

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: July 25-26, 2007

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

From: CINDY McKIM
Chief Financial Officer

Prepared by: Bimla G. Rhinehart
Chief
Division of Right of Way and
Land Surveys

Subject: **RESOLUTIONS OF NECESSITY - APPEARANCE**

RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-19663 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 project.
2. The project is planned and located in a manner that will be most compatible with the greatest public good with 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 owners of record.

In this case, the property owners are contesting the resolution and have requested an appearance before the Commission to discuss the outstanding issues, which are related to the design of the project.

BACKGROUND:

Discussions have taken place with the owners, each of whom have been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which the owners may subsequently be entitled. Adoption of the resolution will not interrupt our efforts to secure equitable settlement. In accordance with statutory requirements, each owner has been advised 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-19663 - Masomeh Behpourian

08-SBd-62-PM 17.17 - Parcel 19765-1, 2 - EA 476809.

Right of Way Certification Date: 08/23/07; Ready to List Date: 04/01/08. Conventional highway - widen roadway for two-way left turn lane and eight-foot shoulders. Authorizes condemnation of land in fee for a State highway and a temporary easement for construction purposes. Located in the unincorporated area of San Bernardino County, commonly known as Joshua Tree, at 60920 Twentynine Palms Highway. Assessor's Parcel Number 0602-272-15.

Attachments

SUMMARY OF ISSUES

The property owner, Masomeh Behpourian, and her brother Robert Behpourian do not contest the need for the project or that the property sought to be condemned is necessary for the project. However, they have expressed concerns regarding impacts to their property as a result of the Department of Transportation's (Department) proposed project.

The following is a description of the concerns expressed by the property owner and her representative, followed by the Department's response.

Owner:

The original design and construction of State Route (SR) 62 by the Department created a grade difference of three to five feet between the highway and their property, which altered the natural drainage patterns across the property, thereby causing flooding during excessive rains. Therefore, the Department should compensate the property owner to import fill material to level their property to a buildable site, as would be required by the County of San Bernardino, in the event the property is developed.

Department Response:

Neither the original construction of SR 62 nor the roadway widening completed in 1970 disrupted the drainage patterns across the property.

Additionally, according to the Flood Insurance Rate Map #06071C8140F, issued by the Federal Emergency Management Agency, which has an effective date of March 18, 1996, a portion of the property is located within a flood zone. The property owner purchased the subject property in October 2004, with this pre-existing condition, and the Department has not changed nor altered the roadway drainage facilities since that time.

Any requirements to level or fill the property, or restrictions imposed by the County of San Bernardino as a condition to develop, would be the obligation of the property owner, and not the Department. The Department is prohibited from spending public funds for the benefit of private development.

Owner:

Can the Department construct a drainage facility adjacent to the southern property boundary within the proposed right of way (R/W) at the toe of slope to control highway runoff?

Department Response:

Yes. As part of the project, the Department will be constructing a drainage facility along the toe of slope to control highway runoff created by the project.

Owner:

Will the Department be providing any landscaping or erosion control measures on the proposed slope adjacent to the subject property? The owner has requested that the slope be landscaped with upgraded rock treatment and/or vegetation, so aesthetically it will be visually appealing to future tenants of the property.

Department Response:

Yes. Proposed erosion control measures over the roadway side slope call for restoring the slope to be consistent with the natural habitat and vegetation within the project area. This will primarily consist of a seed mix of native plants that blend in with the surrounding area. This proposed erosion control measure was recommended and approved by the Department in order to ensure compliance with regulations affecting Storm Water Pollution contained in the Federal Clean Water Act. The Department has no obligation to provide additional landscaping or rock treatment, to do so could be considered a gift of public funds. The slope treatment proposed by the owner would disrupt the natural environment and not be compatible with the surrounding area.

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA 08-SBd-62-PM 17.1/17.8
Expenditure Authorization (EA) 476809

Location: On State Route (SR) 62 in San Bernardino County in the community of Joshua Tree

Limits: From Sunny Vista Road to Hallee Road

Cost: Construction cost: \$1,590,000
Right of Way cost: \$533,000

Funding Source: Amended into the 2006 State Highway Operation and Protection Program (SHOPP) under the 201.010/HB1 Safety Improvement Program

Number of Lanes: Existing SR 62: Four-mixed-flow lanes
Proposed SR 62: Four-mixed-flow lanes plus one continuous two-way left turn lane (TWLTL)

Proposed Major Features: Widen SR 62 from Sunny Vista Road to Hallee Road to accommodate a 12-foot continuous TWLTL and eight-foot shoulders in each direction

