

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: June 30-July 1, 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-20357 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 or 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 has requested an appearance before the Commission. The property owners question the proposed design and believe that the project, as proposed, is not compatible with the greatest public good and the least private injury. The primary concern expressed by the property owners' attorney is that the Department's design as planned is too limited in scope and does not resolve or address slope issues adjacent to Pacific Coast Highway on the subject property. The owners' objections and the Department's responses are contained in Attachment B.

## **BACKGROUND:**

Discussions have taken place with the owners, who have been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which they 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 owners have 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-20357 - Scott Miller, et ux.

07-LA-1-PM 51.6 - Parcel 79508-1 - EA 4L2209.

Right of Way Certification Date: 06/30/10; Ready to List Date: 06/30/10. Conventional highway - place retaining structure on both sides of highway. Authorizes condemnation of a permanent tieback easement for State highway purposes. Located in the city of Malibu at 27036 Sea Vista Drive. Assessor's Parcel Number 4460-017-015.

Attachments:

Attachment A - Project Information

Exhibit A1 and A2 - Project Maps

Attachment B - Parcel Panel Report

Exhibit B1 through B3 - Parcel Maps

Attachment C - Owners Written Objections dated May 14, 2010

## PROJECT INFORMATION

### PROJECT DATA

07-LA-1-PM 51.4/51.8  
Expenditure Authorization (EA) 4L2209

Location: On Pacific Coast Highway (PCH) in the city of Malibu, Los Angeles County

Limits: From 0.19 miles north of Sea Vista Drive to Via Escondido Drive

Cost: Construction Cost: \$7,000,000  
Right of Way Cost: \$2,300,000

Funding Source: Federal Emergency Relief Program

Number of Lanes: Existing: four lanes (two lanes each direction)  
Proposed: four lanes (two lanes each direction)

Proposed Major Features: Construct ground anchors (also known as tiebacks) from the southbound shoulder under and across PCH towards the residential properties adjacent to the northbound shoulder; install a series of sheet piles and micro-piles on southbound shoulder; roadway improvements

Traffic: Existing (year 2008): 64,400 Average Daily Traffic (ADT)  
Proposed (year 2010): 64,500 ADT

### NEED FOR THE PROJECT

State Route 1, also known as PCH, is a north-south route that serves as a major arterial through the coastal communities. The Department's project proposes to stabilize a section of PCH that has been impacted by the Escondido Beach Landslide. The proposed project is located on PCH in the county of Los Angeles, city of Malibu, between Sea Vista and Via Escondido Drives.

Movement of the Escondido Beach Landslide was first documented in February 1978, affecting the southbound lanes of PCH near Via Escondido Drive. Observations in the following years noted the landslide's continued movement, prompting several projects to keep PCH operational. The projects included emergency work for highway fill reconstruction, roadbed reconstruction, and the installation of drainage devices in efforts to repair and stabilize the highway.

Severe winter storms in 2004 accelerated the earth movement as evidenced by cracks in the roadway pavement on the southbound lanes of PCH. Field observations also indicated movement in the highway fill that was constructed during emergency repairs in 1978,

necessitating the proposed project to stabilize the highway, and specifically keep the southbound lanes from further movement.

## **PROJECT PLANNING AND LOCATION**

The PCH adjacent to the subject property has experienced continuous ground movement resulting in several projects to repair and stabilize the highway (e.g. drilled pile system, installation of slope indicators, horizontal drains, and submersible pump and the reconstruction of the roadbed).

On September 14, 2004 a Project Study Report (PSR) for EA 23970K was approved to establish a project whose design would stabilize the earth movement observed on PCH near Via Escondido and Malibu Cove Colony Drives. Four alternatives were evaluated: Alternate 1- Micro-pile System, Alternate 2 - Soldier Pile Tieback Wall System, Alternative 3 - Reinforced Soil Slope System, and Alternate 4 - No Build. Alternative 1 was the preferred alternative due in part to the following:

