

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: January 14, 2009

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: **RESOLUTION OF NECESSITY - APPEARANCE**

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-20038 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 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 owners are contesting the Resolution and have requested an appearance before the Commission to express their belief that the proposed project is not compatible with the greatest public good and least private injury, and that the property sought to be condemned is not necessary for the project. The owner's 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-20038 - E. David G. Waters, Trustee, etc., et ux.

08-SBd-215-PM 6.8 - Parcel 18566-1, 2, 01-01 - EA 0071V9.

Right of Way Certification Date: 01/15/09; Ready to List Date: 06/30/09. Freeway - add two high occupancy vehicle lanes and operational improvements. Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, a temporary easement for construction purposes, and excess land in fee to which the owner has consented. Located in the city of San Bernardino at 860 West 2nd Street and 877 Main Street.

Assessor's Parcel Numbers 0134-263-03, -15, -16.

Attachments:

Attachment A – Project Information

Exhibits A1 through A2 – Project Maps

Attachment B – Parcel Panel Report

Exhibits B1 through B2 - Parcel Maps

PROJECT INFORMATION

PROJECT DATA	08-SBd-215-PM 6.56/8.95 Expenditure Authorization (EA) 0071V9
<u>Location:</u>	Interstate (I) 215 in the city of San Bernardino, in San Bernardino County
<u>Limits:</u>	From south of Rialto Avenue to south of Massachusetts Avenue
<u>Contract Limits:</u>	I-215 from I-10 to State Route (SR) 210
<u>Cost:</u>	Programmed construction cost: \$289,482,000 Right of way cost estimate: \$96,905,000
<u>Funding Source:</u>	State Transportation Improvement Program, Traffic Congestion Relief Program, Corridor Mobility Improvement Account, Federal Demonstration Program, Regional Improvement Program, Congestion Mitigation and Air Quality, Projects of National and Regional Significance, and Measure I
<u>Number of Lanes:</u>	Existing (I-215): four to six lanes both directions Proposed (I-215): six to eight lanes both directions
<u>Proposed Major Features:</u>	<u>Interchanges:</u> 2 nd , 3 rd , 5 th , Baseline Streets; SR 259 <u>Other:</u> widen I-215; add one high occupancy vehicle (HOV) and one mixed-flow lane in each direction. Collector-Distributor (CD) roads between 2 nd and 3 rd Streets; widen 2 nd Street.
<u>Traffic:</u>	Existing (year 2003): 83,800 Annual Daily Traffic (ADT) - northbound 73,800 ADT - southbound Proposed (year 2030): 127,000 ADT - northbound 122,000 ADT - southbound

NEED FOR PROJECT

The purpose of the proposed project is to respond to a need to improve I-215 based on identified deficiencies of the existing facility. These deficiencies include: lack of direct, equitable access to the west; exceptions to design standards; inability to meet traffic demand; above average accident rates; and incompatibility with land use goals and objectives.

The project is identified as segments one and two of five project segments along the San Bernardino I-215 Corridor, and is needed to provide additional mainline capacity between I-10 near the city of Colton and SR 210 in the city of San Bernardino, thereby facilitating the movement of people and goods as well as improving operational efficiency and traffic safety. The affected cities along the routes have planned for the widening of the freeway for many years.

Because the surrounding areas of Riverside/San Bernardino are the fastest growing counties in the state, the existing congestion along this freeway segment is expected to worsen in the coming years due to increasing traffic demand.

The City of San Bernardino and the San Bernardino Associated Governments, the regional transportation planning agency, have also given their full support for the project as designed.

PROJECT PLANNING AND LOCATION

Several project alternatives were considered during the project approval process and were documented in the 1992 Project Report and 1999 Final Environmental Impact Statement / Final Environmental Impact Report (EIS/EIR). The alternatives considered included:

No-Build alternative - This alternative considered the impact of making no improvements. It was discarded because it did not mitigate any of the identified needs.

Mixed-flow lane alternative - This alternative considered adding a conventional mixed-flow lane. It was discarded because it did not meet air quality goals plus it provided lower traffic capacity than the HOV alternatives.

HOV lane alternative, Option 1 - This alternative provided a carpool lane in each direction of travel and utilized frontage roads between local street interchanges in most areas of the project corridor. New and reconstructed interchanges were also proposed. As part of the frontage road system, the existing I Street exit ramp was to be maintained somewhat similar to the property owner's suggestion. Overall, this alternative had system-wide operational deficiencies and was discarded. Two of the primary deficiencies that were documented included an unacceptable freeway Level of Service (LOS) 'F' and underperforming local street circulation on the frontage roads. Use of the I Street as an exit ramp was also cited as undesirable.

