

# Memorandum

To: CHAIR AND COMMISSIONERS  
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: May 7, 2013

Reference No.: 2.4a.(4)  
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-21044 summarized on the following page. This Resolution is for reconstruction of the interchange at the Interstate 10 Freeway and Tippecanoe Avenue in District 8, in San Bernardino 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 or located in the 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 primary concerns and objections expressed by the property owner is that the property sought to be acquired is not necessary for the proposed project, and that the Department's offer to acquire the property does not comply with Government Code Section 7267.2. The owner's objections and the Department's responses are contained in Attachment B.

**BACKGROUND:**

Discussions have taken place with the property owner, who has 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 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.

Discussions have been ongoing between the property owner and the Department to address and resolve the issues. Progress has been made but in order to keep the project schedule, the Department is requesting that this appearance proceed to the May 7, 2013 Commission meeting. Legal possession will allow the construction activities on the parcel to commence, thereby avoiding and/or mitigating considerable right of way delay costs that will accrue if efforts to initiate the condemnation process are not taken immediately.

C-21044 - Victor J. Miller, et al.

08-SBd-10-PM 26.51 - Parcel 21745-1 - EA 448129.

Right of Way Certification Date: 09/03/13; Ready To List Date: 09/04/13. Freeway - Reconstruct interchange at Interstate 10 and Tippecanoe Avenue. Authorizes condemnation of land in fee for a State highway. Located in the city of San Bernardino at 1309 East Rosewood Drive. Assessor Parcel Number 0281-161-44.

Attachments:

- Attachment A - Project Information
- Exhibit A1 through A3 - Project Maps
- Attachment B - Parcel Panel Report
- Exhibit B1 through B4 - Parcel Maps
- Exhibit B5 - Property Owner's Alternative Alignment

## PROJECT INFORMATION

### PROJECT DATA

08-SBd-10-PM 26.0/27.3  
Expenditure Authorization 448129

Location: Interstate 10 (I-10) in San Bernardino County in the cities of Loma Linda and San Bernardino at Tippecanoe Avenue

Limits: From 0.3 mile west of Tippecanoe Avenue to 1.02 miles east of Tippecanoe Avenue

Contract Limits: From 0.3 mile west of Tippecanoe Avenue to 0.6 mile east of Tippecanoe Avenue

Cost: Programmed construction cost: \$17,806,000.00  
Current right of way cost estimate: \$32,143,000.00

Funding Source: Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users, Transportation Equity Act for the 21<sup>st</sup> Century, Interstate Maintenance Discretionary, Federal Demonstration Funds, City and Measure I

Number of Lanes: Existing: Eight lanes  
Proposed: Eight lanes plus one auxiliary lane in the eastbound direction

Proposed Major Features: Modify/Construct westbound ramps, widen Tippecanoe Avenue and Redlands Boulevard, construct new local Street (Laurelwood Drive), construct soundwalls, drainage and landscape improvements

Traffic: Existing I-10 (year 2009): Between Waterman and Tippecanoe Avenues: 232,900 Annual Daily Traffic (ADT); between Tippecanoe and Mountain View Avenues: 225,500 ADT

Proposed I-10 (year 2035): Between Waterman and Tippecanoe Avenues: 353,100 ADT; between Tippecanoe and Mountain View Avenues: 330,100

## **NEED FOR THE PROJECT**

The purpose of the I-10 Tippecanoe Avenue Interchange Improvement project is to improve operational deficiencies and increase capacity at the interchange due to rapidly increasing traffic demand generated by the substantial growth and development that has occurred, and will continue to occur, in the cities of Loma Linda and San Bernardino. It is also designed to provide adequate access to local businesses, residences, and major facilities served by the interchange (e.g., Loma Linda University Medical Center, Loma Linda University, the Jerry Pettis Veterans Administration Hospital, San Bernardino International Trade Center, and the San Bernardino International Airport).

The existing I-10 Tippecanoe Avenue interchange is a compact diamond interchange with single-lane entrance and exit ramps. The interchange consists of three closely spaced signalized intersections along Tippecanoe Avenue/Anderson Street. These intersections include the westbound (WB) I-10 ramps intersection, the eastbound (EB) I-10 ramps intersection, and the Redlands Boulevard intersection. Traffic queuing spillover at these closely spaced intersections results in deficient operations. Without improvements, they would operate at inadequate levels of service (LOS) in both the AM and PM peak hours in 2035: WB I-10 ramps/Tippecanoe Avenue (LOS E), EB I-10 ramps/Tippecanoe Avenue (LOS F), and Anderson Street/Redlands Boulevard (LOS F).

Ramp accident data indicated that the actual rate of accidents on the WB on-ramp at Tippecanoe Avenue exceeds the average rates for similar type of facilities. The primary collision factor was failure to yield.

In the existing and 2035 conditions, the peak demand on I-10 on the vicinity of Tippecanoe Avenue is in the east bound direction during the PM peak hour. Demand volumes are projected to increase 50 percent in 2035 when compared to the existing condition. Heavy weaving occurs between the eastbound on-ramp at Waterman Avenue and the eastbound off-ramp at Tippecanoe Avenue in both AM and PM peak hours.

Unless improvements are implemented at the I-10 Tippecanoe Avenue interchange, traffic congestion is expected to worsen over time, resulting in increased commuter delays and frustration, higher travel costs, and increased air pollution. In addition, inadequate LOS at intersections are expected to increase demand on adjacent interchanges and the local street network as motorists seek less congested alternate routes. The elevated levels of traffic congestion exacerbate emergency vehicle access problems to Loma Linda University Medical Center.