Traffic: Existing (year 2007): 19,300 Average Daily Traffic (ADT)
Proposed (year 2027): 30,000 ADT

PARCEL DATA

Property Owner: Masomeh Behpourian

Parcel Location: 60920 Twentynine Palms Highway
At the northeast corner of Bartlett Mountain Road and SR 62, in San Bernardino County in the community of Joshua Tree
Assessor's Parcel Number 0602-272-15

Present Use: Vacant Land

Area of Property: Five Acres

Area Required: Parcel 19765-1 = 0.38 acres in fee (includes 0.11 acres within existing SR 62 maintained by the Department)
Parcel 19765-2 = 0.08 acres in temporary construction easement

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met at the district office in San Bernardino on May 17, 2007. The Panel members consisted of Donald Grebe, Department of Transportation (Department) Headquarters (HQ's) Division of Right of Way and Land Surveys; Nancy Naylor, Department Los Angeles Legal Division; Luis Betancourt, Department HQ's Division of Design; and Mark Zgombic, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Masomeh Behpourian, the property owner, and her brother Robert Behpourian were present at the meeting.

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 Chief Engineer.

NEED FOR THE PROJECT

The project is located on State Route (SR) 62 from Sunny Vista Road to Hallee Road (Post Mile 17.1 to 17.8), in the community of Joshua Tree, county of San Bernardino. Due to increasing traffic volumes, thirty-eight traffic collisions have occurred within the project limits from January 1, 2003 to December 31, 2005, including twenty-four rear-end accidents. The majority of rear-end collisions were mainly due to the lack of a two-way left turn lane. Another contributing factor to the traffic collisions are shoulder widths that are neither standard nor continuous, to provide a safe area for emergency stops or parking. The length of the project is 0.7 miles and is located within highway segments to the east and west, which currently have four through lanes and a two-way left turn lane. Therefore, it is desirable to maintain the continuity of these geometric features of the highway within the project limits.

This project will improve safety on SR 62 within the project limits by providing a 12-foot continuous two-way left turn lane and an eight-foot shoulder in each direction of traffic. Implementation of this project will provide a safe area for left turn maneuvers and emergency parking, reduce the number of traffic collisions, facilitate traffic flow, and improve the geometric features of the highway.

PROJECT PLANNING AND LOCATION

The proposed project scope is to widen SR 62 from Sunny Vista Road to Hallee Road in the community of Joshua Tree, in San Bernardino County, to accommodate a continuous 12-foot two-way left turn lane, a standard eight-foot shoulder in each direction of traffic, and improve the existing drainage system within the project limits.

SR 62 is a conventional highway, which runs west to east and provides for interstate and interregional travel between California and Arizona via Riverside and San Bernardino Counties. The highway extends from the junction of Interstate 10 near White Water in California to the Arizona State line near Earp, by traversing through Morongo Valley, the vicinity of Yucca Valley, Twentynine Palms, Rice, and Vidal Junction. The highway is approximately 152 miles in length. SR 62 is a four-lane undivided conventional highway within the limits of the project.

Most recent highway improvements within the project limits include open graded asphalt concrete over-laid in the year 2001 and installation of traffic signals at a three-way intersection with Hallee Road in the year 1995.

Community meetings were held on a regular basis to explain the scope and purpose of this project. The Community has expressed its concern regarding the need to accelerate the delivery of this project in order to avoid future traffic accidents.

The existing roadbed within the project limits consists of four through lanes with shoulder widths ranging from one to eight feet. There are left turn lanes at three locations in the eastbound and at two locations in the westbound direction. The length of the project is 0.6 miles and the posted speed limit varies from 45 to 55 miles per hour.

Highway Operations initiated the project by preparing a Project Initiation Proposal (PIP). The scope consisted of widening the roadway to provide for a continuous 12-foot two-way left turn lane and standard eight-foot shoulders. The PIP was approved on September 22, 1998.

The environmental document was approved on February 4, 2004. The estimated construction cost is \$1,590,000 and was amended into the 2006 State Highway Operation and Protection Program (SHOPP) under Safety Improvement Program (201.010/HB1). The project should be "Ready to List" by April 2008, and scheduled for advertisement in June of 2008. Construction is estimated to start in September 2008.

NEED FOR SUBJECT PROPERTY

The subject property is needed to accommodate construction of the approved project, which requires widening of SR 62. Specifically, a portion of the property is required to construct a continuous 12-foot two-way left turn lane, a standard eight-foot shoulder, and improve the existing drainage system adjacent to the subject property. The project would result in the permanent acquisition of 0.38 acres, approximately 7.5 percent of a total property area of five acres.