HOV lane alternative, Option 2 - This alternative provided a carpool lane in each direction of travel and more of a continuous and conventional system of frontage roads along the freeway than in Option 1. New and reconstructed interchanges were also proposed. This alternative was discarded due to several factors including but not limited to, underperforming local circulation on the frontage roads and restricted emergency routes. It also compared less favorably to Option 3 in five key areas described below.

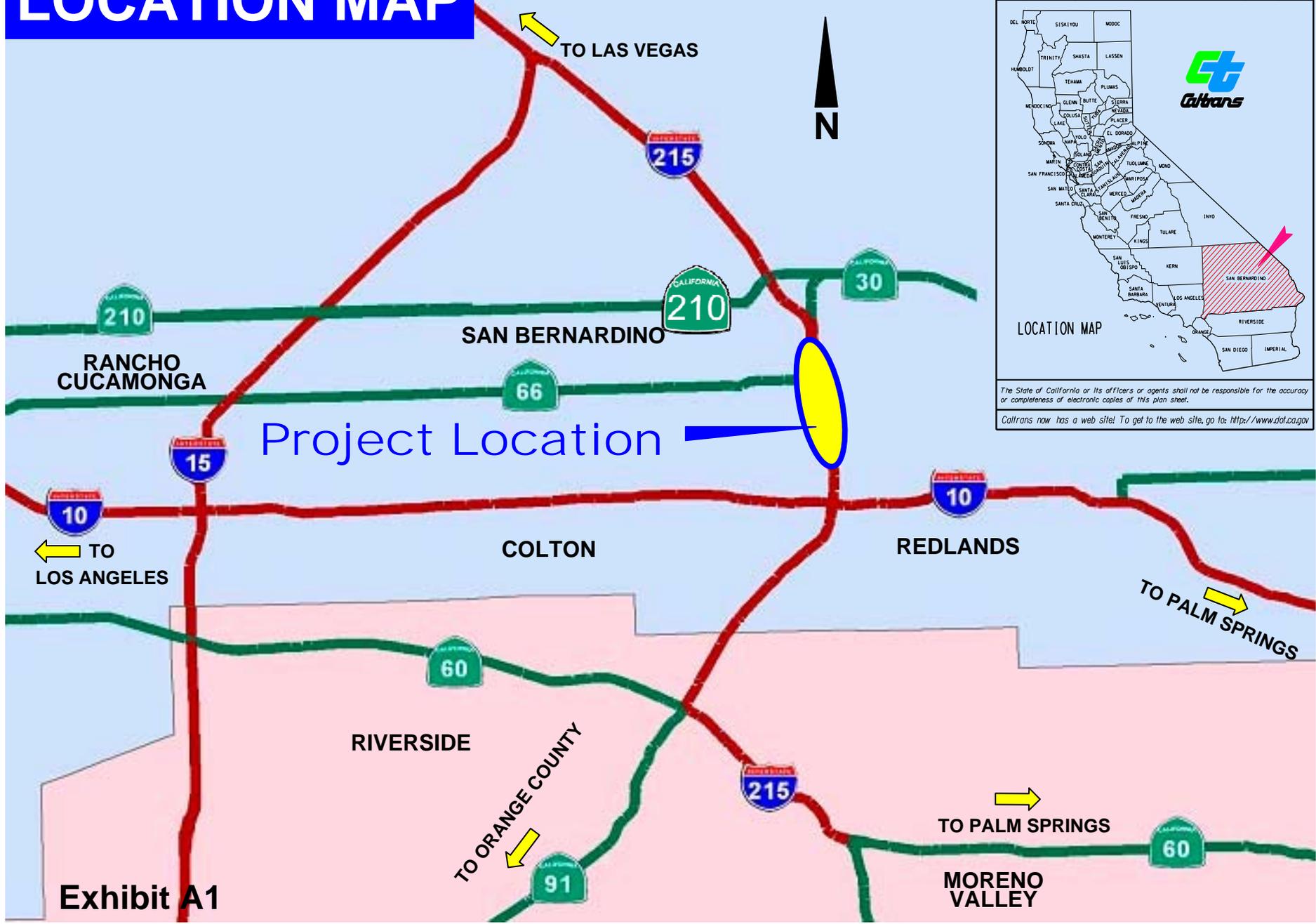
HOV lane alternative, Option 3 - This alternative provided a carpool lane in each direction of travel and a full system of collector-distributor (CD) roads along the freeway which would connect to the new and reconstructed interchanges. This alternative was preferred overall because 1) it surpassed the other alternatives in key areas including freeway LOS, 2) it had the support of the city of San Bernardino, 3) it had the highest local circulation among the alternatives, 4) a higher number of access points to the city especially to the west side, and 5) elimination of substandard median ramps, as well as several other important advantages as compared to the other alternatives.