The proposed improvements include realignment of the WB I-10 off-ramp and the addition of a new WB I-10 loop on-ramp, both of which will terminate at the Tippecanoe Avenue/Harriman Place intersection. The off-ramp realignment would eliminate the signalized intersection at the existing WB ramps location, which will reduce congestion at the ramp intersections and along Tippecanoe Avenue.

## **PROJECT PLANNING AND LOCATION**

The Project Report and Environmental Document were approved in January 2011. In February of 2012, a Supplemental Project Report was approved to document the acceptance of the original project being constructed in two phases to accelerate the start of construction. This project is programmed in the Southern California Association of Governments adopted 2011 Federal Transportation Improvement Program. Construction cost is currently estimated at \$17,806,000.00 for this project, which will be funded by Federal, Local, and Measure I funds. The current Right of Way Certification date is September 3, 2013, Ready to List is September 4, 2013, and advertising is targeted for November 25, 2013, with construction anticipated to start in February of 2014.

The current design proposes to minimize right of way impacts and reduce congestion at the ramp intersections at the I-10 Tippecanoe Avenue interchange, which resulted from the analysis of a number of different project alternatives as well as a value analysis study. The project proposes to modify the existing tight diamond configuration to a partial cloverleaf interchange for the north half of the interchange and includes the following improvements:

- Reconfigure the WB off-ramp from a tight diamond to a partial cloverleaf configuration, increasing the intersection spacing by over 400 feet. The ramp intersection would align with the existing Harriman Place/Tippecanoe Avenue intersection.
- Add a Tippecanoe Avenue WB loop on-ramp. Addition of this ramp would allow for the removal of the existing left-turn lane for traffic heading NB on Tippecanoe Avenue to access WB I-10. This would provide the room needed to add double left-turn lanes for SB traffic on Tippecanoe Avenue onto the EB on-ramp and EB Redlands Boulevard.
- Widen the existing I-10 bridge structure over Tippecanoe Avenue in the WB direction to accommodate the WB loop on-ramp.
- Widen Tippecanoe Avenue from I-10 to just north of Lee Street to provide lane taper length.
- Widen Anderson Street from I-10 to south of Court Street to accommodate additional turn lanes at the Anderson Street/EB ramps intersection and Anderson Street/Redlands Boulevard intersection.
- Widen Redlands Boulevard to accommodate a six-lane facility with dual left-turn lanes, striped medians, and sidewalks between approximately 450 feet west and 800 feet east of the intersection at Anderson Street.

- Modify and interconnect traffic signals at the intersection of Anderson Street and Redlands Boulevard; the intersection of Anderson Street and the EB on and off-ramps; and the intersection of Tippecanoe Avenue and the WB on and off-ramps/Harriman Place.
- Add a local road, Conejo Drive, connecting East Coulston Street, East Lee Street, and East Laurelwood Drive.
- Eliminate the South Ferree Street connection to East Rosewood Drive by providing a cul-de-sac at East Laurelwood Drive and South Ferree Street.
- Relocate utility facilities to accommodate street widening and realignment.

# PROJECT LOCATION

DIST	COUNTY	ROUTE	POST MILES TOTAL PROJECT	SHEET NO.	TOTAL SHEETS
8	SBD	10	26.0/27.3		

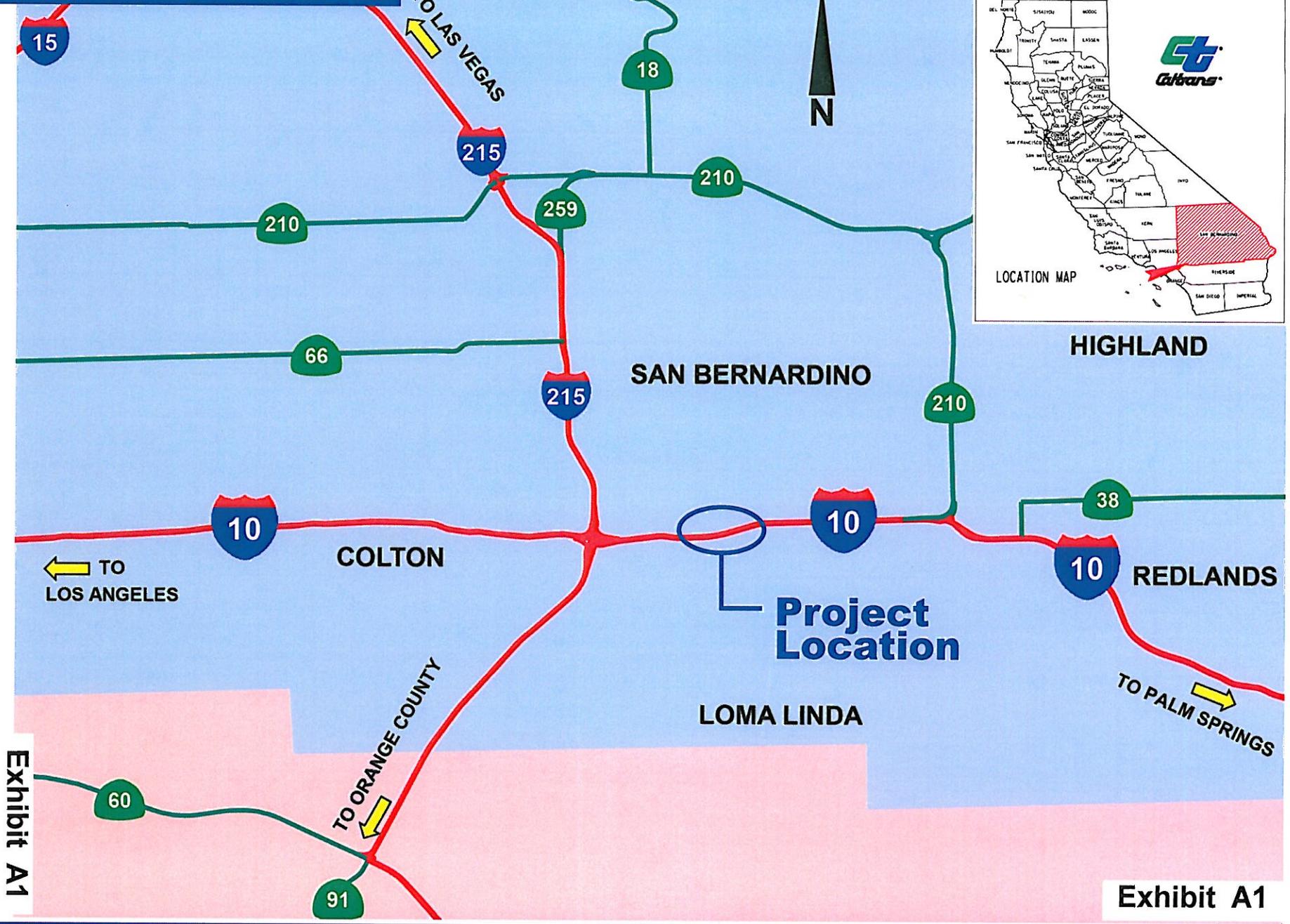
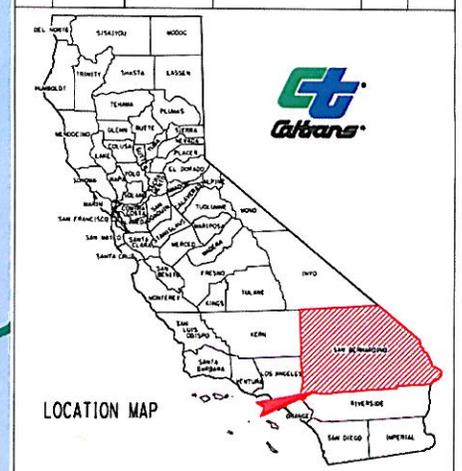


