

# Memorandum

To: CHAIR AND COMMISSIONERS  
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: October 26-27, 2011

Reference No.: 2.4a.  
Action Item

From: NORMA ORTEGA  
Chief Financial Officer

Prepared by: Brent L. Green  
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-20620 summarized on the following page. This Resolution is for widening the 405 Freeway in District 7 in the city of Los Angeles in Los Angeles County.

## **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 October 26-27, 2011 meeting. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-20620 - E.H. Summit, Inc., a California Corporation

07-LA-405-PM 33.2 - Parcel 79710-1 - EA 120309.

Right of Way Certification Date: 01/18/12; Ready to List Date: Design Build. Freeway - widening for high occupancy vehicle lane. Authorizes condemnation of a temporary easement for construction purposes. Located in the city of Los Angeles at 11461 Sunset Boulevard.

Assessor's Parcel Numbers 4429-031-007, -009.

Attachments:

Attachment A - Owners Written Objections dated July 6, 2011

Attachment B - Department Response dated July 25, 2011

Attachment C - Fact Sheet

Exhibits A and B - Maps

1 copy to Stephen Maller, to Right of Way  
7-12-11

LAW OFFICES  
**GRAHAM • VAAGE LLP**  
Suite 1030  
500 NORTH BRAND BOULEVARD  
GLENDALE, CALIFORNIA 91203

PLEASE REPLY TO:  
**Arnold K. Graham**  
**Alexei Brenot**  
FILE NO:  
E.H. Summit, Inc./Caltrans

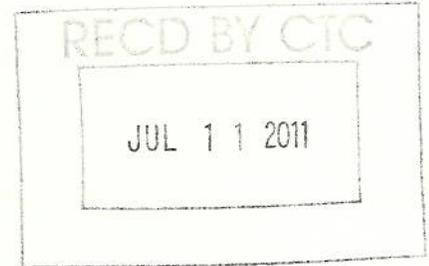
TELEPHONE  
(818) 547-4800

FACSIMILE  
(818) 547-3100

**Via Overnight Mail and  
Facsimile (916) 653-2134**

July 6, 2011

Executive Director of the California Transportation Commission  
P.O. Box 942873  
Main Station 52  
Sacramento, California 95814



**RE: Parcel No: 79710-2**  
**11461 Sunset Boulevard, Los Angeles**  
**Los Angeles County APN 4429-031-007 and 4429-031-009)**  
**[Resolution of Necessity Hearing]**

**Our Client: E.H. Summit, Inc.**

Dear Executive Director of the CTC:

Please be advised that as counsel on behalf of the owners of the parcel proposed to be taken by condemnation herein, notice is hereby given that we desire to appear at the August 10 - 11, 2011 hearing presently scheduled in Sacramento, California to object to the adoption of a Resolution of Necessity regarding the above-referenced project and proposed taking. It is requested that the scheduled hearing be re-set for Los Angeles for the convenience of counsel and the owners, as well as because the property is located in Los Angeles.

Alternatively, we request to make the necessary appearance at the Resolution Hearing in writing rather than formally appearing, and that our written objection be included as part of the Official Record.

As to the Notice itself, an objection is therefore made to the setting of the hearing on the Resolution of Necessity in Sacramento, California inasmuch as the subject property which is proposed to be acquired is located in Los Angeles, California, and counsel for the owners is also located in Los Angeles, and the CTC regularly conducts hearings in Los Angeles.

An additional objection is that the Notice of Intent, with its provision of notice for a two-day time period, does not comport with the statutory requirements for providing the owner with proper notice, and a corresponding right to appear and object to the proposed taking. The Notice of Intent does not specify the precise date, time and location of the Resolution of Necessity hearing, as required by law.

Executive Director of the  
California Transportation Commission  
July 6, 2011  
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Last, objection to the Notice of Intent is also made on the basis that it is vague, ambiguous and uncertain as to specific interests in the property that Caltrans is proposing to adopt a Resolution of Necessity on, and to acquire by eminent domain, if necessary. Specifically, the Notice of Intent references Caltrans' Parcel 79710-2 as the property interest being subject to the hearing, but thereafter inconsistently references Caltrans' Parcel No. 79710-1 in the "Resolution of Necessity Description" attached to the Notice of Intent. This error creates inadequate notice as required by the statute.

