

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: March 11-12, 2009

Reference No.: 2.4a.
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-20070 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 challenge the outstanding issues. However, at the request of the property owner, objections to the Resolution have been submitted in writing in lieu of a personal appearance before the Commission. The owner's objections are included as Attachment A. The Department's responses to the owner's objections are contained in Attachment B.

BACKGROUND:

Discussions have taken place with the owner, who has been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which the owner may subsequently be entitled. Adoption of the Resolution will not interrupt the Department's efforts to secure an equitable settlement. In accordance with statutory requirements, the owner has been advised that the Department is requesting the Resolution at this time. Adoption

will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules. The property owner signed a Right of Entry on February 26, 2007.

C-20070 - John E. Free, Trustee, etc., et al.

05-SB-101-PM 12.2 - Parcel 8581-1 - EA 447809.

Right of Way Certification Date: 08/16/07; Ready to List Date: 03/20/07. Freeway - reconstruct two interchanges, add lanes and ramp. Authorizes condemnation of a permanent easement for drainage and soundwall for State highway purposes, together with all of those certain improvements which straddle the right of way line with an easement to enter the remaining ownership to remove such improvements. Right of Entry was signed February 26, 2007. Located in the city of Santa Barbara at 514 South Salinas Street. APN 017-371-012.

Attachments:

Attachment A - Owners Written Objections dated January 14, 2009

Attachment B - Department response dated February 11, 2009

Attachment C - Fact Sheet

Exhibits A and B - Maps



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January 14, 2009

Our File Number: 18FK-136997

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Executive Director
California Transportation Commission
P.O. Box 942873
Mail Station 52
Sacramento, CA 94273-0001

Re: Written Comments and Notice of Intent to Appear on February 18
and 19, 2009 at the California Transportation Commission Meeting
on the Resolution of Necessity
05-SB-101-PM 12.2
EA 447809
Parcel 8581-1

Dear Executive Director:

John Free and Helen Free own the Sunrise RV Park at 514 S. Salinas ("RV Park"), also identified by the Santa Barbara County Assessor as Parcel No. 017-371-012. The California Department of Transportation ("Caltrans") proposes to acquire a Drainage and Soundwall Easement at the RV Park, in association with the construction of the Highway 101 Operational Improvements between Milpas Street and Hot Springs Road/Cabrillo Boulevard (the "Project"). This letter is in response to the California Transportation Commission Notice of Intent to Adopt Resolution of Necessity to Acquire Certain Real Property or Interest in Real Property by Eminent Domain ("Notice") (dated January 2, 2009 and received by undersigned on January 6, 2009). The Notice was not accompanied by a copy of the proposed Resolution of Necessity. Therefore, the Frees object to the Notice and contend that it was defective for failing to give the Frees the statutory time period of 15 days from the mailing of the notice for responding to the proposed Resolution of Necessity.

The purpose of this letter is to provide the Frees' written comments concerning the acquisition, under the California Department of Transportation's power of eminent domain, of the Frees' property, also described by Caltrans as Parcel 8581-1. Specifically, this letter addresses conditions (b) and (c) under California Code of Civil Procedure Section 1240.030 and

ATTACHMENT A

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the requirements of Code of Civil Procedure Section 1245.230 and Government Code Section 7267.2. This letter also provides **Notice of Intent to Appear** on February 18 and 19, 2009 at the California Transportation Commission Meeting on the Resolution of Necessity.

I. Code of Civil Procedure Section 1240.030(b)

Code of Civil Procedure Section 1240.030(b) provides that in order for a public agency to exercise its power of eminent domain, "[t]he project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury." The Frees contend that the Project is not planned or located in a manner that will be most compatible with the greatest public good and the least private injury, including but not limited to the following reasons:

A. Noise and Air Quality

The construction of this Project will involve the use of a pile driver and will occur during the peak season months for the RV Park. During the projected six-month period of construction of the Project, there will be pile driver noise between the hours of 7 a.m. and 8 p.m. Since the soundwall will be removed during the construction, the noise level during the entire period of construction will make it impossible to rent any of the 33 spaces in the RV Park. The project description contains no provisions for mitigating this noise for the RV Park. Already, before the construction of the Project has even started at the RV Park, customers have complained about the pile driver noise and indicated that they would take their business elsewhere. One category of regular renters in the RV Park are visiting nurses, who commonly work at night and sleep during the day. It is obvious that it will be impossible for anyone to sleep next to this construction project and, consequently, the RV Park will be unable to rent to this segment of its renting population.