Exhibit A1

Exhibit A1

# PROJECT LOCATION

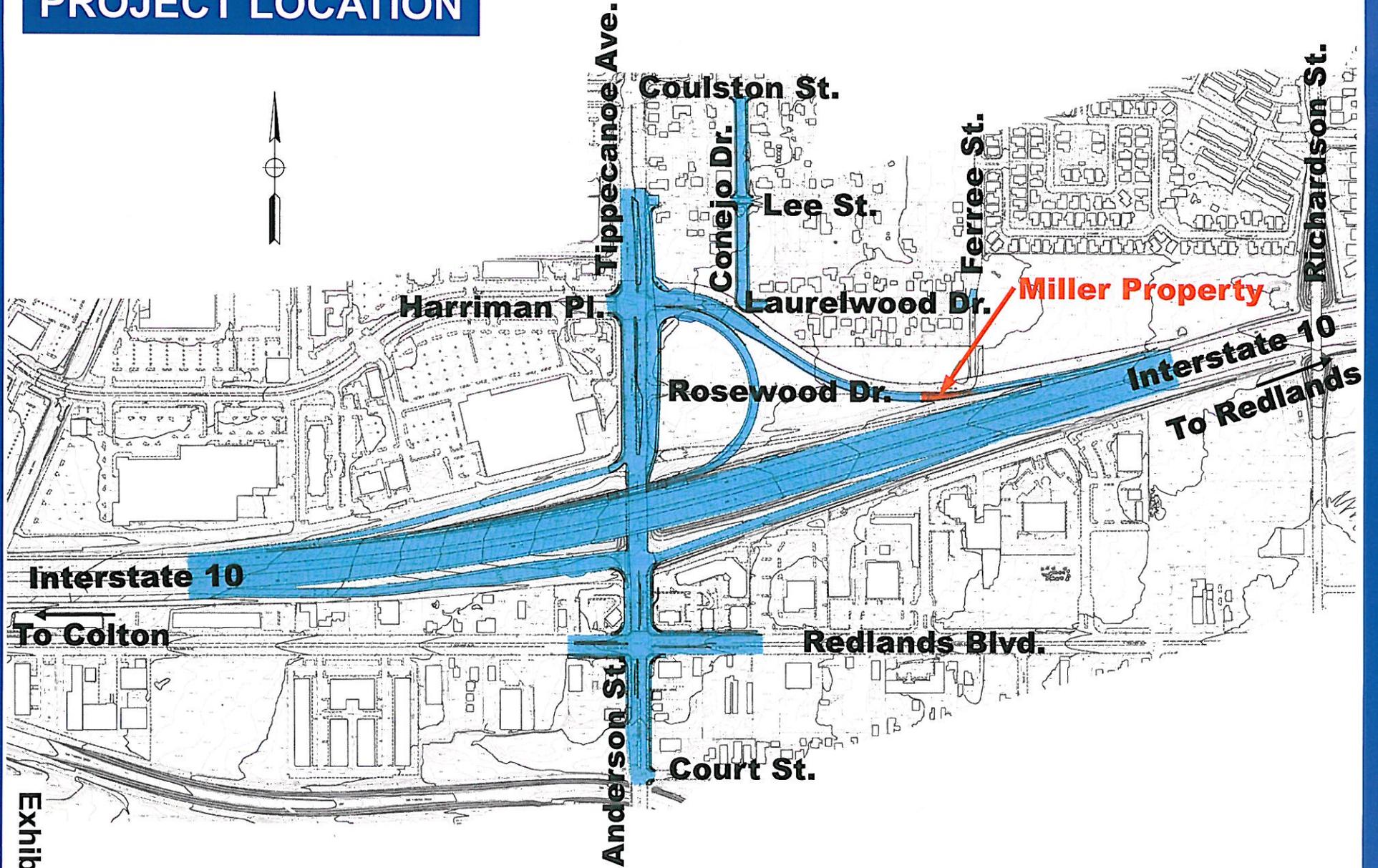


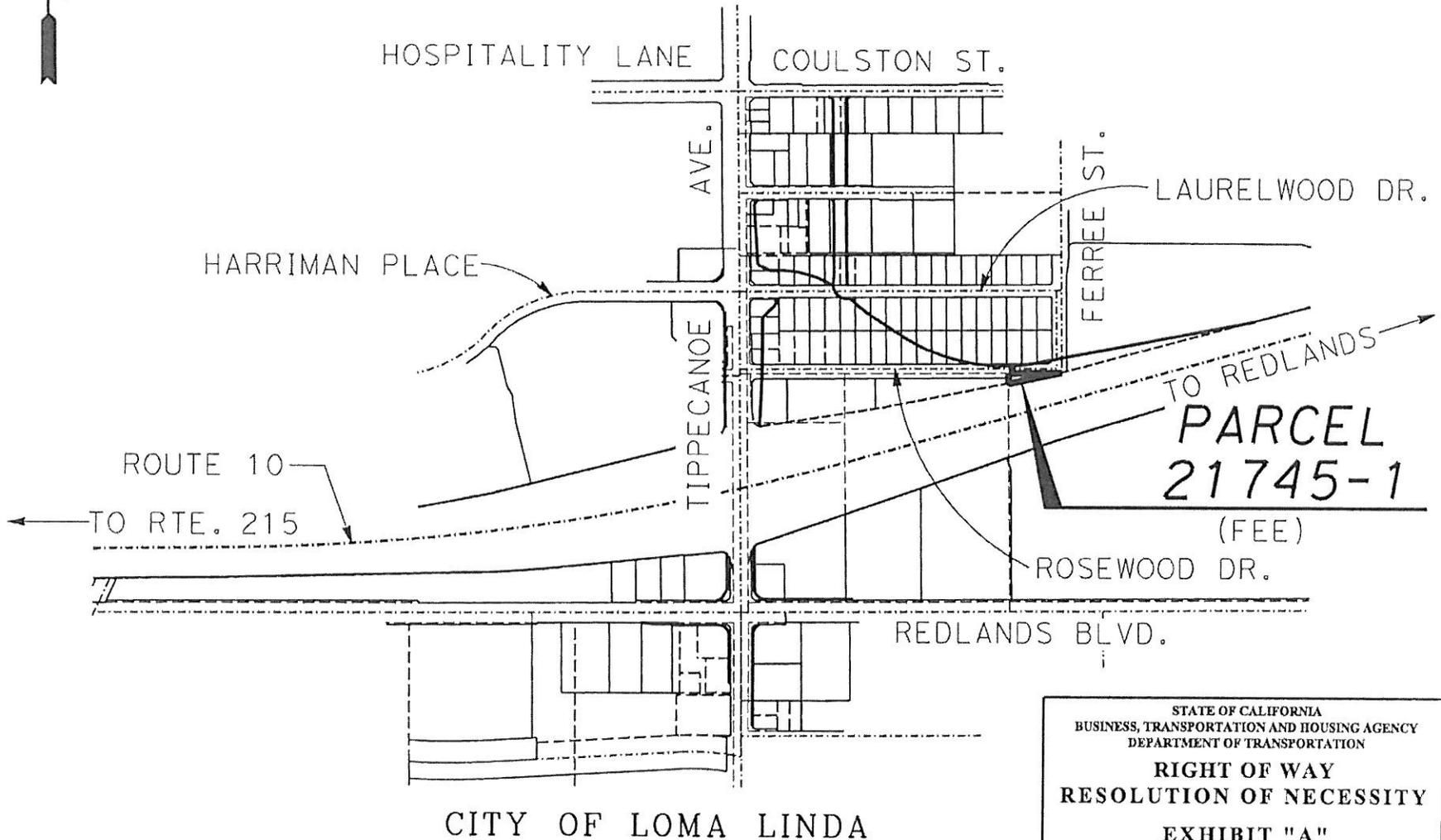
Exhibit A2

Exhibit A2

# COUNTY OF SAN BERNARDINO

## CITY OF SAN BERNARDINO

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.



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
08	SBd	10	26.51	1	2

Exhibit A3

## PARCEL PANEL REPORT

### PARCEL DATA

Property Owners: Victor J. Miller and Craig R. Miller

Parcel Location: 1309 East Rosewood Drive in the city of San Bernardino  
Assessor Parcel Number 0281-161-44

Present Use: Billboard Advertising Site

Zoning: CG-1/ FCOD – Commercial General / Freeway Corridor Overlay  
District

Area of Property: 4,649 Square Feet (SF)

Area Required: Parcel 21745-1: 4,649 SF - Fee

### PARCEL DESCRIPTION

The subject property is triangular in shape and is 4,649 SF. Based on the survey and records documents it is 42.06 feet deep at the western end tapering to a point at the eastern end. The overall length of the parcel is 221.10 feet. At the northerly end adjacent to Rosewood Drive, the parcel is encumbered by a ten-foot street and highway easement to the City of San Bernardino. As such, the net usable area along the northern end is reduced by 10 feet. The dimensions of the net usable area are 168.5 feet along Rosewood Drive, 32.06 feet along the west side facing Rosewood Drive, and 224.94 feet along the Interstate 10 right of way. The subject property is improved with full flag, twin-V, vinyl wrap illuminated bulletin (advertising billboard). The approximate height of the billboard above ground level is 50 feet. The westbound bulletin is 14 by 42 feet and the eastbound bulletin is 14 by 48 feet.