In compliance with federal and state requirements for multi-million dollar projects, a Value Analysis (VA) study was conducted in March 2000 with the purpose of identifying improvements to the preferred alternative. The study contained 11 alternatives from which it was concluded that significant cost-value and operational improvements would result if an additional mixed-flow lane was added to the project and the CD roads (or a braided-ramp variation) were grade-separated. A modified alternative (braided-ramp/split-diamond system) was derived from the VA study and was approved in a supplemental project report as the revised alternative. No additional right of way requirements were expected under the revised alternative and in some areas right of way was reduced.

This project, which was programmed and scheduled in segments for construction under individual contracts, is located along I-215 in the city of San Bernardino, county of San Bernardino, and covers approximately 2.5 miles of high volume freeways that serve 83,800 northbound and 73,800 southbound vehicles daily. Upon completion, the San Bernardino I-215 widening will provide increased capacity as well as improved access and mobility. The major elements of the project include mainline widening in the northbound direction from three mixed flow lanes to four mixed flow and one HOV lane. In the southbound direction, this freeway segment will be widened from three mixed flow lanes to accommodate four mixed flow and one HOV lane. Due to inadequate spacing between 2nd, 3rd, and 5th Street interchanges, "braided" exit and entrance ramps in both northbound and southbound directions are proposed. Also included are the elimination of "fast lane" on and off ramps, various local street reconfigurations into cul-de-sacs, and the construction of several retaining walls and soundwalls.

The main funding sources for the project are Measure I, state, and federal funds. The project is programmed in the 2008 State Transportation Improvement Program (PPNO 247P). The current estimated construction cost is \$289,482,000, and the estimated cost for right of way is \$96,905,000. The Record of Decision for the 1999 final EIS/EIR was issued by the Federal Highway Administration on January 2, 2001, and an Environmental Re-Evaluation was completed on December 1, 2005. The project "Ready to List" date is targeted for the end of June 2009 and is scheduled for advertisement by July of 2009. Construction is targeted to start by October 2009.

LOCATION MAP



DIST	COUNTY	ROUTE	KILOMETER POST TOTAL PROJECT	SHEET NO	TOTAL SHEETS
08	SBd	215	6.6/10.4		

LOCATION MAP

The State of California or its officers or agents shall not be responsible for the accuracy or completeness of electronic copies of this plan sheet.

Caltrans now has a web site! To get to the web site, go to: <http://www.dot.ca.gov>