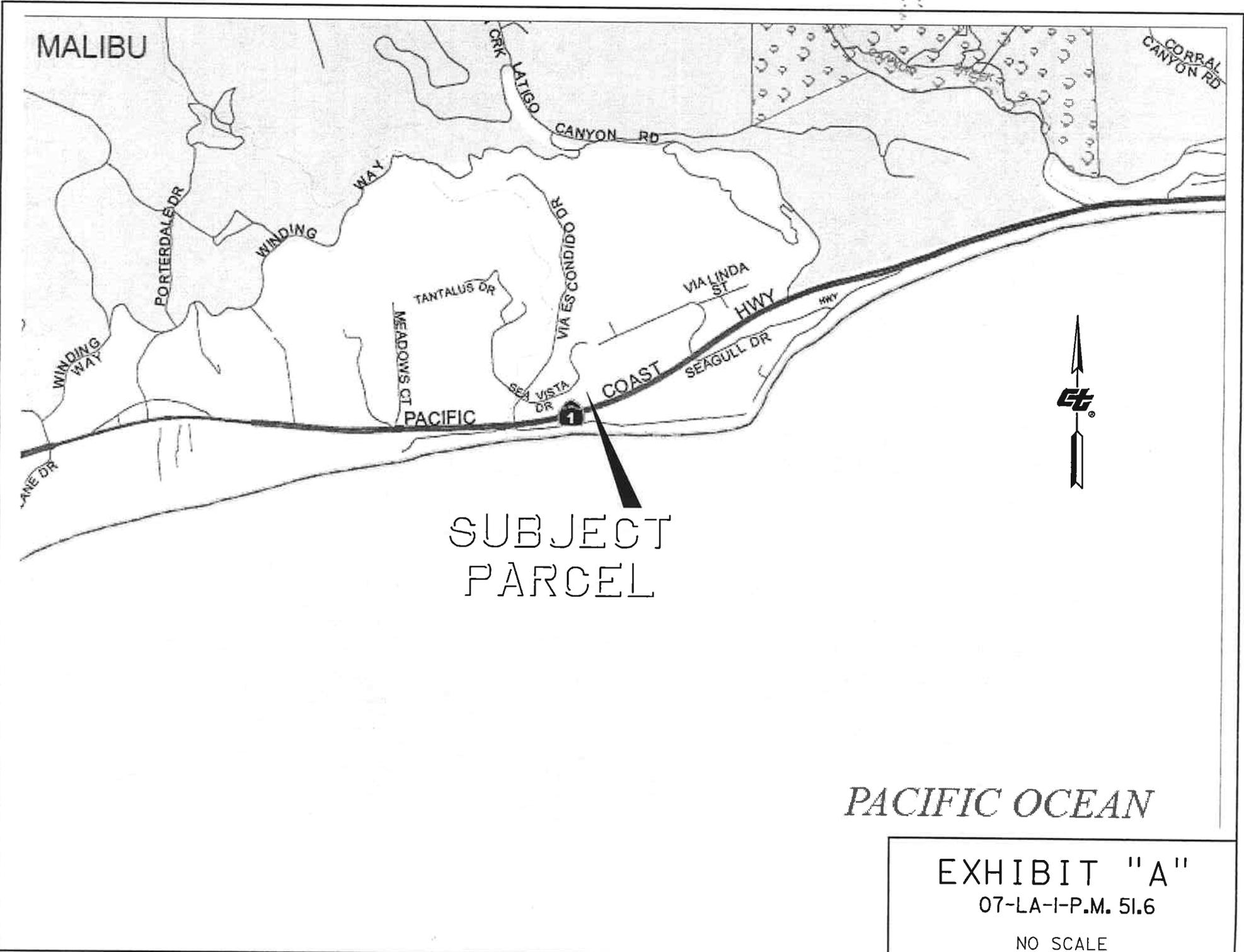
- No permanent right of way was required.
- The proposed installation of micro-piles would be done within the Department's existing right of way.
- The environmental document is a Categorical Exemption under the California Environmental Quality Act and a Categorical Exclusion under the National Environmental Policy Act.

Heavy winter storms in 2004 accelerated the earth movement along PCH. Due to the severity of these storms and subsequent damages to PCH, a Damage Assessment Form (DAF) was completed to secure federal emergency funding for the repairs. The Federal Highway Administration (FHWA) approved the DAF on August 23, 2005 and a supplemental DAF on September 23, 2008. The additional damage from the 2005 storms required a re-design from the 2004 PSR proposal. Department experts determined that combining elements included in the modified Alternatives 1 and 2 would be necessary to stabilize PCH. The proposed design now includes sheet piles, micro-piles and tiebacks. As a result of this re-design, the subject property is now impacted by a permanent tieback easement.

The proposed project would construct a series of tiebacks from the southbound shoulder of PCH under and across the highway to the bedrock underneath the neighboring slope adjacent to northbound lanes. These tiebacks anchor the highway to the bedrock and will stabilize the slide underlying the highway and minimize earth movements from the neighboring properties. A series of sheet piles and micro-piles would also be installed on the southbound shoulder to limit movement of the highway towards the properties adjacent to the southbound shoulder.

A Categorical Exemption/Categorical Exclusion Determination environmental document for the proposed highway stabilization work was approved on December 6, 2007.

The current estimated right of way cost is \$2,300,000 and the estimated construction cost is \$7,000,000. This project is programmed as a State Highway Operation and Protection Program project with 100% federal funding. The project has a Ready to List date of June 2010 and tentative Advertising date of September 2010.