### NEED FOR THE SUBJECT PROPERTY

The existing compact diamond interchange configuration is being replaced by a partial cloverleaf configuration in the northeast quadrant of the I-10 Tippecanoe Avenue interchange. The reconfiguration includes realignment of the westbound off-ramp and the addition of a new westbound loop on-ramp, both of which will terminate at the Tippecanoe Avenue/Harriman Place intersection. The reconfiguration would eliminate the signalized intersection at the existing WB ramps location, which will reduce congestion at the ramp intersections and along Tippecanoe Avenue. The subject parcel is

located in the northeast quadrant of the I-10 Tippecanoe Avenue interchange, immediately adjacent to the existing westbound off-ramp. To accommodate the proposed project and specifically the realignment of the westbound off-ramp, a full acquisition of the subject parcel is required and cannot be avoided.

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

The Condemnation Review Panel (Panel) met in San Bernardino on December 13, 2012. The Panel members included Donald Grebe, Panel Chair, Department of Transportation (Department) Headquarters (HQ's) Division of Right of Way and Land Surveys; Eric Fleetwood, Department Los Angeles Legal Division; Linda Fong, Department HQ's Division of Design; and Mark 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, Michael Reiter.

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 primary concerns and objections expressed by the property owners is that the property sought to be acquired is not necessary for the proposed project, and that the Department's offer to acquire the property does not comply with Government Code Section 7267.2.

The following is a description of the concerns/contentions expressed by the owners' representatives, followed by the Department's response:

### **Owners Contend:**

The Department's offer of just compensation does not comply with the requirements of Government Code Section 7267.2, as it did not consider or include an offer for Loss of Business Goodwill.

### **Department Response:**

The Department has complied with Government Code Section 7267.2 by having a fair market value appraisal prepared which determines the just compensation for the real property, and has made an offer to the owners of record to acquire the property in the full amount of that appraisal. Government Code Section 7267.2 pertains to "real property" interest and not "loss of business goodwill". Loss of Business Goodwill is not real property and is not a required element of Government Code Section 7267.2. Additionally, the owners have been provided with a "Notification of Right to Claim Loss of Business Goodwill" package. Upon receipt of this package and the required documentation, the Department will consider and evaluate the owners' claim for Loss of Business Goodwill, separate from the offer made for the real property.

It should be noted as a result of the proposed project, there is excess land just north of the subject property outside the proposed right of way. The Department has identified a comparable portion of this excess land as a potential replacement site for the owners' advertising billboard (See Exhibit B4). In an attempt to mitigate and/or reduce project impacts, the Department has offered this land to the property owners as a replacement site. To date the property owners have not accepted the Department's offer.

**Owners Contend:**

The Department has wrongly denied the owners' applications for an Outdoor Advertising (ODA) permit to upgrade to an electronic sign at the existing location.

**Department Response:**

In 2010 the owners' request was denied due to the area being classified as a Landscaped Freeway and due to a future construction project. Recently, this section of I-10 has been declassified as a Landscaped Freeway and is currently zoned for commercial use.

As previously stated, the Department has offered a portion of excess land as an exchange for the owners' property and for the relocation of their advertising billboard. The owners can apply for a permit to install an electronic signboard at this proposed replacement site, and the Department's ODA Program will consider the approval of a complete and accurate permit application.

The property owners would also be responsible for obtaining the appropriate advertising sign permits from the City of San Bernardino. The City of San Bernardino has indicated they are amenable to an electronic signboard upgrade at the proposed replacement site.

**Owners Contend:**

The Department's project could be designed to avoid the subject property by using an alternative alignment by shifting the westbound off-ramp to the west (See Exhibit B5).

**Department Response:**

The alternative alignment as proposed by the property owners' attorney is a non-standard ramp design. There are no standard alternative alignments for the westbound off-ramp that would eliminate impacts to the subject property. The alternative design proposed is not in the greatest public good and least private injury, as the alternative alignment does not meet driver's expectations, and jeopardizes safety. This alternative would direct vehicles at too sharp of an angle, into a sequence of two reversing curves, at a speed that is too fast for the curve geometry.

The following is a list of non-standard features associated with the owners' proposed alternative alignment:

- Standard exit ramp geometry has not been provided resulting in unsafe exits from westbound I-10. The Department's Highway Design Manual (HDM) requires a standard ramp exit angle of just under five degrees, while the proposed alternative provides an exit angle of approximately 30 degrees. This far exceeds the angle for a smooth transition, resulting in unsafe and unexpected geometrics.
- Adequate deceleration length is not provided from the point of the ramp exit to the beginning of the first horizontal curve, which may result in hard braking or steering to stay on the ramp.
- A minimum design speed of 50 miles per hour (mph) is required at the exit gore area. The proposed alternative alignment only provides for a design speed of 38 mph, substantially less than driver expectations.
- Adequate tangent length is not provided for between the two reversing horizontal curves to develop the necessary superelevation transition, requiring the driver to perform quick steering maneuvers to stay on the ramp.