Exhibit A1

Parcel Location

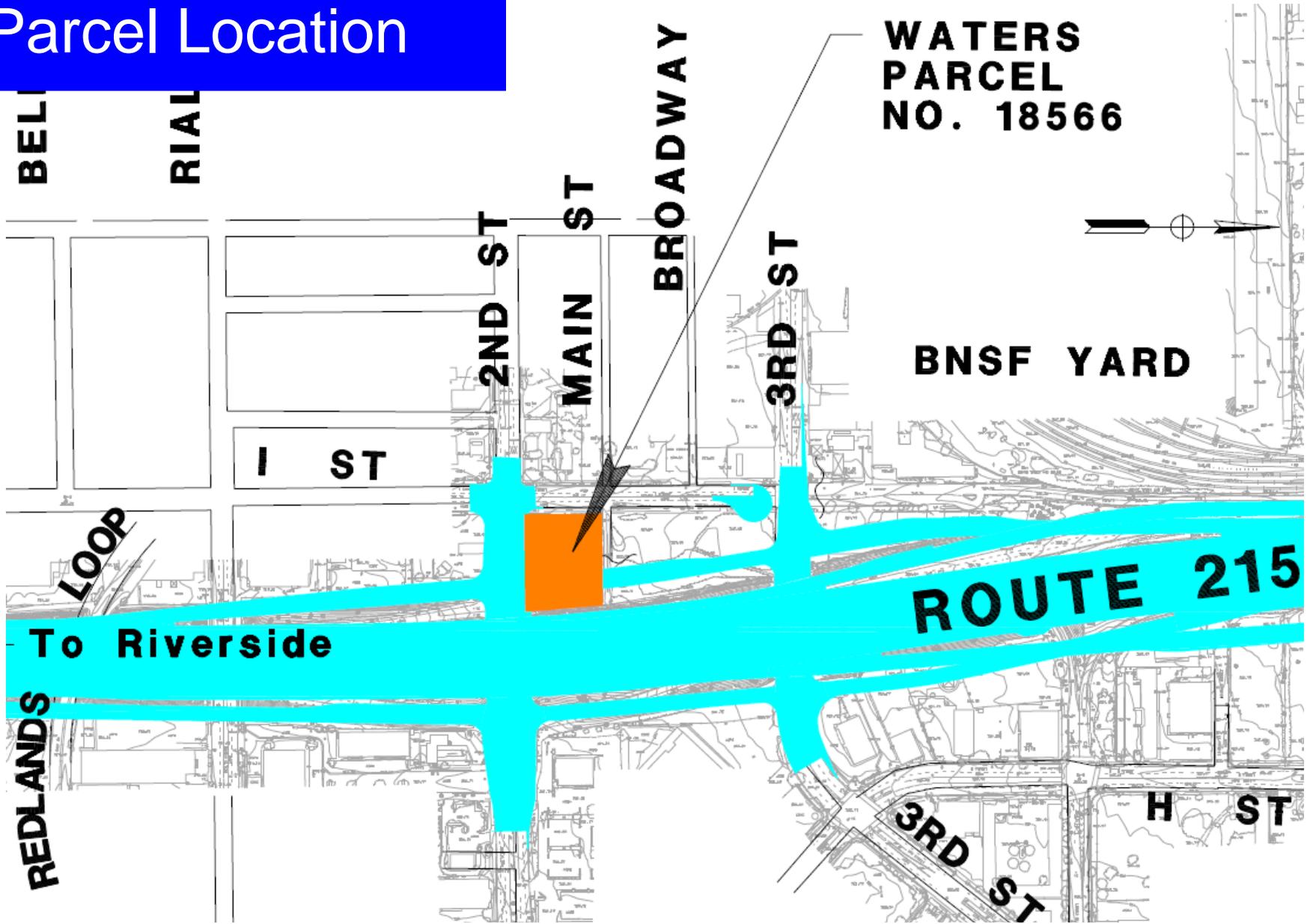


Exhibit A2

PARCEL PANEL REPORT

PARCEL DATA

Property Owner: E. David G. Waters and Dora P. Waters, as Trustees of that certain Revocable Declaration of Trust, known as the E. David G. and Dora P. Waters Living Trust executed March 11, 2003.

Parcel Location: Northwest corner of Interstate (I) 215 and 2nd Street. Located in the city of San Bernardino at 860 West 2nd Street and 877 Main Street. Assessor Parcel Numbers (APN)s 0134-263-03, -15, -16.

Present Use: Multi-Residential 30-unit apartment complex (Three Palms Court)
Zoned Commercial General

Area of Property: 41,694 Square Feet (sq ft)

Area Required: Parcel 18566-1 – 26,584 sq ft - Fee
Parcel 18566-2 – 1,911 sq ft - Temporary Construction Easement (TCE)
Parcel 18566-01-01 – 15,110 sq ft - Fee (Excess)

PARCEL DESCRIPTION

The subject property is located at the northeast corner of 2nd and I Streets in the city of San Bernardino and is identified as Assessor's Parcel Numbers 0134-263-03, -15, -16. Both 2nd and I Streets are fully improved and maintained by the City of San Bernardino. Although the subject has frontage on both 2nd and I Streets, access to the property is from Main Street, which is located to the north directly adjacent to the site. Main Street dead ends into the northeast corner of the property and is the only means of ingress and egress to the site and its off-street parking lot. The City of San Bernardino does not allow for on-street parking on 2nd or I Streets. The site is rectangular in shape, with a predominately level topography containing a total property area of 41,694 square feet. Located contiguous to and west of the I-215, the subject parcel is improved with 12 single-story buildings housing 30 residential apartment units, a laundry facility, two car garage, adjacent carport and open parking area.

NEED FOR SUBJECT PROPERTY

Right of way needs to be acquired on both sides of the freeway to provide increased traffic operations and capacity on the freeway and to improve the city's east-west traffic connectivity. This will be accomplished by widening the freeway, constructing collector-distributor (CD) roads, drainage improvements and widening city streets. The subject property is immediately adjacent to the freeway and a significant portion of the east and south sides of the property are needed to accommodate these elements. Specifically, the CD road that encroaches on the property will provide full access to traffic entering and exiting the freeway in this area of the city. In addition, to collect storm water run off from the freeway, a bio-swale will be constructed adjacent to the

CD road as part of the water pollution control measures for the project. Second Street will also be widened to accommodate the forecasted ramp intersection and east-west through-traffic volumes.

Realigning the freeway further to the east to avoid the subject property would severely impact a number of commercial properties on the east side of the freeway and would be problematic in matching the alignment of the freeway segments that are already under construction to the south and to the north at the new 5th Street bridge project, which is nearing completion. Shifting the freeway widening further to the east would increase the impact to businesses between 2nd and 3rd Streets where there is a Ford dealership with a two-story car storage facility, an In-N-Out Burger restaurant, and a Marshalls Shopping Center. Realigning the freeway further east would also impact existing freeway bridges at Rialto and the Redlands Loop Railroad. The current design allows these bridges to be widened to accommodate the additional lanes. If the freeway were realigned to the east, these bridges would need to be completely reconstructed; this would significantly increase the cost of the project.