In an effort to lessen project impacts to the subject parcel, the Department looked at the following alternatives:

- 1) Reducing the project limits to avoid the subject property entirely. The result of this alternative would leave a small segment of SR 62 without a continuous two-way left turn lane and standard shoulder for emergency parking. This alternative was rejected as it creates unsafe driving conditions since this segment will be located between two other highway segments, which have two-way left turn lanes.
- 2) Shifting the proposed corridor alignment further to the south, thereby avoiding the subject parcel. However, due to safety issues created by the location and angle of the adjacent intersection with local streets, this alternative was not recommended. Horizontal realignment of the highway would also have additional impacts on surrounding parcels outside the scope of the environmental document, as well as the existing natural drainage patterns in the area. In addition, shifting the alignment south

would impact the integrity of the Joshua Tree Inn. The local historical society, as well as the Department's cultural studies unit, recommended that this site be preserved. This was another consideration in the final selection of the proposed alignment.

The right of way (R/W) requirements for the subject parcel are as follows:

Parcel 19765-1: A fee acquisition that consists of 0.38 acres (includes 0.11 acres within existing SR 62 maintained by the Department) located along the southern boundary of the subject property. This requirement is for the SR 62 mainline widening to facilitate construction of a continuous 12-foot two-way left turn lane and an eight-foot shoulder. In addition, this area is needed to construct a Portland Concrete Cement "V" ditch at the toe of slope within the proposed R/W to collect highway runoff.

Parcel 19765-2: A temporary construction easement that consists of 0.08 acres located along the southern boundary of the subject property adjacent to parcel 19765-1. This easement is necessary for access and construction activities associated with the proposed highway widening, which include slope grading and construction of the drainage facility.

The Department's design has taken into consideration the minimum highway design standards. The proposed R/W requirements have been reduced as much as possible to minimize impacts to the subject property while keeping with the overall purpose of the project, which is to improve safety. Therefore, the described impacts to the subject property cannot be avoided.

The following is a description of the concerns expressed by the property owner and her representative, followed by the Department's response:

Owner:

The original design and construction of SR 62 by the Department created a grade difference of three to five feet between the highway and their property, which altered the natural drainage patterns across the property, thereby causing flooding during excessive rains. Therefore, the Department should compensate the property owner to import fill material to level their property to a buildable site, as would be required by the County of San Bernardino, in the event the property is developed.

Department Response:

Neither the original construction of SR 62 nor the roadway widening completed in 1970 disrupted the drainage patterns across the property.

Additionally, according to the Flood Insurance Rate Map #06071C8140F, issued by the Federal Emergency Management Agency, which has an effective date of March 18, 1996, a portion of the property is located within a flood zone. The property owner purchased the subject property in October 2004, with this pre-existing condition, and the Department has not changed nor altered the roadway drainage facilities since that time.

Any requirements to level or fill the property, or restrictions imposed by the County of San Bernardino as a condition to develop, would be the obligation of the property owner, and not the Department. The Department is prohibited from spending public funds for the benefit of private development.

Owner:

Can the Department construct a drainage facility adjacent to the southern property boundary, within the proposed R/W at the toe of slope to control highway runoff?

Department Response:

Yes. As part of the project, the Department will be constructing a drainage facility along the toe of slope to control highway runoff created by the project.

Owner:

Will the Department be providing any landscaping or erosion control measures on the proposed slope adjacent to the subject property? The owner has requested that the slope be landscaped with upgraded rock treatment and/or vegetation, so aesthetically it will be visually appealing to future tenants of the property.

Department Response:

Yes. Proposed erosion control measures over the roadway side slope call for restoring the slope to be consistent with the natural habitat and vegetation within the project area. This will primarily consist of a seed mix of native plants that blend in with the surrounding area. This proposed erosion control measure was recommended and approved by the Department in order to ensure compliance with regulations affecting Storm Water Pollution contained in the Federal Clean Water Act. The Department has no obligation to provide additional landscaping or rock treatment, to do so could be considered a gift of public funds. The slope treatment proposed by the owner would disrupt the natural environment and not be compatible with the surrounding area.