It is anticipated that the following activities will greatly impair the air quality and the noise level at the RV Park:

1. Demolition, stacking and removal of 1,200 pieces of the old wooden wall will impair access and cause demolition noise and dust.
2. Motorized trenching will create noise and dust.
3. Cement trucks onsite and backfilling the foundation will cause noise and dust.
4. Stockpiling the concrete block for the 12 feet high and 450 long wall will cause noise and impair access.

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5. The cement grouting machine will cause noise.

The foregoing activities will make it impossible to rent the RV Park to anyone during the construction period on and near the RV Park. It is expected that these disruptions will have a negative long-term effect on the business of the RV Park, which obtains its customers at least in part by repeat customers.

B. Access to the RV Park

In combination with the noise issues, there will be no physical access to 17 of the spaces during the construction period. There will also be no access to 10 of the spaces during a pre-construction period (of undetermined length) for the relocation of utilities.

Additionally, the construction of the Project has and will involve closing the Salinas Street ramp, prohibiting access to the RV Park. This condition is contrary to representations by Caltrans that there will be access to the RV Park before and during construction.

C. Drainage and Potential Flooding Problems Created by the Project

The Frees are concerned about the drainage and potential flooding problems created by the Project. Previous soundwall footing and subsurface drainage designs for the Project included proposals to have trench footings 6 ½ feet deep along the 450 foot park frontage, which would create a damn in this high water table area and exacerbate the potential for flooding. The Frees and Caltrans have had numerous conversations regarding this problem. To the extent that the final design creates drainage and potential flooding problems, the Frees object to the Project description and design.

II. Code of Civil Procedure Section 1240.030(c)

Code of Civil Procedure Section 1240.030(c) provides that in order for a public agency to exercise its power of eminent domain, "[t]he property sought to be acquired is necessary for the project. Attached to the Notice is "[a] description of the required property." The Frees object to the extent of the property to be taken as described by Caltrans as follows: "TOGETHER WITH all of the existing improvements which are located partially within and partially outside the boundaries of the above-described parcel, together with the right and easement to enter upon the owner's remaining land outside the boundaries of said parcel at any time within 120 days after the date of possession is authorized as indicated in the order for possession, or within 120 days after FINAL JUDGMENT IN CONDEMNATION, for the purpose of removing all of the said existing improvement." The above description could potentially allow Caltrans to remove all of the improvements at the RV Park. Caltrans has not established a basis for removal of all of the improvements at the RV Park, and there is no such basis.

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III. The Caltrans Offer Does Not Meet the Requirements of

Code of Civil Procedure Section 1245.230 and Government Code Section 7267.2.

The Notice was not accompanied by the offer required by Government Code Section 7267.2. Therefore, the Frees object to the Notice and contend that it was defective for failing to give the Frees the statutory time period of 15 days from the mailing of the notice for responding. The Frees did not receive the offer until January 13, 2009.

However, without waiving the above objection, the Frees additionally contend that Caltrans's offer pertaining to just compensation for the Drainage Easement did not meet the requirements of Government Code Section 7267.2. (b). That subsection provides:

The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. The written statement and summary shall contain detail sufficient to indicate clearly the basis for the offer, including, but not limited to, all of the following information:

1. The date of valuation, highest and best use, and applicable zoning of property.
2. The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value.
3. If appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.

Caltrans has offered \$29,100.00 for 1,753.60 square feet, based on its conclusion of \$75.01 per square foot times 25% times 1,418.60 square feet for the drainage/soundwall easement and \$75.01 per square foot times 10% times 335 square feet for the existing structure easement. Caltrans's summary statement does not provide a basis for the 25% and 10% adjustments. Further, Caltrans' appraisal of \$75.01 per square foot is not supported by the Valuation Summary Statement provided by Caltrans. Two of the three sales Caltrans's appraiser used were in excess of this amount.