The widening of 2nd Street is required by the traffic study to accommodate projected future traffic volumes. It is necessary to provide two through lanes and two turn lanes in each direction between the northbound and southbound ramp intersections. Beyond the ramp intersections, the widened 2nd Street transitions back to match the existing street width. In addition, the ramp intersection needs to be designed to handle a large truck turning radius to accommodate the high volume of large trucks in the area. Reducing the width of 2nd Street to avoid the subject property would create unacceptable levels of service on 2nd Street and lead to significant queuing of traffic, disruption of local circulation, and potentially block ramp access. This would have the potential to create back up on the freeway ramps and disrupt mainline operations.

The project would result in the permanent acquisition of 26,584 square feet, from a total property area of 41,694 square feet (approximately 64 percent of the total land area). This leaves a remaining property area of 15,110 square feet that has limited utility due to its size and shape. The property currently enjoys a legal non-conforming use, per City of San Bernardino codes, to operate a multi-residential apartment complex in a commercially zoned area of the city. The proposed acquisition of over 50 percent of the improvements on the subject property would result in the loss of the legal non-conforming status allowing the owner to operate a multi-residential apartment complex in a commercially zoned area of the city. The City of San Bernardino would then require the remaining improvements to be demolished. For this reason, the remaining property is considered to be an uneconomic remnant to the property owners. As such, the Department has proposed to purchase the entire property and the property owners have signed a letter consenting to the Department's purchase of the remaining property area that is considered to be "excess" land.

The right of way requirements for the subject parcel are as follows:

Parcel 18566-1: A fee acquisition of 26,584 square feet located along the east and south boundaries of the subject property. This requirement is needed primarily for the construction of the new CD road, a bio-swale, and the widening of 2nd Street. Improvements impacted include 7 of the 12 residential buildings plus all of the off-street parking lot, carport and garages.

Parcel 18566-2: A temporary construction easement of 1,911 square feet. This easement located adjacent to Parcel 18566-1 is necessary to provide sufficient room to accommodate the proposed construction activities.

Parcel 18566-01-01 (excess): A fee acquisition of 15,110 square feet considered to be an uneconomic remnant to the owner. Improvements within this parcel include the remaining five residential buildings. As previously stated, the City of San Bernardino requires that these remaining buildings be demolished as the property would no longer meet the criteria for a legal non-conforming use of multi-residential units due to the loss of over 50 percent of the improvements that cannot be rebuilt on the remaining property.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met at the California Department of Transportation's (Department) District 8 office on October 24, 2008. The Panel members included: Donald Grebe, Panel Chair, Department Headquarters' (HQ) Division of Right of Way and Land Surveys; William Rittenburg, 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. The property owners, David and Dora Waters were also present.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity (Resolution) and makes a recommendation to the Department's Chief Engineer. The property owners contest the purpose and need for the project as designed. They believe that the project design is not planned and located in a manner that is the most compatible with the greatest public good and least private injury, and that the property sought to be condemned is not necessary for the project. The property owners believe that an alternative design for the project can more fully achieve these conditions.

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

Owner:

It is unknown whether or not the public interest and necessity require the project.

Department:

The purpose and need statement in the project's Final Environmental Impact Statement / Environmental Impact Report (EIS/EIR), demonstrates the public interest and necessity of the project. In the EIS/EIR it is stated that, "The purpose of the proposed project is to respond to a need to improve I-215 based on identified deficiencies of the existing facility. These include: lack of direct, equitable access to the west; exceptions to design standards; inability to meet traffic demand; above average accident rate; and incompatibility with land use goals and objectives."

Owner:

The project, as designed, is not compatible with the greatest public good and the least private injury, nor is the property sought to be acquired necessary for the project. There is another possible alternative design for the I-215 freeway expansion project that will avoid the subject property, with minimal negative impact, while at the same time achieving the greatest public good and the least private injury. The alternative design is as follows:

Use I Street, from its connection at the I-215 freeway, north of 3rd Street, to 2nd Street, and from the south curb at 2nd and I Streets, the freeway entrance can be positioned in a south-easterly direction, until it merges with the existing entrance to the freeway. This off ramp can have access to 3rd street in an east-west direction, and 2nd Street in an east-west direction. One example of Caltrans using this design is its eastbound freeway exit on I-10 at Eureka Street, in Redlands.