PARCEL DESCRIPTION

The subject property is located at 60920 Twentynine Palms Highway, in the community of Joshua Tree, in San Bernardino County. Identified as Assessor's parcel number 0602-272-15, this parcel is situated at the northeast corner of Bartlett Mountain Road and SR 62, with a total area of five acres. The property is vacant undeveloped land with sloping topography, which slopes primarily from north to south toward SR 62. A portion of the property is located within a special flood hazard area subject to flooding by a 100-year flood (Flood Insurance Rate Map #06071C8140F - Zone A). The southern boundary of the parcel sits approximately three to five feet below grade of existing SR 62. The parcel has visibility from the adjacent SR 62 and can be accessed from Bartlett Mountain Road.

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.

PANEL RECOMMENDATION

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

- The public interest and necessity require the project.
- The project is planned and located in a manner that will be most compatible with the greatest public good with the least private injury.
- This property is necessary for the proposed project.
- An offer to acquire the property 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 California Transportation Commission.

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:

RICHARD D. LAND
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING
HEARING ON MAY 17, 2007**

Donald Grebe, Headquarters Division of Right of Way and Land Surveys, Panel Chair
Nancy Naylor, Los Angeles Legal Office Attorney, Panel Member
Luis Betancourt, Headquarters Division of Design, Panel Member
Mark Zgombic, Headquarters Division of Right of Way and Land Surveys, Panel Secretary

Masomeh Behporian, Property Owner
Robert Behpourian, Property Owner's brother and representative

Michael A. Perovich, District 8 District Director
Sergio Avila, District 8 Design
Jesus Paez, District 8 Design
Anthony Liao, District 8 Project Management
Pati Smith, District 8 Right of Way Project Delivery Manager
Maurice Rodriguez, District 8 Right of Way Agent
Jean Colyer, District 8 Right of Way Agent