## **DEPARTMENT CONTACTS**

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

<b>Type of Contact</b>	<b>Number of Contacts</b>
Mailing of information	5+
E-Mail of information	36+
Telephone contacts	7+
Personal/meeting contacts	7

## **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 owners have been notified that issues related to compensation are outside the purview of the California Transportation Commission (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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KARLA SUTLIFF  
Chief Engineer

**PERSONS ATTENDING THE CONDEMNATION PANEL REVIEW  
MEETING ON DECEMBER 13, 2012**

Donald E. Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair  
Eric Fleetwood, Los Angeles Legal Office Attorney, Panel Member  
Linda Fong, HQ's Division of Design, Panel Member  
Mark Zgombic, HQ's Division of Right of Way and Land Surveys, Panel Secretary

Michael Reiter, Attorney for the Property Owners

Christy Connors, District 8, Deputy District Director, Design  
Jon Bumps, District 8, Design Oversight  
Michael Han, Transystems, Design Consultant  
Meardey Tim, District 8, Project Manager  
Jamal Elsaleh, District 8, Program Project Management  
Jerone Edwards, Southern Area Manager, Outdoor Advertising Program  
Chris Jimenez, District 8, Outdoor Advertising Program  
Brenda Morrison, District 8, Supervising Right of Way Agent  
Anthony Rizzi, District 8, Senior Right of Way Agent  
Rita Harris, District 8, Right of Way Agent  
Steve McClaury, District 8, Right of Way Project Coordinator