SUBJECT  
PARCEL

PACIFIC OCEAN

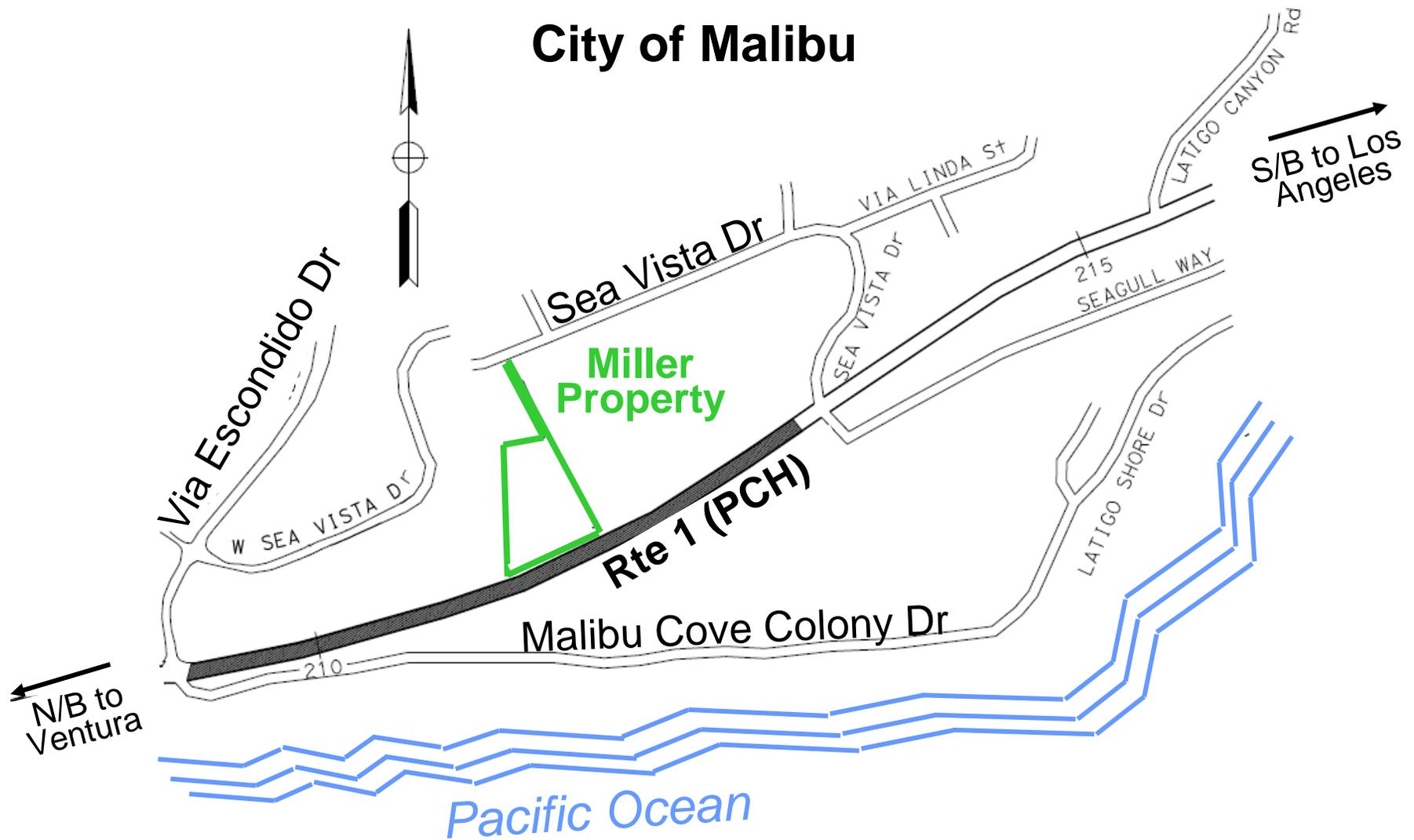
EXHIBIT "A"  
07-LA-I-P.M. 51.6

NO SCALE

Exhibit A1

Exhibit A1

# Project Location



**EXHIBIT A2**

## PARCEL PANEL REPORT

### PARCEL DATA

Property Owner: Scott Miller and Melissa Miller, husband and wife as community property

Parcel Location: North of Pacific Coast Highway (PCH), east of Via Escondido Drive at 27036 Sea Vista Drive, Malibu. Assessor Parcel Number: 4460-017-015

Present Use: Single Family Residence

Zoning: RR-2 (Rural Residential)

Area of Property: 128,500 Square Feet (SF), (2.95 acres)

Area Required: Parcel 79508-1: 19,111 SF, (0.44 acres) – Permanent Subsurface Tieback Easement

### PARCEL DESCRIPTION

The subject property is located on a bluff adjacent to PCH at 27036 Sea Vista Drive, in the city of Malibu. Zoned Rural Residential and irregular in shape, the property has an approximate area of 128,500 SF, or 2.95 acres. The property has an unobstructed ocean view and is improved with a single family residence. The property is generally level and slopes downward as it approaches PCH. Access to the site is from Sea Vista Drive located north of PCH. The proposed project impacts the southern most portion of the subject site, which is primarily slope area adjacent to PCH. This area is unimproved, and contains miscellaneous landscaping and a chain link fence.

