

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: June 25-26, 2003

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

From: ROBERT L. GARCIA  
Chief Financial Officer

Prepared by: Brice D. Paris  
Division Chief  
Right of Way

Ref: APPEARANCE

## RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission adopt Resolution of Necessity C-18794, which is the subject of this Appearance. The summary below identifies the location of and designates the nature of the property rights covered by the Resolution of Necessity. In accordance with statutory requirements, the owners have been advised that the Department of Transportation is requesting a resolution at this time. Adoption of Resolution of Necessity C-18794 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

### C-18794 - Billie M. & Lois O. Powers, et al.

01-Lak-20-KP 21.32-Parcel 11053-1, 2, 3 - EA 296202 - Certification Date: 06/26/03 - RTL Date: 06/26/03 (Conventional Highway - continuous left turn lane). Authorizes condemnation of land in fee for a State highway, an easement for utility purposes, located in the unincorporated area of Nice at 3104 east, Highway 20.

Attachments

## SUMMARY OF ISSUES

At the conclusion of the Department's 2<sup>nd</sup> Level Review, on May 9, 2003, Mr. Richard Daybell, consultant to the property owners, indicated his objections to the project had been satisfactorily addressed. Per Mr. Daybell, the property owners reserve the right to appear before the California Transportation Commission (Commission) on June 26, 2003, if any portion of the plans or agreements is changed.

Per his request, the Department mailed final project plans to Mr. Daybell on May 19, 2003.

### ITEMS OF CONCERN:

1. Mr. Daybell asked for substantial design revisions to reduce the area to be acquired and to obtain specific actions for his client.

Of special interest was a proposed paved turnout and turning area to be constructed at the west end of the property where Manzanita Drive West joins Highway 20. Mr. Daybell asked that this feature be deleted from the plans and that his client be allowed to access Highway 20 directly from the easterly half of the property frontage.

The project design was modified per Mr. Daybell's request to delete the turnaround feature and its associated taking from the property. Highway access will continue to be from Manzanita Drive East. Mr. Daybell will need to obtain an encroachment permit for his proposed direct access onto Highway 20.

2. Mr. Daybell asked that a drainage drop inlet on the property be upgraded to current standards.

An upgraded drain inlet is incorporated into project plans.

3. Preserving mature trees on the property is a concern of the owners for aesthetic reasons.

Most of those trees are avoided by the new design. One or possibly two trees must be removed from the right of way that will be acquired with this project. Mr. Daybell accepted this decision during the 2<sup>nd</sup> Level Review.

4. Mr. Daybell requested certain plan specification modifications.

These requests included that angle points on project plan sheets be redrawn to incorporate angles from previous monuments in existing public documents. The proposal is counter to professional survey standards and could not be accommodated. Mr. Daybell asked that a temporary protective fence be erected around one tree near the edge of the proposed right of way. The fence has been included in design plans. Mr. Daybell asked that a guardrail be erected along the frontage of the property to protect the vacant house on the property from errant vehicles. The subject property is located along a straight section of the highway, and safety records for the last ten years indicate no

vehicles have left the roadway. It was explained that design requirements and traffic conditions do not justify such a feature. Per Mr. Daybell's request, a letter accompanying the final plans set was sent to Mr. Daybell on May 19, 2003 acknowledging the decision by the Department not to construct the guardrail.

5. Per Mr. Daybell, construction contract clauses need to be included to benefit the owner.

Mr. Daybell requested that the contractor be instructed to dump fill dirt on a portion of the property for the purpose of building up a future driveway area. Any excavated fill is within the contractor's discretion to use as needed. Mr. Daybell was advised to pursue this request directly with the successful contractor. Mr. Daybell also requested that the advertising bulletin include a clause advising that the subject property is available for rent during construction. The Department cannot provide such an advertising advantage to an individual. As above, Mr. Daybell was advised to pursue the matter directly with the successful contractor. Mr. Daybell accepted these limitations.

6. Mr. Daybell requested that a power pole be relocated within the right of way.

Distribution lines from this power pole will be relocated to another pole nearby and the existing pole will be relocated onto the remainder property to be used as a service pole. By policy, private service poles are not allowed within the right of way.