# PARCEL LOCATION

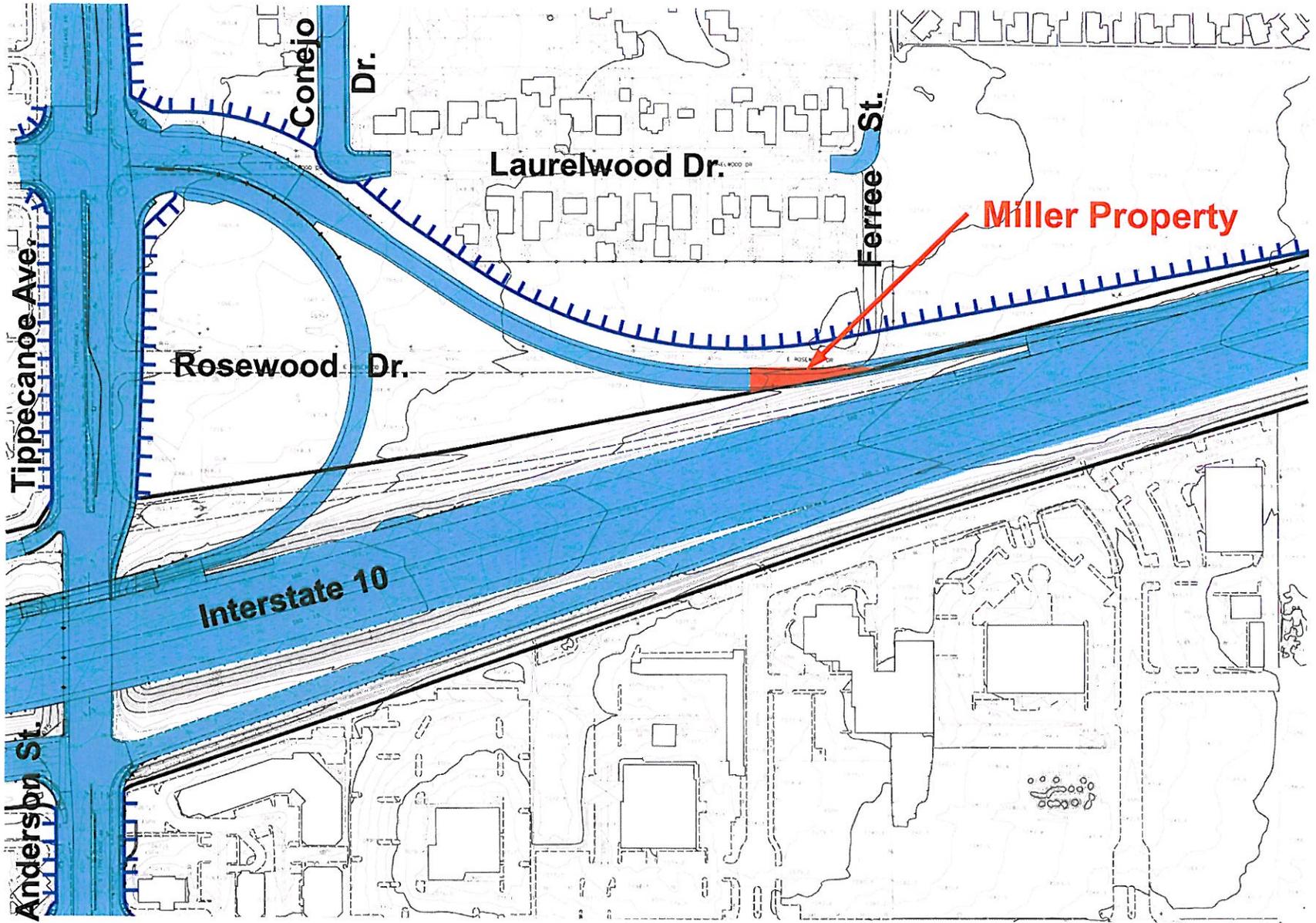


Exhibit B1

Exhibit B1

# PARCEL IMPACTS

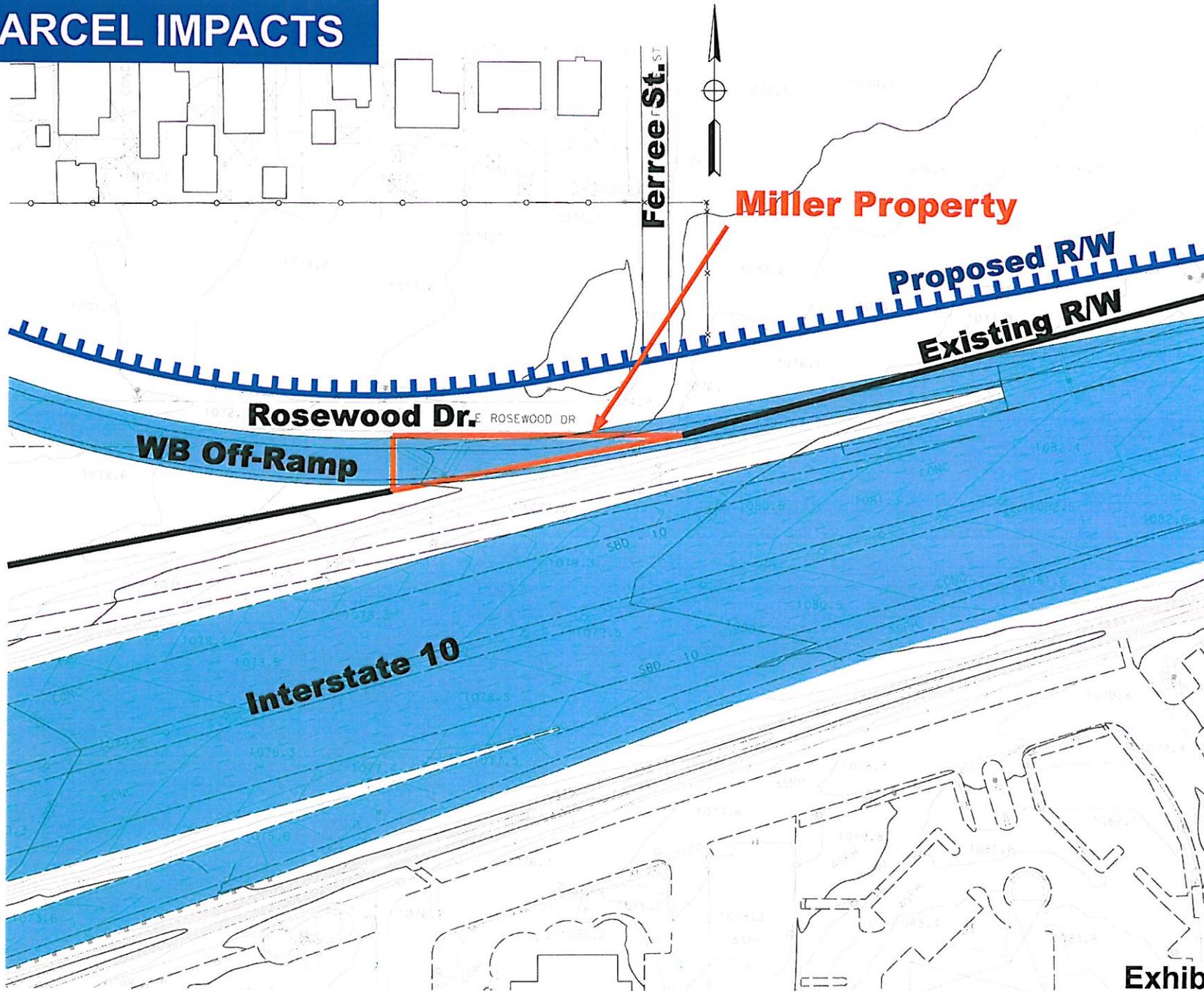