### NEED FOR SUBJECT PROPERTY

A portion of subject property is needed to stabilize and repair PCH due to earth movement caused by heavy winter storms. To accommodate construction of the proposed project, micro-piles and a series of subsurface ground anchors (also known as tiebacks) will be installed from the southbound shoulder of PCH under the highway, into the slope area of the subject property adjacent to the northbound shoulder of PCH. The tiebacks will extend approximately 45 feet into the southern portion of the subject property, at a depth of 50 to 150 feet below the surface of the slope. The tiebacks necessitate the acquisition of a 19,111 SF permanent subsurface tieback easement. The proposed permanent subsurface easement will not disrupt the owners' continued use of the slope area.

## **RESOLUTION OF NECESSITY REVIEW PANEL REPORT**

The Condemnation Review Panel (Panel) met in Los Angeles on December 1, 2009. The Panel members included Donald Grebe, Panel Chair, Department of Transportation (Department) Headquarters (HQ's) Division of Right of Way and Land Surveys; William Rittenburg, Department Los Angeles Legal Division; Jim Deluca, Department HQ's Division of Design; and Mark A. Zgombic, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property owners at the meeting was attorney David B. Cosgrove.

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 owners do not contest the need for a project, but do challenge the proposed project as not being planned and located in a manner that has the greatest public good and least private injury. The primary concern expressed by the property owners' attorney is that the Department's design as planned is too limited in scope and does not resolve or address slope issues adjacent to PCH, on the subject property.

The following is a description of the concerns expressed by the owners' and/or their attorney, followed by the Department's response:

### **Owner:**

The owners allege that past projects performed by the Department have damaged the slope area of their property adjacent to PCH. In particular, work performed by the Department in 1995.

### **Department:**

In 1995, the Department constructed two projects along PCH. The first project was a non-emergency roadbed reconstruction that included the addition of a concrete barrier and guardrail wall along the southbound shoulder needed to provide the necessary shoulder width. This project was on the opposite side of PCH, from the subject property.

The second project was an emergency project to mitigate slide issues occurring on the neighboring properties to the west and east of the subject property. This project, allowed the Department to clear and grub, and re-grade the slopes that had failed in the area, sloughing onto PCH. In order to repair the slope damage, the Department was granted permission to enter onto the subject property by way of a Permit to Enter and Construct, dated May 10, 1995. The Permit to Enter was secured to gain access across the subject property to the neighboring properties. There is no apparent damage to the subject property, as a result of these projects and the work performed on the neighboring properties.

### **Owner:**

The owners questioned the need and location of a proposed debris wall that would be located along the northbound shoulder of PCH adjacent to their property.

### **Department:**

The debris wall, to be located within existing Department right of way, was proposed to reduce maintenance of PCH by catching and preventing slope debris from falling onto the traveled way after storm events. Upon further review by the Department, it was determined that debris is

generally limited to the shoulder areas and that maintenance can be achieved without the proposed debris wall by sweeping away slope debris that may fall onto the shoulder. As such, the debris wall was eliminated from the project.

**Owner:**

The Department's project as planned is too limited in scope, and does not resolve or address slope issues that currently exist adjacent to PCH on the subject property. The fact that the Department initially proposed a debris wall as part of the project also indicates that there is an issue with the stability of the adjacent slope and thus a retaining wall should be constructed.

**Department:**

The Department's project as proposed is to stabilize and repair the highway. Upkeep and maintenance of slope areas of neighboring private properties adjacent to the highway, is the responsibility of those private property owners. Although minor sloughing of soil occurs along the highway in this area, a retaining wall is not warranted. The purpose of the debris wall, which was subsequently eliminated from the project, was intended for maintenance purposes as explained above. It was not proposed nor designed to act as a retaining wall to support the adjacent slope.

While the Department's project is to stabilize the highway, and specifically keep the southbound lanes from further movement, the adjacent private properties will receive some stabilization benefit. The proposed sheet piles and micro-piles will anchor the highway to solid bedrock to stabilize land movement above Malibu Cove Colony Drive. The proposed anchor tieback system will further stabilize land movement in this area.