IV. Conclusion

Based on the foregoing, the Frees contend that the Resolution of Necessity should not be adopted because the California Department of Transportation has failed to establish the required

SHEPPARD MULLIN RICHTER & HAMPTON LLP

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statutory conditions for the exercise of eminent domain under California Code of Civil Procedure
Section 1240.030 and Section 1245.230.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robin L. Lewis".

Robin L. Lewis

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: John Maddux
Donna Andersen

DEPARTMENT OF TRANSPORTATION

50 Higuera Street
San Luis Obispo, CA 93401-5415
PHONE (805) 549-3352
FAX (805) 549-3259
john_maddux@dot.ca.gov



*Flex your power!
Be energy efficient!*

February 11, 2009

Sheppard, Mullin, Richter & Hampton, LLP
Attorneys at Law
1111 Chapala Street, Third Floor
Santa Barbara, California 93101

HIGHWAY R/W MATTERS
Appearance
5-SB-101-PM 12.2
E.A.: 447809
Parcel: 8581-1
Grantor: John & Helen Free

Dear Ms. Lewis:

This letter is in response to your letter dated January 14, 2009, addressed to the Executive Director of the California Transportation Commission (Commission). In your letter you addressed specific concerns and objections to the Commission's proposed action on several grounds regarding Parcel 8581-1, Sunrise RV Park at 514 S. Salinas Street in the City of Santa Barbara (City), owned by John and Helen Free.

Per your written request, your letter will be submitted to the Commission in lieu of a personal appearance and will be part of the official record.

The subject of the amount of compensation for your client's property is not an issue for the Commission and will not be considered by them. The District's acquisition agent will continue to be available to you and your client to discuss compensation and other project related issues.

The following is the California Department of Transportation's (Department) responses to the concerns and objections that appeared in a letter dated January 14, 2009 to the Commission from attorney, Ms. Robin L. Lewis.

Owner:

The Notice of Intent (NOI) was defective because a copy of the proposed Resolution of Necessity (Resolution) did not accompany it.

Department:

The notice required for adoption of a Resolution is governed by Code of Civil Procedure (CCP) section 1245.235, with which the Department has complied. Section 1245.235 does not require attaching a Resolution to the NOI. As a practical matter, a copy of the Resolution did not accompany the NOI because the Resolution will not be acted on until the Commission has met and voted on the proposed Resolution.

Attachment B

Owner:

The property owner objects to the NOI and contends it was defective for failing to give the Frees the statutory time period of 15 days to respond to the NOI to adopt the Resolution.

Department:

In accordance with CCP section 1245.235, the NOI sent by the Department informed the Frees that they had 15 days from the date the NOI was mailed to submit a written response or request to appear and be heard on the matters relevant to adoption of the Resolution (i.e., those identified in CCP section 1240.030). The Notice of Intent was mailed to the Frees on January 2, 2009, allowing 15 days, until January 17, 2009, for a response. Written comments, provided by you as their attorney, were received on January 14, 2009.

Owner:

The Department will be constructing the project during peak season creating noise, including the use of a pile driver, and affecting air quality, which will make it impossible to rent any of the 33 spaces in the RV Park.

Department:

Concerns raised about potential lost rents and other business damages that the park might sustain as a result of temporary construction activities during the course of the project go directly to the amount of compensation that might be claimed or due as a result of the acquisition. Issues related to compensation are outside the purview of the Commission. Impacts to noise and air quality are further discussed below.

Owner:

The Department's activities as follows will greatly impair air quality and the noise level at the RV Park:

- Demolition, stacking and removal of the existing wooden wall
- Motorized trenching
- Cement truck onsite and backfilling the foundation
- Stockpiling concrete blocks
- Cement grouting machine

Department:

The Department has, as a part of the environmental process, surveyed the project area for potential impacts to air quality and noise. The Department has completed studies, reports, documentation, and mitigation as required by law. The Environmental Document was completed and approved on March 11, 2004. The California Environmental Quality Act completion/approval date was November 25, 2003 and the National Environmental Protection Agency document was approved on March 11, 2004. Federal Highway Administration has reviewed and concurred with the study. The Department is constrained to abide by the Environmental Document in the performance of its construction activities for this project.