7. Per request, Mr. Daybell will be notified of the advertising date for the highway project, and the date of the subject property sewer line re-connection to the main line.
8. The Department has appraised the subject property and offered the full amount of the appraisal to the owners in compliance with Government Code Section 7267.2

**Resolution of Necessity Appearance Fact Sheet**

**PROJECT DATA:** 01-LAK-20-19.6/21.9

**LOCATION:** Highway 20 in town of Nice

**LIMITS:** From 0.6-km east of Lucerne cutoff to about 0.6-km west of Sayre Avenue.

**CONTRACT LIMITS:** N/A

**COST:** R/W Cost = \$1.25 million, Construction Cost = \$4.46 million.

**FUNDING SOURCE:** SHOPP HB1 FY 2/3  
Programmed dollars: Construction - \$4.831 million.  
Right of Way - \$1.671 million.

**NUMBER OF LANES:** Existing: 2 lanes  
Proposed: 3 lanes

**PROPOSED MAJOR FEATURES:**

**INTERCHANGES:** None

**OTHER:** Two-way left-turn lane

**TRAFFIC:**

<i>Existing ADT (2001):</i>	9,000
<i>Proposed ADT (2015):</i>	14,000
<i>Proposed ADT (2025):</i>	17,600

**PARCEL DATA:**

**PROPERTY OWNER:** Billie M. Powers and Lois O. Powers

**PARCEL LOCATION:** North of the intersection of Lakeshore Extension with SR20

**PRESENT USE:** Vacant residence

**AREA OF PROPERTY:** 27,729 square feet

**AREA REQUIRED:** 3,216 square feet fee acquisition  
48 square feet utility easement

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

The Resolution of Necessity Review Panel met at 1:00 PM, May 9, 2003 at the Department facility at 2800 Gateway Oaks St., Sacramento. The Review Panel included Jarvia Shu, San Francisco Legal Office, Linda Fong, Headquarters Design Division and Vern Rhinehart, Headquarters Right of Way Division. Representatives from North Region Design and Right of Way were either present in person or were able to phone into the meeting using a phone bridge account established for the meeting. Mr. Richard Daybell, representing the property owners, elected to attend the meeting by phone.

This report summarizes the findings of the Review Panel with regard to the four criteria required for a Resolution of Necessity and makes recommendation to the Deputy Director for Project Delivery.

### **NEED FOR THE PROJECT**

Route 20 transects northern California west to east connecting Fort Bragg at the Pacific Coast and emigrant Gap in Placer County. Notably the route parallels the north shore of Clear Lake in Lake County, passing through several lake front communities there. In this vicinity the existing State Route is a conventional two-lane highway with narrow cross-section and little or no shoulders for vehicle recovery or off pavement parking. Increased traffic in this area calls for highway widening in the community of Nice to improve traffic flow and safety.

Current speed limit posting is 45 MPH (72 km/h). Traffic has increased 60% since completion of improvements to the Lucerne Cutoff intersection in 1989. Forecast ADT is 14,000 by 2015, up from 9,000 in 2001.

### **PROJECT DESIGN**

The project proposes to widen the portion of 01-Lak-20 from Sayre Avenue to a point just southeast of Lucerne Cutoff in Nice. The highway will be widened symmetrically about the existing centerline to provide standard lane widths and shoulders with a continuous two-way turn lane between two traffic lanes. A portion of an existing slope easement along the route is being acquired in fee for the proposed widening.

This project incorporates construction of a continuous two-way turn lane and shoulder widening. The highway will be widened symmetrically about the existing centerline to allow a two-way turn lane between the Lucerne Cutoff and Sayre Avenue in Nice. The two-way turn lane would allow a momentary pullout and stop location for vehicles entering the highway. These vehicles would be able to wait safely in the turn lane for an opening in traffic before completing a turn into the active lane.

Typical cross-section of the widened highway will include two traffic lanes 3.6 meters (12 feet) wide, divided by a 3.6-meter (12 feet), two-way turn lane. Shoulders would be 2.4 meters (8 feet) or wider. A sewer cleanout, two utility poles and a street light pole will be relocated outside the new right of way along the frontage of the subject property. Turn arrows will be displayed on the highway surface at one

end of Manzanita Drive East, the east boundary of the property. At the west of the property Manzanita Drive will be closed beyond an entry opening to a neighboring property.