DIST.	COUNTY	ROUTE	KILOMETER POST
08	Sbd.	62	27.64

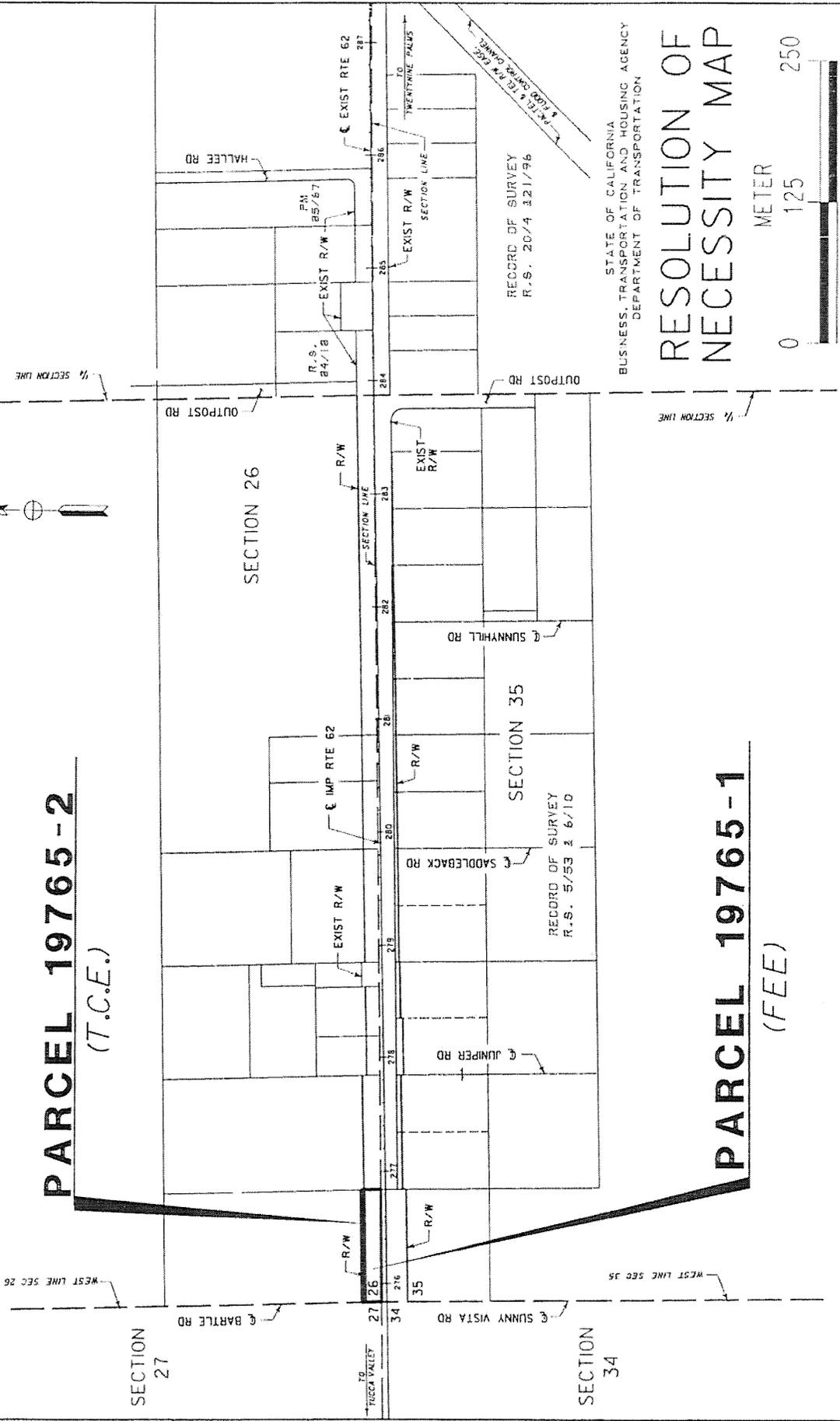


EXHIBIT "A"

T. J. N. R. 6 E. S. B. M.
 UNINCORPORATED TERRITORY OF
 SAN BERNARDINO COUNTY
 JOSHUA TREE AREA

PARCEL 19765-2
 (T.C.E.)

PARCEL 19765-1
 (FEE)



STATE OF CALIFORNIA
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY
 DEPARTMENT OF TRANSPORTATION

RESOLUTION OF
 NECESSITY MAP



SCALE 1:5000

DIST.	COUNTY	ROUTE	KILOMETER POST
08	Sbd.	52	27.64

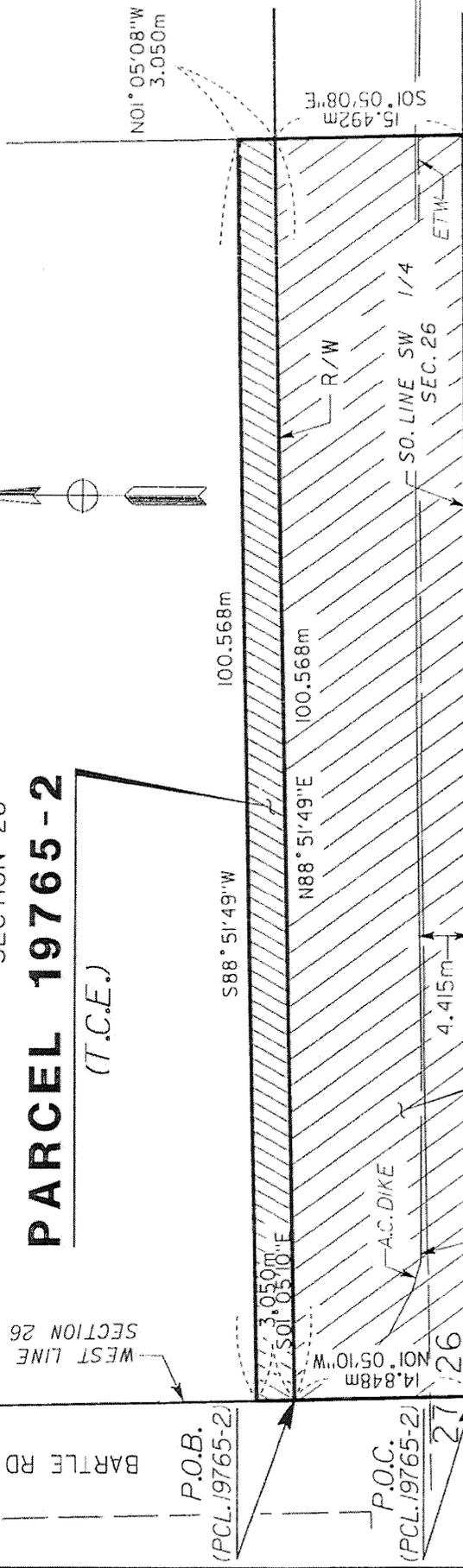


EXHIBIT "B"

T. J. N. R. & S. B. M.,
 UNINCORPORATED TERRITORY OF
 SAN BERNARDINO COUNTY
 JOSHUA TREE AREA
 SECTION 26

PARCEL 19765-2

(T.C.E.)



STATE OF CALIFORNIA
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY
 DEPARTMENT OF TRANSPORTATION

**RESOLUTION OF
 NECESSITY MAP**

PARCEL 19765-1

(FEE)

SECTION 35