Exhibit B2

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# PARCEL IMPACTS

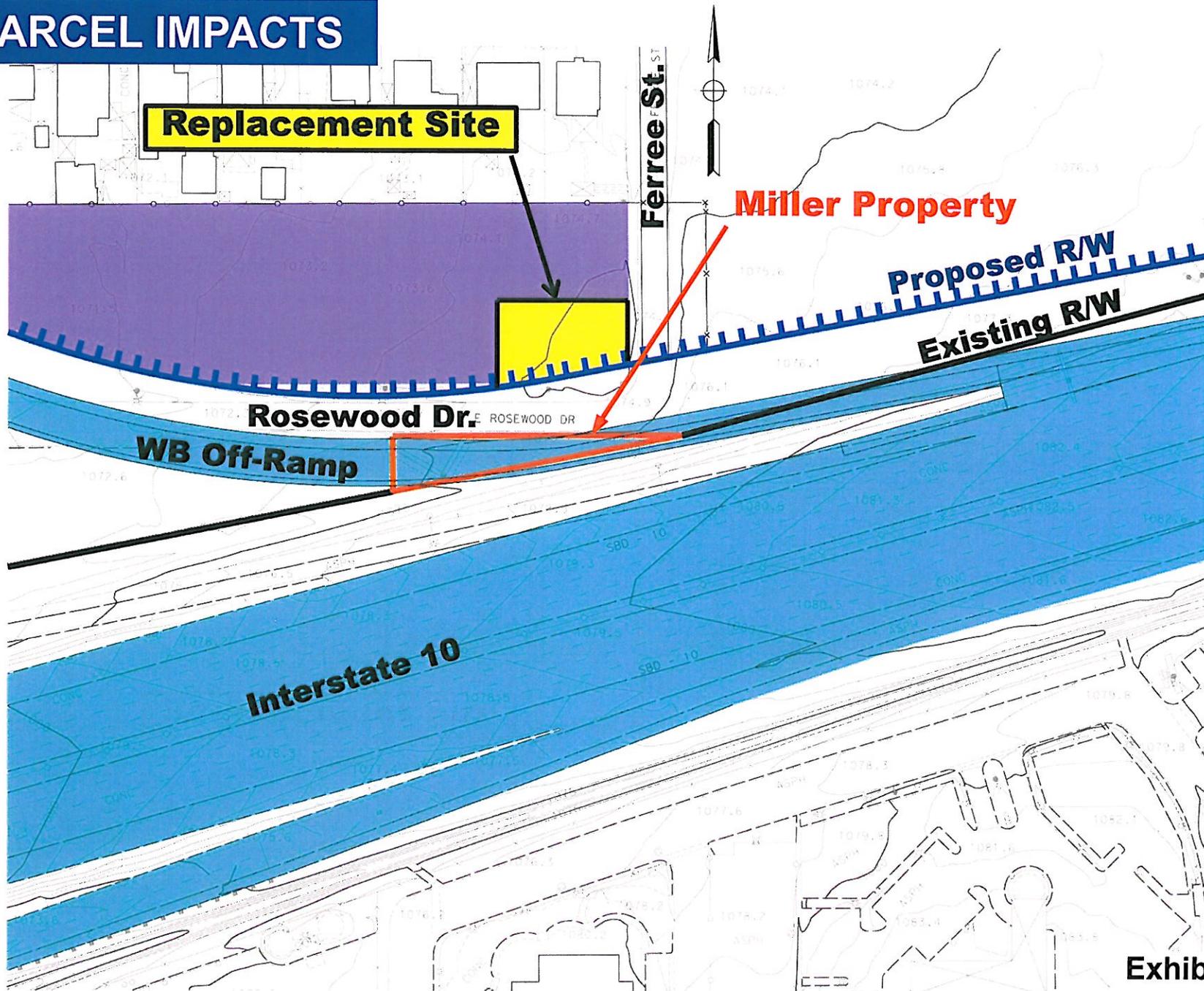


