALE  
DATE 9-29-2009

Exhibit A

FIRESTONE BLVD.

S 57°01'37" E

318.32'

Curve Data  
Δ = 0°47'38"  
R = 3,295.60'  
L = 45.67'

Curve Data  
Δ = 0°47'38"  
R = 3,252.95'  
L = 45.07'

78261-1

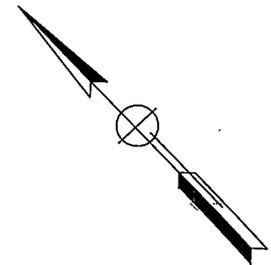
FRONTAGE ROAD

187.78'

78261-2

COUNTY OF  
LOS ANGELES

CITY OF  
SANTA FE SPRINGS



85.59'

N 30°22'52" E

RADIAL BRG.

N 31°10'30" E

RADIAL BRG.

ASPH

ASPH

3.28'

S 32°58'23" W

337.16'

337.15'  
S 32°58'23" W

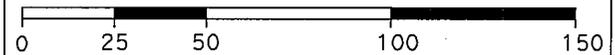
CONC

S 57°01'29" E

317.79'

Exhibit B

EXHIBIT "B"  
07-LA-5-PM. 2.14  
FEET



SCALE 1" = 50'

DATE 3-30-2009