Department:

Using the I Street alternative proposed by the owner is not a viable option for the following reasons:

- The owner's proposal to move the CD road to I Street would result in additional right of way requirements for the project. For CD operation, it would be necessary to change I Street from a two-way street to a one-way, southbound street, widen I Street and eliminate all the driveways along I Street. This would result in full parcel acquisitions of all the properties abutting I Street since the elimination of driveways would cause the properties to be landlocked, including the Waters property. A ramp connection at 2nd and I Streets would cause additional property between the freeway and I Street, south of 2nd Street, to be acquired. Access control along 2nd Street between the northbound and southbound ramps would also be required to facilitate the ramp intersection traffic. Therefore this alternative is incompatible with the requirement for "the greatest public good and the least private injury," which refers to the cumulative beneficial effects of the project vs. the aggregate "injury" of the smallest number of property owners. As proposed, the owner's alternative will result in lesser public good by providing less capacity and throughput and cause more private injury by affecting additional properties.
- This design would be non-standard and would not operate adequately. A southbound on ramp from 2nd and I Streets that would extend south to merge with the southbound freeway at the same location, as the current design could not be designed to meet geometric design standards. The merge point with the southbound mainline can not be moved any further south, as the weave distance to the Mill Street off ramp is already near minimum. Moving the ramp intersection to 2nd and I Street would require 2nd Street to be widened to eight lanes all the way to I Street. This would result in a larger acquisition of the Waters property along 2nd Street and would then require additional right of way on the west side of I Street to transition back to the existing street. The Department's current design provides for the transition to be complete by I Street. Extending the improvements west of I Street at this location would also extend beyond the environmentally cleared footprint of the project. I Street is a city street that is required for local traffic circulation. Locating the southbound on ramp at 2nd and I Streets would cause I Street south of 2nd Street to be cut off. This would have an impact to local traffic circulation and would reduce accessibility

from south of 2nd Street and result in negating one of the project's core objectives to improve freeway access.

- The owners proposal to carry freeway traffic from the 3rd Street off ramp and the 3rd Street intersection onto a converted I Street (which would become a CD road) would break down when that traffic is forced to turn left onto 2nd Street, mix with 2nd Street traffic, and then turn right onto the 2nd Street on ramp. This would put a large volume of traffic through two signalized turning movements before it could enter the freeway. The current design, with a CD road on the east side of the subject property, takes freeway traffic off the 3rd Street off ramp, collects and distributes traffic from both 3rd and 2nd Streets, and then enters freeway traffic onto I-215 at the 2nd Street on ramp without any turning movements. The current design is a much cleaner and more efficient design than the owners' proposal and will therefore operate at a higher level of service for a longer period of time.

- The owner's assertion that an existing comparable situation exists on I-10 in Redlands is incorrect. The existing situation in Redlands, at North Eureka Street, on which the owners have based their alternative design proposal, is inappropriate for several reasons. The eastbound off ramp from I-10 ends at the intersection of North Eureka Street and West Pearl Avenue. Pearl Avenue is a two-lane, two-way city street running east-west at this location and connects with five north-south city streets before there is an eastbound on ramp onto I-10. There are several driveways along this section of Pearl Street as well as the five local road intersections. This road was built when I-10 was constructed around 1959, and does not meet the Department's current standards for interchange design. It is clearly evident that deficiencies exist on this facility, resulting in poor operations during afternoon commute periods. Traffic backup on the eastbound off ramp is routine. It is for these reasons the Department would not replicate this type of design today.

Owner:

The Notice of Intent to Adopt Resolution of Necessity dated August 8th, 2008, does not make it clear whether it will be a full take or partial take of our property.

Department:

The Notice of Intent (NOI) to Adopt Resolution of Necessity itself does not specify by using the words "full" or "partial" acquisition. Rather, the NOI makes reference to the property to be acquired by attaching a Right of Way Map that depicts the property in question that is to be acquired.

Owner:

Caltrans has not made reasonable effort to negotiate the purchase of our property before resorting to a condemnation. We were unfairly and unreasonably treated during the process by Caltrans that has stalled the proceeding of the freeway project without notifying us that the project would be on hold for a while. We had heard that you had to re-do your environmental study because the time had expired. The long procrastination of the proceeding caused a very negative effect on our business and caused us to delay the capital improvement that we were prepared to

make. Eventually, we made the necessary capital improvement, as it appeared that Caltrans might take a long time to make the freeway improvement.

Department:

Mr. Waters attended a public meeting in June of 2001 regarding the proposed project, and since that time has had numerous contacts with Department staff regarding the status of the project. Also, in accordance with federal guidelines, an environmental re-evaluation was completed on December 1, 2005. The purpose of that re-evaluation was to address minor changes in the project design and the project area as proposed since the circulation of the 1993 Draft EIS, as well as changes in environmental laws and regulations. In addition, more than three years had passed since the date of circulation of the Draft EIS.

In addition, funding for the project was not in place until mid February 2008. The Department's appraisal was then approved by the end of March 2008, and subsequently an offer to purchase the property was presented to the property owner on May 30, 2008.

All the required policies, guidelines and procedures have been and continue to be followed throughout the entire acquisition process. Numerous contacts during this time were made to negotiate with the property owner.