**Owner:**

The Department's Geotechnical Design Report dated November 18, 2005 is outdated and doesn't support the proposed project as designed to stabilize the highway to a 1.5 safety factor.

**Department:**

The data contained in the Department's Geotechnical Design Report dated November 18, 2005 is still accurate and fully supports the current design for the proposed project which stabilizes the highway to a 1.5 safety factor.

**Owner:**

Will the "H" beams that are buried in the middle of PCH affect construction of the proposed project and can they be drilled through when the subsurface tiebacks are installed?

**Department:**

During the emergency repair work performed in 1978, a drilled pile system was installed on the north side of the highway median to protect the northbound lanes. The system consisted of "H" beams filled with concrete and wood lagging placed between the piles. The wood lagging can be drilled through during construction and will not impact the highway or adjacent slopes. Language has been included in the contract specifications to notify the Department's contractor of the previously installed pile system.

**Owner:**

The owners requested reimbursement for Geological tests they independently conducted at a cost of \$65,000.00.

**Department:**

The Department has conducted geologic studies of the slide area and has based its project design on those studies. The owner's geological tests were independently contracted and not related to the Department's efforts. The Department is not obligated to reimburse the property owner for those costs.

**Owner:**

The owners requested reimbursement for the costs incurred for their own Appraisal Report.

**Department:**

The property owners have been informed that pursuant to Code of Civil Procedure Section 1263.025, should they elect to obtain an independent appraisal, the Department will pay for actual reasonable costs up to \$5,000, subject in part to the following conditions: 1) in order to determine actual reasonable costs, a copy of the owner's appraisal be provided to the Department; 2) an invoice for the completed work by the appraiser be provided to the Department. To date, the Department has not received copies of the requested information.

**Owner:**

The owners have submitted a Public Records Act Request, requesting information regarding the proposed project. The information requested includes, but is not limited to, the following: The November 18, 2005 Geotechnical Design Report and supporting data, the August 23, 2002 Geotechnical Report, all Slope Inclinometer reports, Maintenance Records, and Project Plans.

**Department:**

The Department has complied with the Public Records Act Request and provided all the requested information.

**DEPARTMENT'S CONTACTS**

The following is a summary of contacts made with the property owner:

Type of Contact	Number of Contacts
Mailing of information	6
E-Mail of information	7+
Telephone contacts	17+
Personal / meeting contacts	3

## **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.

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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:

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RICHARD D. LAND  
Chief Engineer

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

Donald Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair  
William Rittenburg, Los Angeles Legal Office Attorney, Panel Member  
Jim Deluca, HQ's Division of Design, Panel Member  
Mark A. Zgombic, HQ's Division of Right of Way and Land Surveys, Panel Secretary

David B. Cosgrove, Attorney for the Property Owner

Richard D. Land, District 7, Interim District Director  
Maria Quinonez, District 7, Office Chief, Design Branch C  
Mike K. Nguyen, District 7 Project Engineer, Design Branch C  
Andrew P. Nierenberg, District 7, Deputy District Director, Right of Way  
Yoshiko Henslee, District 7, Supervising Right of Way Agent  
Joy Granflor, District 7, Senior Right of Way Agent