This portion of route 20 is functionally classified as Rural Minor Arterial. It is not included in the National Highway System. The project has local support.

The Project Study Report (PSR) was approved November 12, 1992. The Project Report (PR) was approved June 30, 1999. The environmental document was approved in June 1999, updated and approved July 10, 2002. This project is Categorically Exempt under CEQA guidelines and Categorically Excluded under federal NEPA guidelines. Preliminary construction costs estimate is \$4.3 million as a HB-4N SHOPP project. Right of way costs are estimated at 1.25 million. Advertising is anticipated in June 2003.

### **NEED FOR THE PARCEL**

The subject property is 27,729 square feet. It is zoned SR-1, a single family residential lot. A vacant home on the property is not being acquired. The right of way parcel involves fee taking for roadway widening in an area of former highway slope easement, approximately 3,154 square feet (Parcel 1); a triangular fee area of approximately 62 square feet for turning movements (Parcel 2) at the junction of the highway and Manzanita Drive East; plus an additional utility easement of 48 square feet (Parcel 3). The utility easement is required for a pole anchor.

### **STATUTORY OFFER TO PURCHASE**

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record in compliance with Government Code Section 7267.2.

### **PANEL RECOMMENDATION**

The Panel concludes that the District's design complies with Section 1245.230 of the Code of Civil Procedure in that:

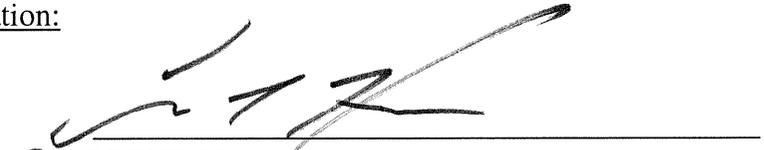
- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property to be condemned is necessary for the proposed project.
- An offer to purchase 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.



VERNON V. RHINEHART  
Division of Right of Way  
Panel Chair

I concur with the Panel's recommendation:

  
BRENT FELKER  
Chief Engineer

**PERSONS ATTENDING SECOND LEVEL REVIEW PANEL HEARING ON  
MAY 9, 2003**

Mr. Richard Daybell,  
Advisor to the property owner

Telephone attendance

Department of Transportation:

Brent Meyer, Project Engineer  
Atifa Ferouz, Design Engineer  
John Roccanova, HQ Design  
Gary Horn, Chief, North Region Right of Way  
Jim Hall, North Region Right of Way  
Chuck Edwards, District 01 Right of Way  
Ed Fitzgerald, District 01 Right of Way  
Don Campbell, District 01 R/W Engineer  
Charlie Fielder, district 01 Program and Project Mgt.  
Linda Fong, HQ Design, Panel Member  
Vern Rhinehart, HQ Right of Way, Panel Member  
Jarvia Shu, District 04 Legal Div., Panel Member  
Charles Carrillo, Right of Way, Facilitator

Telephone attendance

Telephone attendance

Telephone attendance

Telephone attendance

Telephone attendance

Telephone attendance

### Chronology of Contacts with Property Owner and other Project Events

- 6/27/02 introductory phone call - take over assignment from B. Martin and M. Ricards
- 9/5 phone contact with R. Daybell, consultant/son-in-law
- 9/20 mail R/W Contract, deed and map for \$6400-US Mail
- 9/27 electronic mail from consultant, R. Daybell that the Powers reject State's offer and wants State to buy entire parcel
- 9/30 phone call from RD in A.M.  
phone call to RD in P.M. to explain State's position and describe Condemnation process
- 10/4 received faxed letter from RD asking for design information  
I email a response
- 10/8 email and faxed letter from RD  
I mail (US) information – photos and plans – to RD
- 10/10 I email RD that information was sent
- 10/18 I email RD in A.M. with additional design information  
  