Owner:

Caltrans has not explained why it designed the project in a way that our property has to be acquired.

Department:

The design of the project was presented at numerous public meetings and was made available during public circulation of the environmental document. Department records also show that the property owner did in fact attend one of these meeting on June 21, 2001. In addition, the Department's design was presented to the property owner during the appraisal and acquisition process. Also, detailed presentations regarding the project and its impacts to the subject property were presented to the property owners on September 10, 2008 and October 24, 2008.

Owner:

We again request a copy of the full environmental documentations (Compact Disk form) for the project as well as any analysis and planning documents that were used in determining to locate the project over our property, which should include any studies of the possible alternate location that we have proposed.

Department:

Full environmental documentation, including the re-evaluation, was delivered to the property owners. Both a hardcopy format on September 12, 2008, and a Compact Disk form on September 15, 2008.

Owner:

Mr. Waters questioned why the historical significance of his property was not discussed in the Environmental Document (EIS).

Department:

The Water's property was generally addressed in the Historic Resources section of the EIS. In that section it is stated properties in the area are not architecturally substantial with the exception of the two other properties that were cited. A specific review of the Water's property is documented in the Historic Property Survey Report, which is listed in the Foreword section of the EIS as a backup technical report. The reviewer of record in that report noted the property was ineligible for historical classification because of significant alterations to the building including the application of stucco to the exterior walls. It was also noted there were no indications that the subject property was associated with any important events or personages in the past.

Owner:

Mr. Waters questioned why his property, the "Three Palms Court", was not specifically mentioned in the environmental documents.

Department:

The Water's property was generally addressed in the EIS in two sections and was specifically mentioned in two of the backup technical reports. In addition to the two historical significance references noted above, the property is generally included in a reference in the EIS as one of several properties in the residential study areas.

A specific reference, to the property is also found in the Residential and Commercial Relocation Study, which is another one of the backup technical reports listed in the Foreword section of the EIS. In that report the property is listed specifically as a residential acquisition. That report also states that residential units west of the freeway, between 3rd and Inland Center Drive on 2nd Street would be displaced. This is the area in which the Water's property is situated.

Owner:

The property owners stated that in 2006 they spotted a "kangaroo rat" on their property.

Department:

It was cited in the EIS, Biological Issues section, that there are no threatened or endangered species known or expected in the project area. It is further cited in the EIS that the kangaroo rat is present in the San Jacinto Valley, which is not in the project area.

Owner:

We request Caltrans to provide reasonable expenses to restore our business.

Department:

On July 25, 2008, the Department executed a Pre-Escrow Rental Agreement (Agreement) with the property owners whereby the Department will pay rent for those apartment units that are currently vacant, and those units that may become vacant during the life of the Agreement. This

Agreement insures that the owners receive rental income for their property until such time the Department takes ownership, or physical possession of the property, whichever occurs first. The Department's Relocation Assistance Program was also discussed thoroughly with the property owner on May 30, 2008, and on subsequent dates with all the current tenants. A Loss of Business Goodwill package was also delivered to the property owner on June 3, 2008. This is a compensation issue and outside the purview of the California Transportation Commission (Commission), in determining whether or not to adopt a Resolution of Necessity (Resolution).

Owner:

We request Caltrans to provide funds for a security guard for the property because vacant units are a target for vandalism. You have caused many tenants to move out.

Department:

Funds can be made available once a possession agreement is executed. Some of the tenants have exercised their right to relocate per the Department's Relocation Assistance Program. In addition, per the terms of the Pre-Escrow Rental Agreement, the Department will rent those units which have been vacated. This is a compensation issue and outside the purview of the Commission in determining whether or not to adopt a Resolution.

Owner:

The Department's Appraisal is flawed as the data used in the Income Approach to value the subject property is not accurate. In particular, the owner feels that the capitalization rate, vacancy rate, expense information, and rents used by the Department's appraiser to derive a value for the property were not accurate. Rather the owner feels the Department should have used the data he provided in order to derive a value for the property.

Department:

The data provided by the property owner was thoroughly reviewed and considered by the Department. However, the Department's appraiser utilized data and information derived from the market, which is the most preferred and relied upon appraisal practice. This is a compensation issue and outside the purview of the Commission in determining whether or not to adopt a Resolution.

DEPARTMENT'S CONTACTS

The following contacts have been made with the property owner since the initial meeting of May 30, 2008, in which the Department presented its first written offer to acquire the property:

Type of Contact	Number of Contacts
Mailing of information	2
E-Mail of information	50+
Telephone messages	4+
Telephone contacts	5+
Personal / meeting contacts	6+

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 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 to the Commission.