# Miller Property Impacts

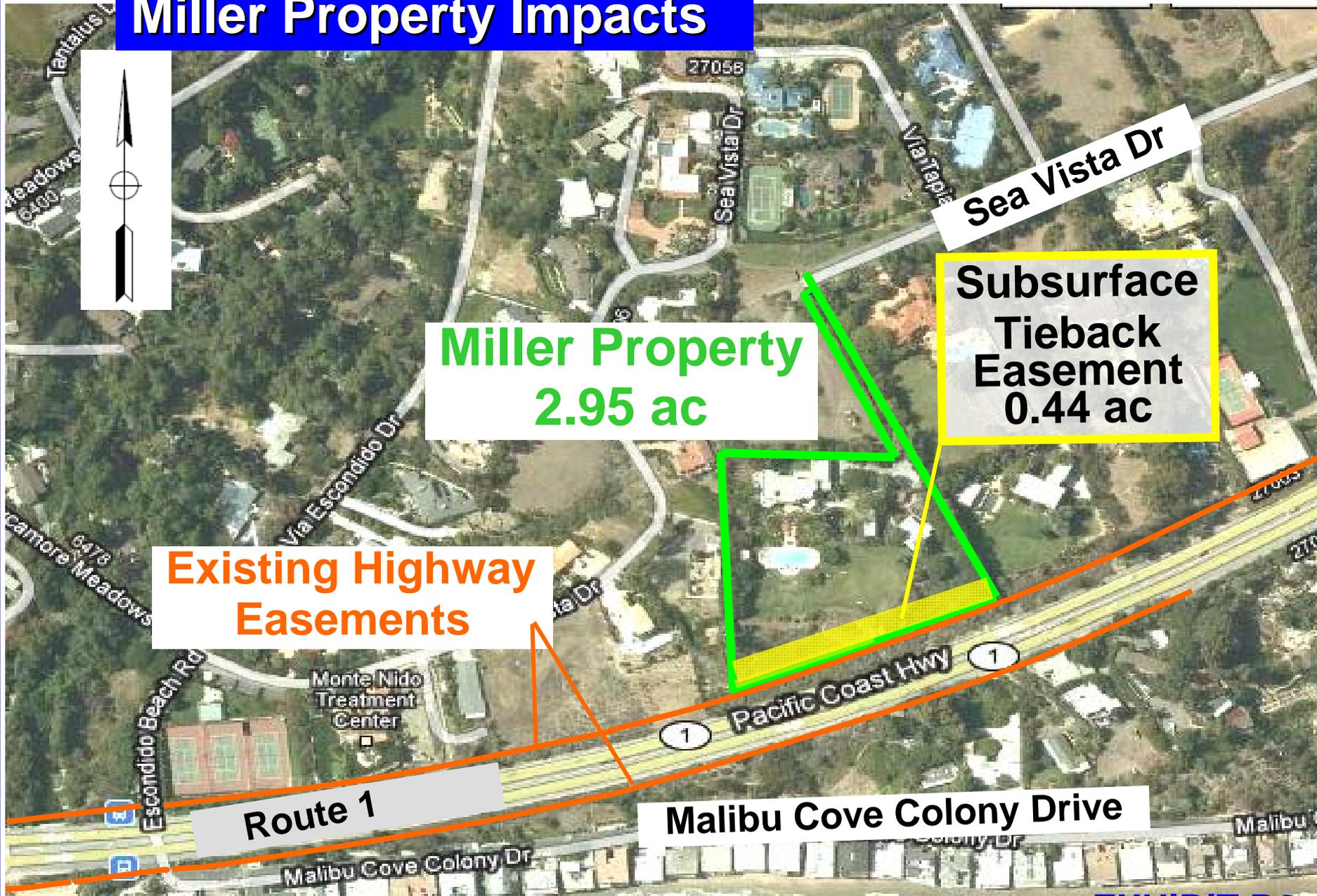
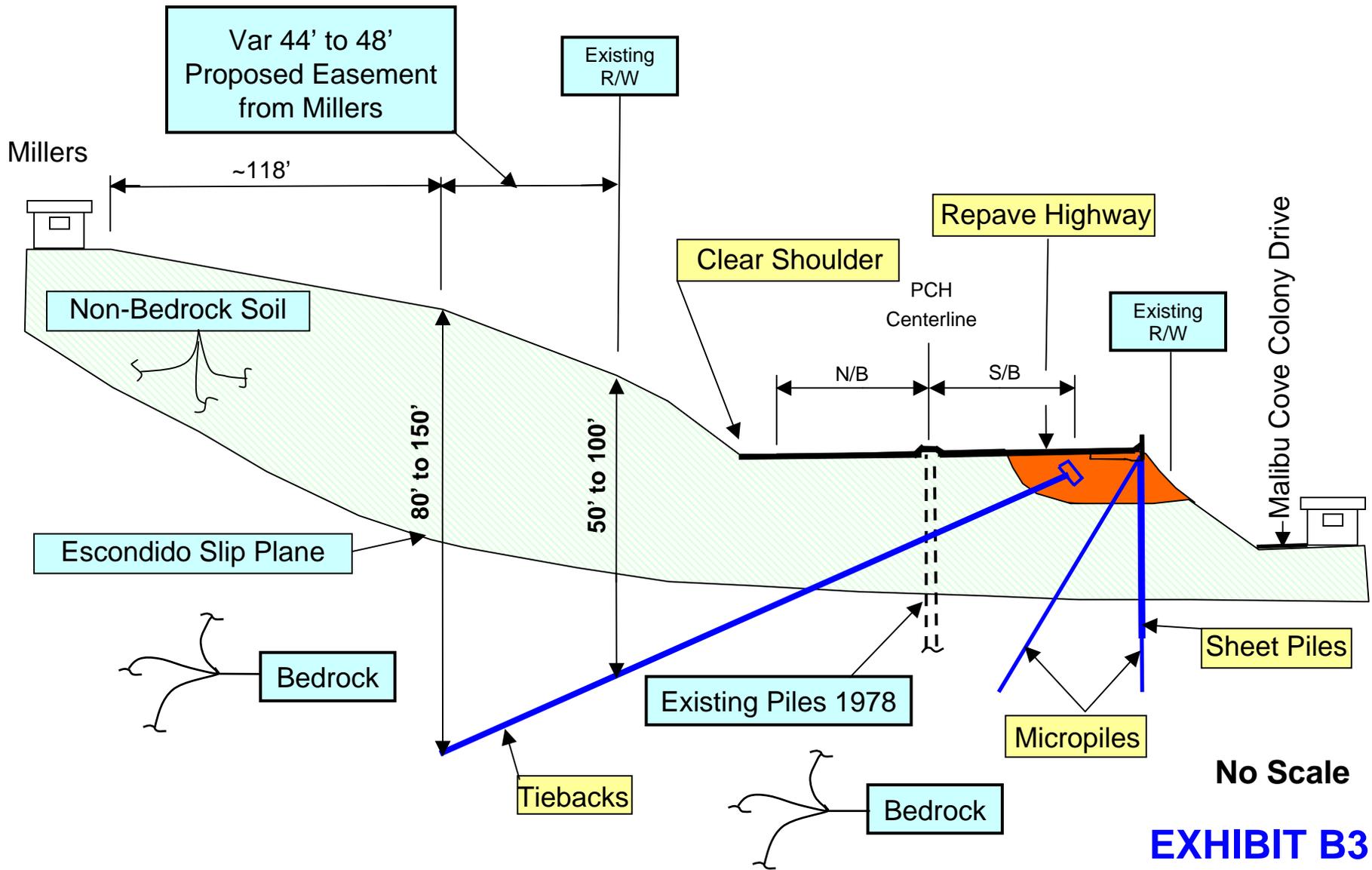