Owner:

There will be no physical access to 17 spaces during the construction period and no access to ten spaces during a pre-construction period for the relocation of private utilities.

The Project will involve closing the Salinas Street ramp, prohibiting access to the RV Park.

Department:

Loss in rental income and impaired access go directly to the amount of compensation that might be claimed or due as a result of the acquisition. Impacts to spaces and/or potential lost rental loss were considered as part of the appraisal and included in the offer. Issues related to compensation are outside the purview of the Commission.

In regards to your concerns about access to the RV Park, access to the property will be maintained at all times during construction and the Salinas Street ramp will remain open.

Owner:

The final design creates drainage and potential flooding damages.

Department:

In regards to Drainage and Potential Flooding Problems Created by the Project, as stated in Right of Way Agent Donna Andersen's letter of April 5, 2006, the Project Engineer and Design Engineers have investigated the subsurface drainage and even though the water table along the property is generally below the bottom of the proposed trench footing (six and one half feet deep), they have agreed to include the additional protective measure of four-inch polyvinyl chloride plastic pipe (PVC) cross drains in the footing every 20 feet to allow subsurface water levels to equalize in instances of heavy water flows. As the Frees' letter of May 18, 2006 acknowledges, there are pre-existing "flooding" issues in the area and in the RV Park. The 45 flood panel openings in the proposed new sound wall along the property and four-inch PVC cross drains in the footing at this location are improvements to the existing drainage system.

Right of Way Agent Donna Andersen states that during an on-site meeting on February 21, 2006, the Frees specifically asked that some of the flood panels be secured with something that could easily be removed if necessary. Per their request, it was approved to omit the bars across nine of the flood panel openings. Specifically, the center flood panel opening in each group of five panels in the sound wall along the property will not have bars, but instead will be access controlled using a short section of chain link fencing, that if necessary, can be removed in an emergency using standard tools. Layout plans were previously provided to you showing the locations of the chain-linked fencing flood panels.

Owner:

The project is not planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

Department:

The proposed project has been planned and developed, in cooperation with the local agencies, through an extensive engineering evaluation and environmental clearance process. The project is located in the Coastal Zone and is subject to the City of Santa Barbara's Local Coastal Plan. The City issued a Coastal Development Permit for the project on December 16, 2004.

Owner:

The language in the legal description could potentially allow the Department to remove all of the improvements at the RV Park.

Department:

Concerns about CCP Section 1240.030(c) and the quoted language from the property description can be addressed as follows. As set forth in the quoted language, the rights related to the acquisition pertain only to those improvements "located partially within and outside" the described parcel. By its terms, the language only speaks to removal of those improvements that are within the acquisition area or those that are partially within and outside the acquisition area, i.e., those, if any, that actually straddle the acquisition area and, if necessary, having the right to enter upon land outside the required boundaries in order to remove those improvements; it does not actually or potentially authorize removal of all improvements in the RV park. The improvements "located partially within and outside" the described parcel involve the relocation of the RV Park's private utilities.

Owner:

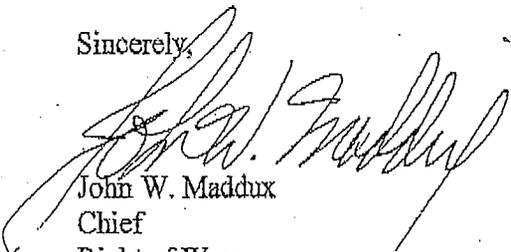
The failure to make a proper Government Code Section 7267.2 offer.

Department:

A written offer for the full amount of the Department's approved appraisal in the form of a Valuation Summary Statement was made on February 6, 2006 in full compliance with Government Code Section 7267.2.

If you have any questions, you can reach Donna Andersen at (805) 549-3411.

Sincerely,



John W. Maddux

Chief

Right of Way

San Luis Obispo Field Office

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA 05-SB-101-PM 10.8/12.8
Expenditure Authorization (EA) 447809

Location: State Route (SR) 101 in Santa Barbara County

Limits: In Santa Barbara from 0.25 PM west of Olive Mill Road Overcrossing to Milpas Street Undercrossing.