DONALD E. GREBE, Chief
Office of Project Delivery
Division of Right of Way and Land Surveys
Panel Chair

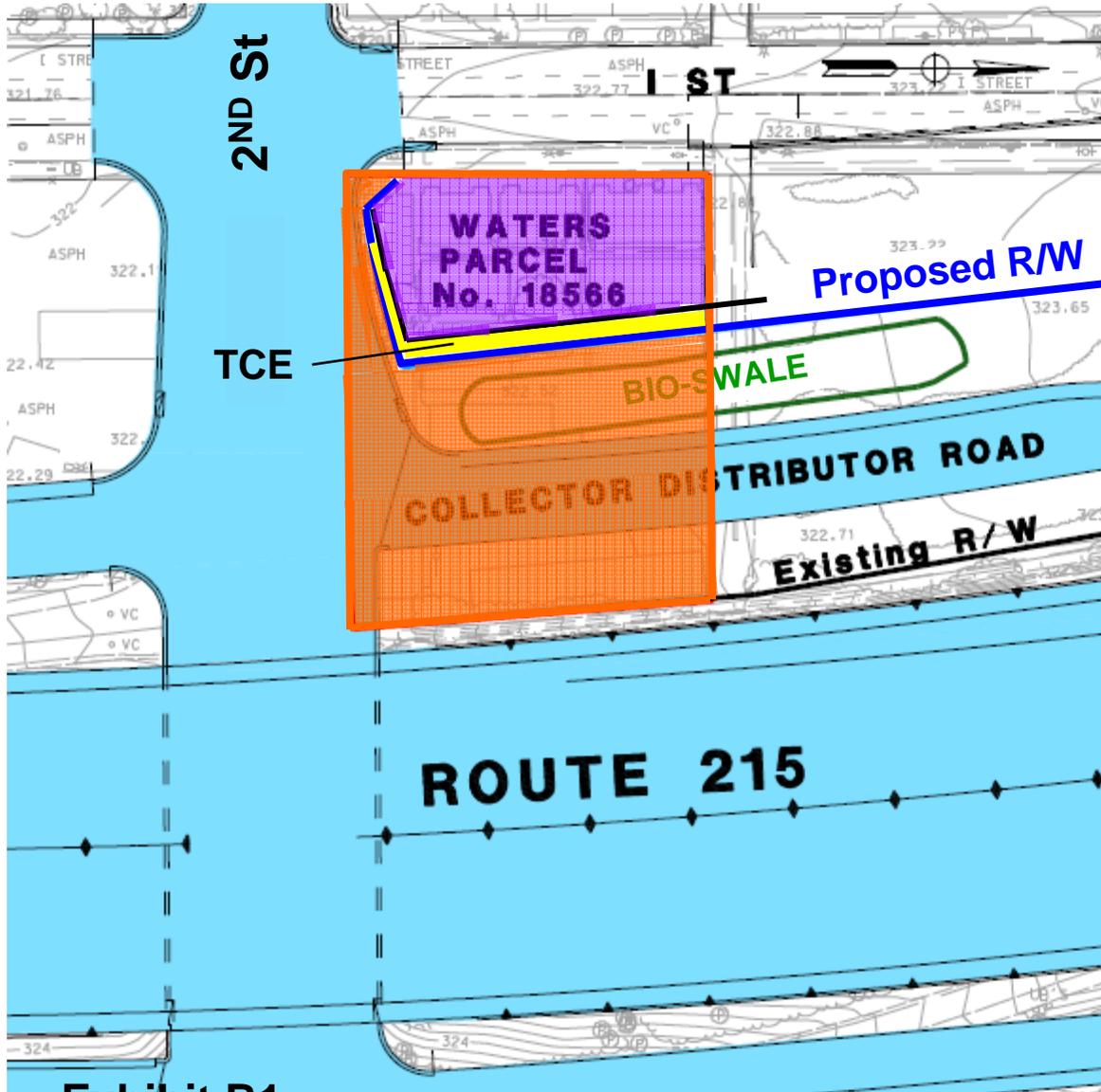
I concur with the Panel's recommendation:

RICHARD D. LAND
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING
HEARING ON OCTOBER 24, 2008**

Donald Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair
William Rittenburg, 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
David Waters, Property Owner
Dora Waters, Property Owner
Ray Wolfe, District 8 District Director
Luis Betancourt, District 8 Acting Deputy District Director, Design
Jon Bumps, District 8 Design Oversight
Joe Meraz, District 8 Project Manager
Basem Muallem, District 8 Project Management
Tony Tavares, District 8 Acting Deputy District Director, Right of Way
Patti Smith, District 8 Right of Way Project Delivery Manager
Mario Montes, DMJM Harris, Design Consultant

Parcel Impacts



Total Area:	41,694 sq ft
Fee Area:	26,584 sq ft
TCE Area:	1,911 sq ft
Excess Land: (18566-01-01)	15,110 sq ft

Exhibit B1