EXHIBIT B2

# Design Cross Section



No Scale

**EXHIBIT B3**

May 14, 2010

California Transportation Commission  
c/o Mark A. Zgombic  
Senior Right-of-Way Agent  
Department of Transportation  
Division of Right-of-Way and Land Surveys  
1120 N Street MS 37  
Sacramento, CA 95814-5960

Re: 27036 Sea Vista Drive, Malibu, California

Gentlemen:

This office, and the undersigned in particular, represent Scott and Melissa Miller ("Millers"), the owners of the property located at 27036 Sea Vista Drive, Malibu, California. Your Commission is considering a resolution of necessity for acquisition for certain easements, for a project referenced as 07-LA-1-PM 51.4\51.8.

The Millers object to the passage of the resolution of necessity for their property. This letter will constitute their appearance at the hearing, and I request this letter, and all matters it incorporates by reference, be included as part of the record of proceedings on the matter.

The Millers have been engaged in a long, and to date very frustrating, series of communications with the local Caltrans District 7 office regarding both this project and the processing of the resolution of necessity findings. We first met with representatives of the district and legal counsel on August 10, 2009, offering to engage in a process of exchange of geological information regarding the area in which the project is proposed, subject to certain cost sharing for expert analyses, and a tolling of any existing claims while solutions could be explored jointly. These offers were renewed at the Condemnation Evaluation hearing held October 19, 2009, and again at the Condemnation Panel Review conducted December 1, 2009. My clients and I met again with representatives of the District on May 4, 2010, and reiterated the offer. To date, staff has refused to enter into any such agreement, rebuffing the Millers' effort to provide what we believe is critical additional geological information relative to the adequacy of the proposed project.

In addition, on July 17, 2009, I forwarded a Public Records Act request to Ms. Linda Harrel, Esq., seeking information regarding various projects, improvements, and installations Caltrans has conducted and maintained over the years, in and around the vicinity of the Millers'

Attachment C

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property. Caltrans failed to respond to that request as required by law, precipitating litigation for production of the public records, entitled *Miller v. State of California ex rel Department of Transportation*, LASC Case No. BS123324. The case files of that action, and the correspondence that has occurred between myself and counsel for Caltrans regarding it, are incorporated herein by reference. That litigation remains pending, and is likely to result in an award of the Millers' attorneys' fees against the State under Government Code Section 6259(d), for its failure to comply with the California Public Records Act.

My clients object to the resolution of necessity because the project as currently designed and conceived does not create the greatest public good and the least private injury. Specifically, the project is too restricted, in both scope and reach. It not only fails to address slope stability issues on the slope abutting the northerly lanes on Pacific Coast Highway, affecting both the Miller property and other adjacent properties, but will actually exacerbate existing slope instabilities, and create new threats to the roadway.