I call RD in P.M.
- 10/23 Staff mails 45 Day Letter while I'm at 3<sup>rd</sup> Week Academy
- 10/28 voice mail from RD  
received email from RD requesting more information
- 10/29 I respond via email
- 10/30 phone call to RD, he said they refuse to talk money until they fully understand how the project impacts the subject parcel and immediate area
- 11/5 email from RD and he sent letter to CTC requesting an appearance before commission
- 11/6 email from RD saying he will be in Nice around 11/12/02
- 11/7 two emails from RD. I try to set up a 1<sup>st</sup> Level Review meeting
- 11/13 first personal contact--First Level Review at property from 1-3:15 PM. RD lists all of the Powers concerns, some of which were dealt with immediately; others we agree to respond to after additional research
- 11/25 phone call to RD; he brings up 5 new concerns about project design. Send fax to RD with additional information
- 11/26 sent our responses from 1<sup>st</sup> Level Review to RD via email
- 12/2 sent additional response via email
- 12/3 left voice mail for RD requesting permission to enter property for further investigation per their request
- 12/6 receive voice mail from RD wanting particulars re:entry onto property  
phone call to RD to explain need to further research his proposals
- 12/9 phone call to RD to provide information on Design's need for field check at property. RD has 4 more requests re:relocation of utilities, design and mapping
- 12/10 phone call to RD; no answer; left message  
RD calls and I explain we are still studying some of RD's proposals from 1<sup>st</sup> Level Review and that project must stay on track and move ahead. I suggest scheduling a 2<sup>nd</sup>

Level Review but RD is hesitant, as he wants more information about numerous items. RD wants access to "technical people" who can answer his questions.

12/13 arrange conference call with Design, R/W and R. Daybell that lasted 1.25 hours. RD agreed to get back to me re: date for 2<sup>nd</sup> Level Review

12/18 phone call to RD re: date for 2<sup>nd</sup> Level Review. He can't respond, as Mr. Powers is ill

12/27 Design mailed information package to RD, as promised in teleconference

12/31 email to RD asking for agreeable date for 2<sup>nd</sup> Level Review meeting.

1/2/03 RD emails a response suggesting where R/W line should be relative to centerline and they oppose removing any trees and request reimbursement for their expenses so far.

1/10 phone call to RD as an update

1/17 email to RD of possible need for utility easement

2/14 email from RD re: utility easement

3/14 phone call to RD with tentative approval to remove turnaround from Powers property. RD said relocating sewer clean out is not a big deal

4/9 phone call to RD. that I have received the revised maps

4/14 send via Overnight Mail a revised contract, map and grant deed showing acquisition area decreased to 3,216sf and State's offer of \$2450. Package lacking utility easement deed, as we have not received requirements from PGE

4/16 4 emails from RD re map. Send utility easement deed via Overnight Mail to RD.

4/17 send partial response to RD's map questions; more to come from R/W Engineering on Friday

4/18 email from RD asking for \$10,000 in consultant costs and additional requests re R/W map

4/21 phone call to RD to see if there are any questions regarding R/W contract; they have additional conditions they want added to contract which he will email to me. I suggest date of 4/29 for 2<sup>nd</sup> Level Review and he is invited to attend in person or by phone but RD isn't sure we need this meeting

4/23 2 emails from RD. 1) additional conditions they want added to contract with 17 items and requested compensation is now \$18,615 to cover consultant fees. 2) email states they will not attend 2<sup>nd</sup> Level Review and he prefers a 10-day notice and it be held in Oxnard if rescheduled

4/25 phone call to RD that Review has been cancelled. Chuck Edwards emails response to RD's "additional conditions" email

4/30 RD faxed an explanation to C. Edwards response.