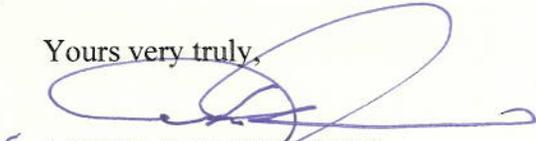
As early as April 2010 and up to and through the present, Caltrans has identified two proposed takings affecting the subject property: (1) a permanent fee taking which Caltrans identified as Parcel No. 79710-1; and (2) a temporary construction easement which Caltrans identified as Parcel 79710-2. The Notice of Intent and the attached "Description" are internally inconsistent by having used the two different Caltrans Parcel Numbers to describe the interests proposed to be acquired, and therefore the Notice of Intent is defective under CCP §1245.230 since it is vague, ambiguous and uncertain as to exactly what property interests are the subject of the hearing.

In order to properly prepare for the Resolution Hearing, it is requested that the Department of Transportation provide the undersigned with a full and complete copy of the EIR prepared for the project for which purports to necessitate the taking and damaging of the subject property.

As a last issue, it is requested that the Department of Transportation directly contact the undersigned for the purposes of discussing and finding a solution to eliminate the substantial business damages which are occurring and will continue to occur to the hotel business operating on the subject property.

Thank you for your immediate attention and reply.

Yours very truly,



**ARNOLD K. GRAHAM**  
**ALEXEI BRENOT**

AKG/mm

cc: Andrew P. Nierenberg, Deputy District Director  
Division of Right of Way, Caltrans [by facsimile (213) 897-8902]

Foster Tepper, Esq. (by email)

**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) 897-2916



*Flex your power!  
Be energy efficient!*

**Via Certified Mail**

July 25, 2011

Mr. Arnold K. Graham, Esq.  
Graham Vaage, LLP  
500 N Brand Blvd, Suite 1030  
Glendale, CA 91203

07 – LA-405 – PM 33.2  
E.A.: 120309  
Parcel No: 79710 -1  
APN: 4429-031-007, 009  
Grantor: E.H. Summit, Inc.

Re: E.H. Summit, Inc.  
11461 W Sunset Blvd, Los Angeles, CA 90049

Dear Mr. Graham:

This letter is in response to your letter dated July 6, 2011 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 at its September 14-15, 2011 meeting to be held in Petaluma, California and not at the August 10-11, 2011, meeting in Sacramento, California, as previously indicated.

The following is the Department's response to the concerns and objections set forth in your letter to the Commission:

**1. Request to reschedule the Commission meeting from Sacramento to Los Angeles**

The dates and locations of the Commission meetings are determined in advance by the Commission. The Department has no control or input on when and where the meeting are to be held. Finally, there are no meetings to be held in Los Angeles area the rest of the calendar year.

Attachment B

**2. Request to make the necessary appearance at the Meeting in writing**

As stated previously, and in lieu of a personal appearance, your July 6<sup>th</sup> letter will be provided to the Commission as your written response objecting to the proposed acquisition of your client's property.

**3. Objection in setting the Resolution of Necessity in Sacramento rather than Los Angeles**

This issue was discussed in the previous paragraph.

**4. Objection that the Notice of Intent does not provide proper notice**

The Commission will not discuss the proposed acquisition of your client's property at their August 10-11, 2011 meeting. Rather, the adoption of the Resolution of Necessity has been rescheduled for September 14-15, 2011 in Petaluma, California. The exact date, location and approximate time of the meeting will be provided under separate notice as soon as they become available, and will provide proper notice as required.

**5. Objection that the Notice of Intent is vague, ambiguous and uncertain as to the specific interests to be acquired namely, the Notice of Intent and Resolution of Necessity Description are inconsistent**

The objection is noted. The Right of Way map no. F-1933-3A, dated 04/20/10 shows two sub parcel numbers, 79710-1(fee), and 79710-2(temporary construction easement). When the project requirements were revised, the 79710-1 fee requirement was eliminated, and the temporary construction area with original sub parcel number 79710-2 changed to 79710-1 as indicated on the revised Right of Way map no. F-1933-3A, dated 02/24/11. As such, an amended Notice of Intent letter and "Resolution of Necessity Description" will be mailed no later than July 28, 2011 correcting any uncertainties that may have resulted.