Exhibit B4

Exhibit B4

# OWNER'S ALTERNATIVE

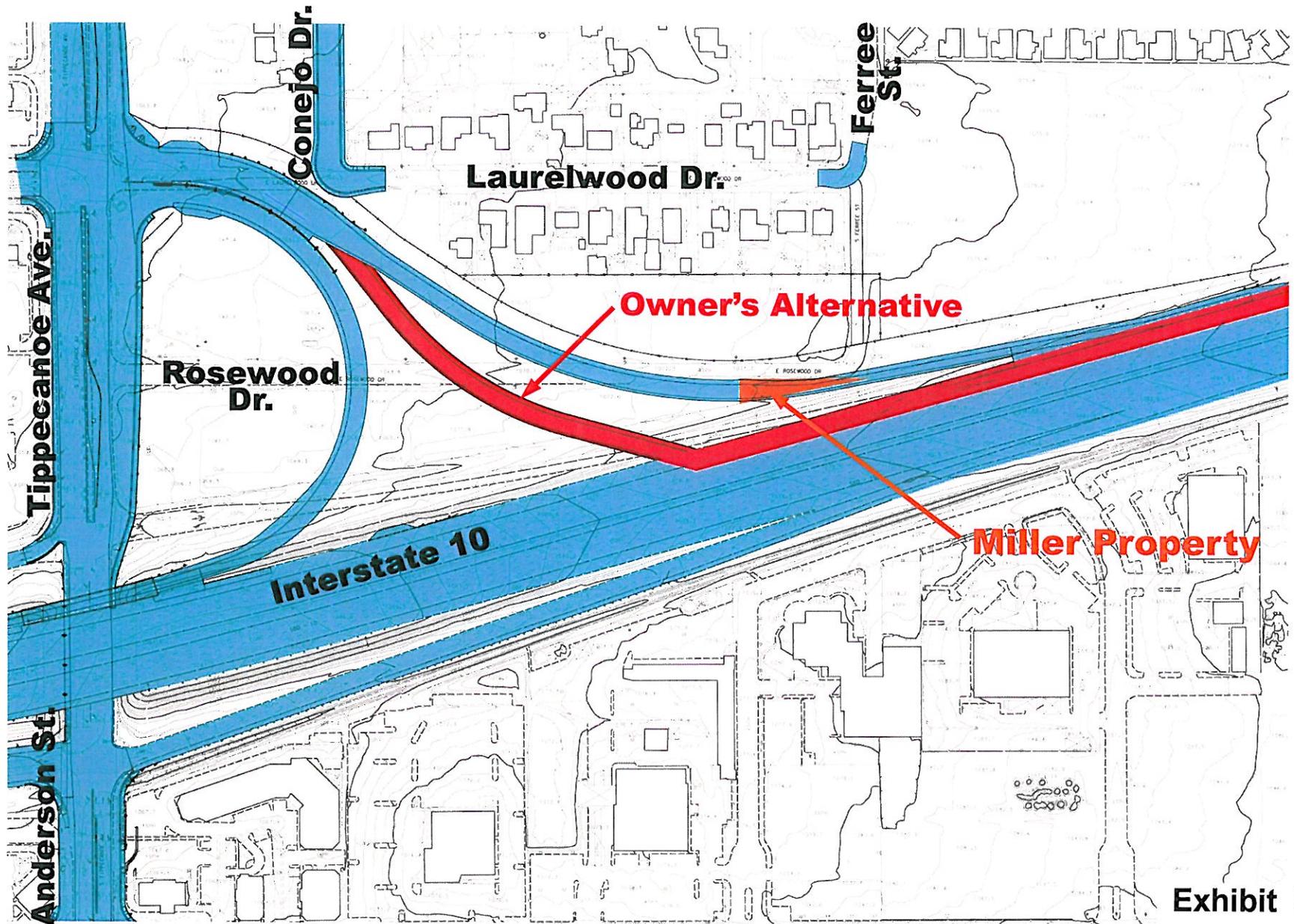


Exhibit B5

Exhibit B5