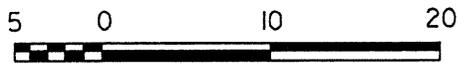
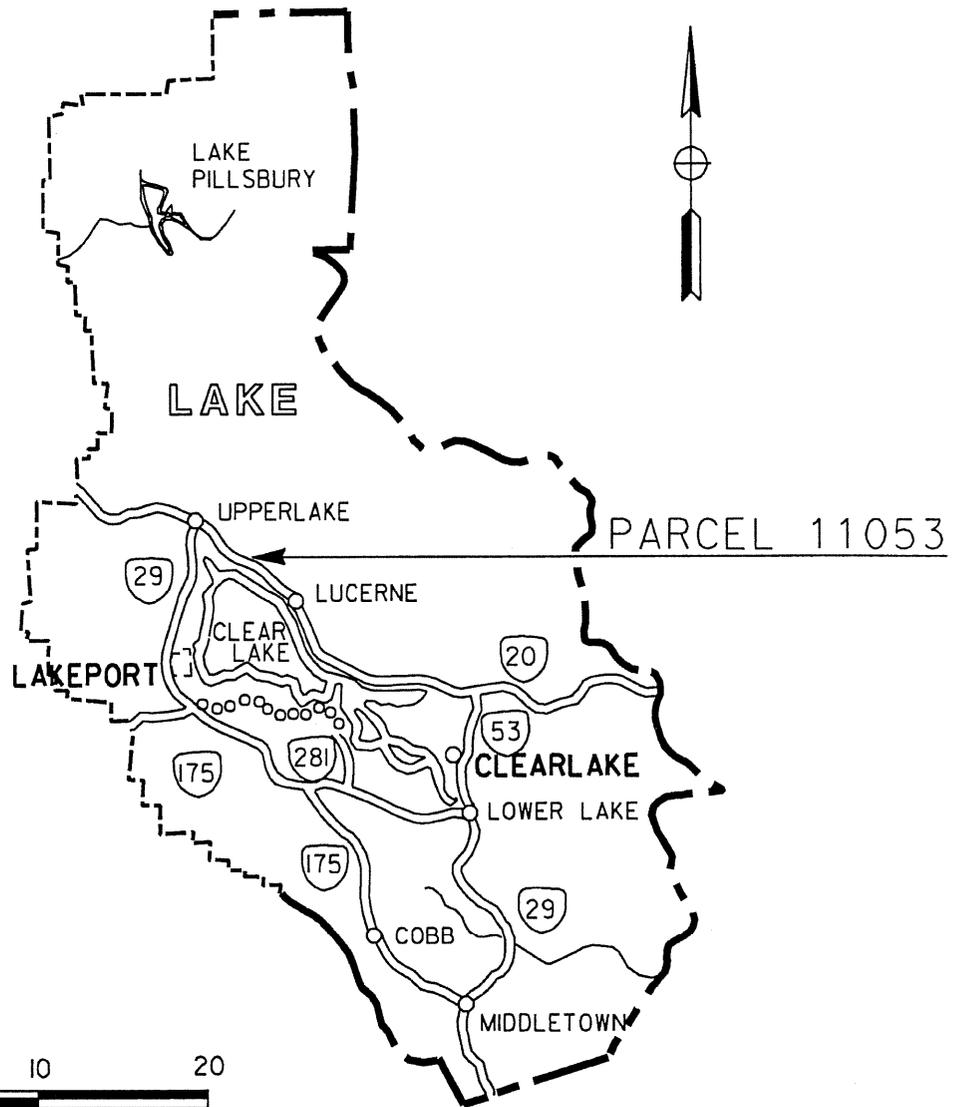
5/1 phone call to RD reiterating all that CT has done in the last 7 months to accommodate the Powers' requests and concerns. RD re-states there is no need for 2<sup>nd</sup> Level meeting; I asked for that in writing.

5/2 sent RD an email recapping last night's conversation and increase our offer of compensation to Powers to \$4,000 as a show of good faith (per Jim Hall's authorization) in trying to settle this. I asked, again, for a written withdrawal from 2<sup>nd</sup> Level Review and CTC appearance

- 5/6 phone call to RD confirming \$4,000 offer to which he said was unacceptable. RD emailed a copy of letter he is sending to CTC making a conditional withdrawal from appearing before the CTC. Headquarters deems this inadequate as it is a conditional withdrawal.  
I call RD later in the day saying his letter wasn't sufficiently clear and he refused to provide another.
- 5/8 send email to RD informing him of teleconference phone number and code to use should he wish to participate in the 2<sup>nd</sup> Level teleconference..
- 5/9 the 2<sup>nd</sup> Level Review Meeting was held via teleconference and RD did participate and it was apparent the remaining issue for the Powers is compensation.

Attachment(s): Maps (2 pages)

EXHIBIT A



SCALE IN MILES

LOCATION MAP

STATE OF CALIFORNIA BUSINESS, TRANSPORTATION AND HOUSING AGENCY DEPARTMENT OF TRANSPORTATION			
RESOLUTION OF NECESSITY MAP			
11053			
DIST	COUNTY	ROUTE	KILO POST
01	LAK	20	21.32
			DATE: April, 2003
			SHEET 1 OF 2