**6. Request for a full and complete copy of the Environmental Impact Report (EIR)**

The Environmental Impact Report (EIR) can be accessed through the following link:  
[http://www.dot.ca.gov/dist07/resources/envdocs/docs/Final%20LA405DOC\\_022208.pdf](http://www.dot.ca.gov/dist07/resources/envdocs/docs/Final%20LA405DOC_022208.pdf)

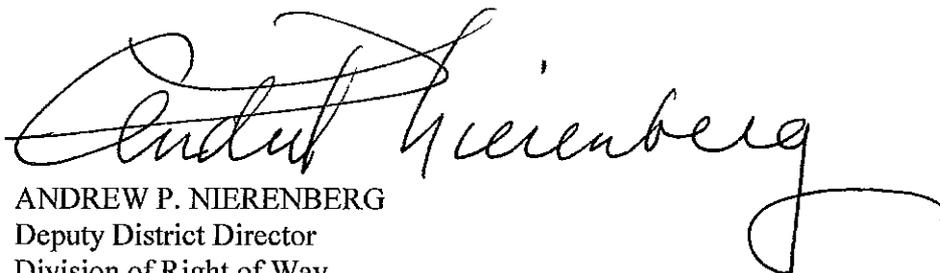
**7. Direct contact for the purpose of discussing and finding a solution to eliminate the substantial business damages which are occurring and will continue to occur to the hotel business operating on the subject property**

Department representatives had tried to meet with the hotel owners since April 2010. A meeting has been scheduled for July 21, 2011 with representatives from Caltrans Right of Way, Metro Design, the Owners, and you to discuss the State's proposed acquisition.

Mr. Arnold K. Graham  
July 13, 2011  
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If you have any questions, please feel free to contact Lydia Lai at (213) 897-1838

Sincerely,

A handwritten signature in black ink that reads "Andrew P. Nierenberg". The signature is fluid and cursive, with a large initial "A" and a long, sweeping tail on the "g".

ANDREW P. NIERENBERG  
Deputy District Director  
Division of Right of Way  
District 7

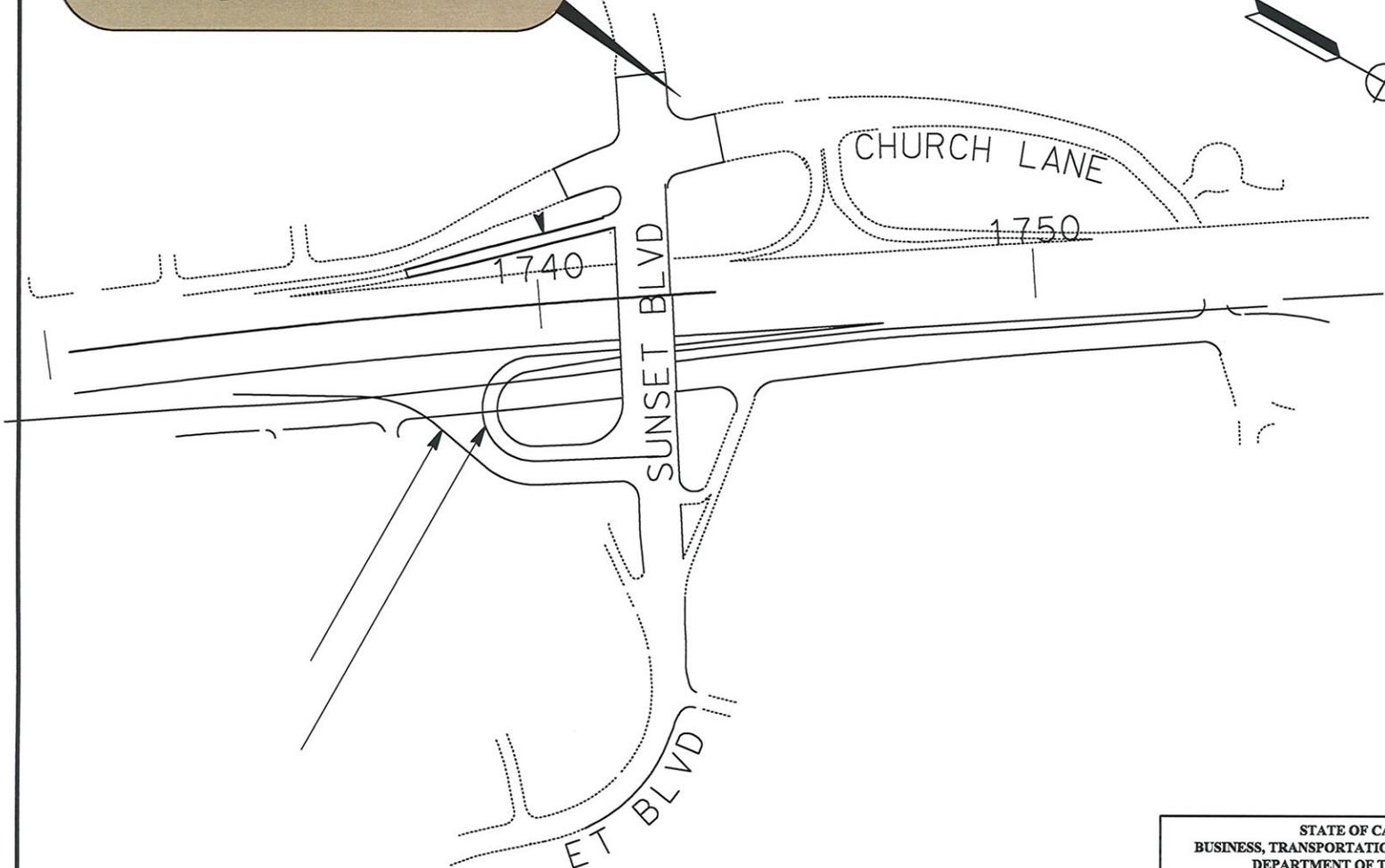
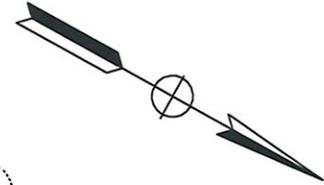
cc: via email: Mark A. Zgombic, HQ Right of Way  
Deborah Meyers, District 7 Right of Way  
Lydia Lai, District 7 Right of Way