In support of this conclusion, the Millers provided the opinion and analysis of a professional geologist with significant experience in the local Malibu area, Mr. Jeff Holt of Mountain Geology, Inc., at the Condemnation Evaluation Meeting of October 19, 2009. A recording of this entire meeting was made by the Millers, can be made available to the Commission upon request, and is incorporated herein by reference<sup>1</sup>. There, Mr. Holt reviewed the nature of the geology in the project area, and indicated that the appropriate scope of the project would be to erect a pile and retaining wall solution, to stabilize the entire slope adjacent to the north lanes of Pacific Coast Highway. He also indicated that the present project design will exacerbate hydrostatic forces that will accelerate existing instabilities on the slope, create new failures, and actually threaten, as opposed to protect, Pacific Coast Highway.

If the Commission reviews the history of Caltrans activities in this area, and the spotty documentary record of its prior projects and maintenance of improvements, it will see that its history of limited-scope, "band aid" solutions to soil stability issues affecting Pacific Coast Highway in this region have been a failure. The Millers believe the present project is another in a series of such measures, that will not only be ineffective to achieve the public good which is purportedly its goal, but will actually exacerbate private injury by further destabilizing the coastal slopes on the Millers' property, and adjacent properties.

In addition, the Condemnation Review Panel's report dated April 30, 2010 references a Categorical Exemption/Categorical Exclusion Determination that was allegedly made for the proposed project on December 6, 2007. No basis for the finding is identified. Apparently, the

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<sup>1</sup> The Millers intended to record the Condemnation Panel Review as well, but were prohibited from doing so by Caltrans staff. No reason was ever given why the proceedings should not be documented, as requested by the Millers.

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Commission intends to rely on this as its compliance with the California Environmental Quality Act, (CEQA) for the proposed acquisition to be authorized by the resolution of necessity. If so, the Commission is, we believe, in violation of CEQA.

Additional study of the project, and its likely effect on the slopes on the Miller and adjacent properties, is required. At a minimum, the testimony of Mr. Holt at the Condemnation Evaluation Hearing on October 19, 2009 provides evidence of a "fair argument" of a significant environmental effect, and constitutes new information that has become available since the outdated December 6, 2007 purported exemption cited. This triggers the need for new environmental review.

Moreover, whatever the asserted basis of the exemption, Title 14, California Code of Regulations §§ 15300.2(a)-(d) instruct that a finding of exemption or exclusion is inappropriate when the project proceeds in a particularly sensitive environment, when cumulative effects of the project in consideration with other projects are significant, when environmental effects are likely because of unusual circumstances, or in areas of Scenic Highways where damage to scenic resources could occur. Each of these is present with the existing project. The coastal bluffs along Malibu are unquestionably a sensitive and scenic environment, and the unusual circumstances of past history of soils movement in the project area, and the State's own failed past projects to address slope stability, make the effects of this project cumulatively significant. As Mr. Holt has already testified to District 7 staff, the area of slope failure as characterized by the design staff is in error, no consideration has been demonstrated on how the project will impact hydrostatic forces at work in the region, and the project will create future failures threatening Pacific Coast Highway. This is not the type of situation that is designed to be exempt from environmental review under CEQA.

Taken together, these circumstances warrant full environmental review of the project's impacts to surrounding property, its relationship to existing landslide areas and hydrostatic conditions in the vicinity, and the direct and cumulative impacts likely to result from the project, along with consideration of a reasonable range of alternatives to the project as proposed. Resort to a dated and unsubstantiated December, 2007 Categorical Exemption/Categorical Exclusion Determination is insufficient. The Commission's failure to comply with CEQA invalidates its resolution of necessity, and threatens the State's ability to secure any type of prejudgment possession of the Millers' property for the project.

In sum, the Millers believe Caltrans staff has refused to take the necessary broader view of the problem this project is funded to address, and its necessary broader solution. This precludes the Commission from making the necessary findings regarding the *greatest* public good and the *least* private injury. Despite direct and repeated offers by the Millers to engage in a deliberative process designed to maximize the sharing of expert information, to assure the project provides the maximum public benefit for the public funds to be invested, Caltrans staff continues

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to insist on a myopic answer to a larger problem. The result is inconsistent with sound public policy, to be sure, but is also inconsistent with the higher ethical responsibilities to the Millers incumbent upon the Department of Transportation in any exercise of its eminent domain authority against their property.

The Millers encourage the Commission to direct staff to re-conceive this project, expand its scope to include the permanent solution that will provide permanent safety and security for the roadway and those using it. The time has come for a permanent solution to a long-standing problem, and rejection of the false economies of interim measures that offer no real solutions. The Millers encourage the Commission refrain from passing any resolution of necessity until a project is undertaken which addresses the comprehensive problem with the requisite comprehensive solution, and until full CEQA review of all aspects of the project, its environmental contexts, and its effects on sensitive scenic resources is complete.

Very truly yours,

RUTAN & TUCKER, LLP



David B. Cosgrove

DBC:ctm

Attachment C