## Resolution of Necessity Appearance Fact Sheet

<b>PROJECT DATA</b>	07-LA-405-PM 33.2 Expenditure Authorization 120309
<u>Location:</u>	Interstate 405 (I-405) in Los Angeles County in the city of Los Angeles
<u>Limits:</u>	Between I-10 and State Route 101
<u>Cost:</u>	Programmed construction cost: \$876,000,000.00 Current right of way cost estimate: \$82,000,000.00
<u>Funding Source:</u>	American Recovery and Reinvestment Act, Traffic Congestion Relief Program, Regional Surface Transportation Program, Proposition 1B, Local Funds, and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
<u>Number of Lanes:</u>	Existing: five mixed-flow lanes in each direction, one southbound high occupancy vehicle (HOV) lane Proposed: five mixed-flow lanes and one HOV lane in each direction
<u>Proposed Major Features:</u>	Interchanges at Santa Monica, Wilshire, Sunset, Ventura, and Valley Vista/Sepulveda Boulevards, Moraga, Getty Center, and Skirball Center Drives; an additional 10-mile HOV lane on northbound I-405 between I-10 and Route 101 freeways; removal and replacement of the Skirball Center Drive, Sunset Boulevard, and Mulholland Drive bridges; realignment of 27 key on and off ramps; widening of 13 existing under-crossings and structures; construction of approximately 18 miles of retaining and sound walls
<u>Traffic:</u>	Existing I-405 (year 2010): 299,100 Annual Daily Traffic (ADT) Proposed I-405 (year 2033): 400,800 ADT
<b>PARCEL DATA</b>	
<u>Property Owner:</u>	E.H. Summit, Inc., a California Corporation
<u>Parcel Location:</u>	11461 Sunset Boulevard, Los Angeles Assessor's Parcel Numbers 4429-031-007, -009
<u>Present Use:</u>	Luxe Hotels Zoned R4-1 VL (Multiple Dwelling Zone) and RE 15 (Residential Estate Zone)
<u>Area of Property:</u>	294,030 Square Feet (SF)
<u>Area Required:</u>	Parcel 79710-1 - 1,013 SF - Temporary Construction Easement

PARCEL 79710

CITY OF LOS ANGELES



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 PM	SHEET NO.	TOTAL SHEETS
07	LA	405	33.2	1	

Exhibit A