Cost: Construction cost: \$53,035,000
Current right of way cost estimate: \$10,276,000

Funding Source: State: Proposition 1B RIP TFA funds
Local: Santa Barbara County Measure D

Number of Lanes: Existing: four-lane
Proposed: six-lane

Proposed Major Features: Two Interchanges: Milpas Street and Hot Springs Road
Sycamore Creek Bridge, add lanes and ramp

Traffic: Existing (year 2005): 94,000 Average Annual Daily Traffic (AADT)
Proposed (year 2030): 141,000 AADT

PARCEL DATA

Property Owner: John E. Free and/or Helen Free, as Trustees of the Free Family Trust

Parcel Location: 514 S. Salinas Street, Santa Barbara
Assessor's Parcel Number 017-371-012

Present Use: RV Park

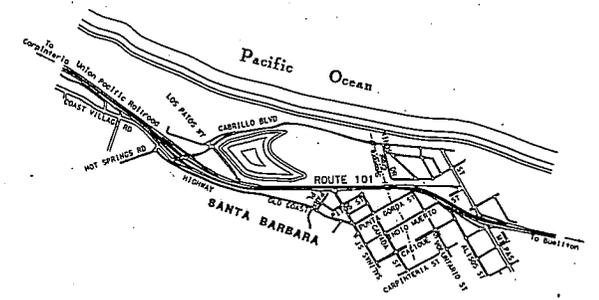
Area of Property: 43,995.6 square feet = 1.01 Acres

Area Required: Parcel 8581-1 = 1,753.6 square feet in drainage/soundwall easement

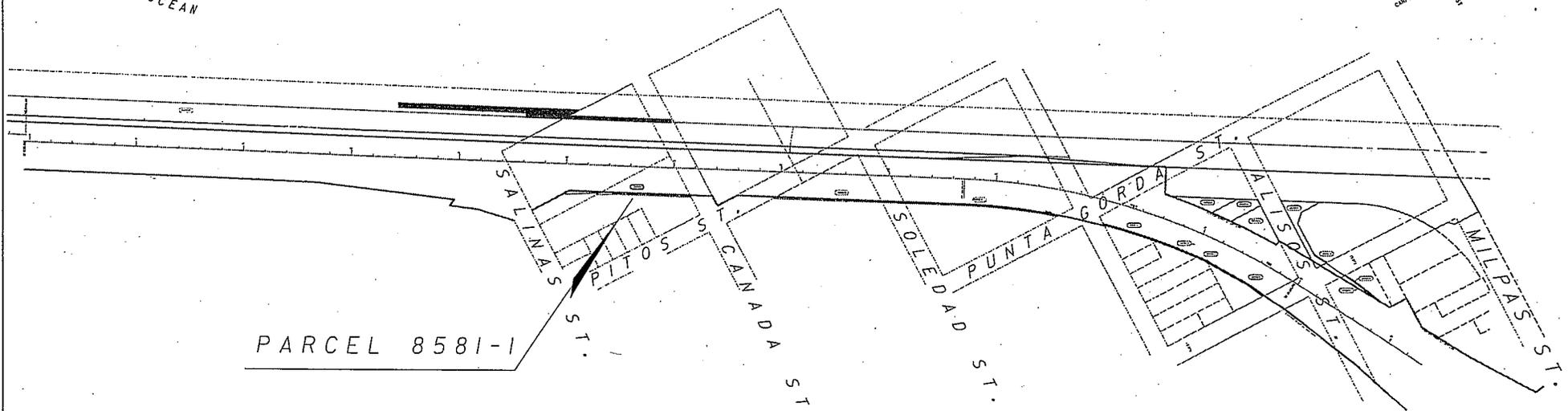


DEPARTMENT OF TRANSPORTATION

STATE HIGHWAY
ROUTE 101
IN SANTA BARBARA COUNTY



CITY OF SANTA BARBARA

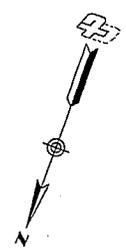


PARCEL 8581-1

EXHIBIT A

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING
DEPARTMENT OF TRANSPORTATION

**RESOLUTION OF
NECESSITY**



NOT TO SCALE

DIST.	COUNTY	ROUTE	POST MILE
05	SB	101	12.2

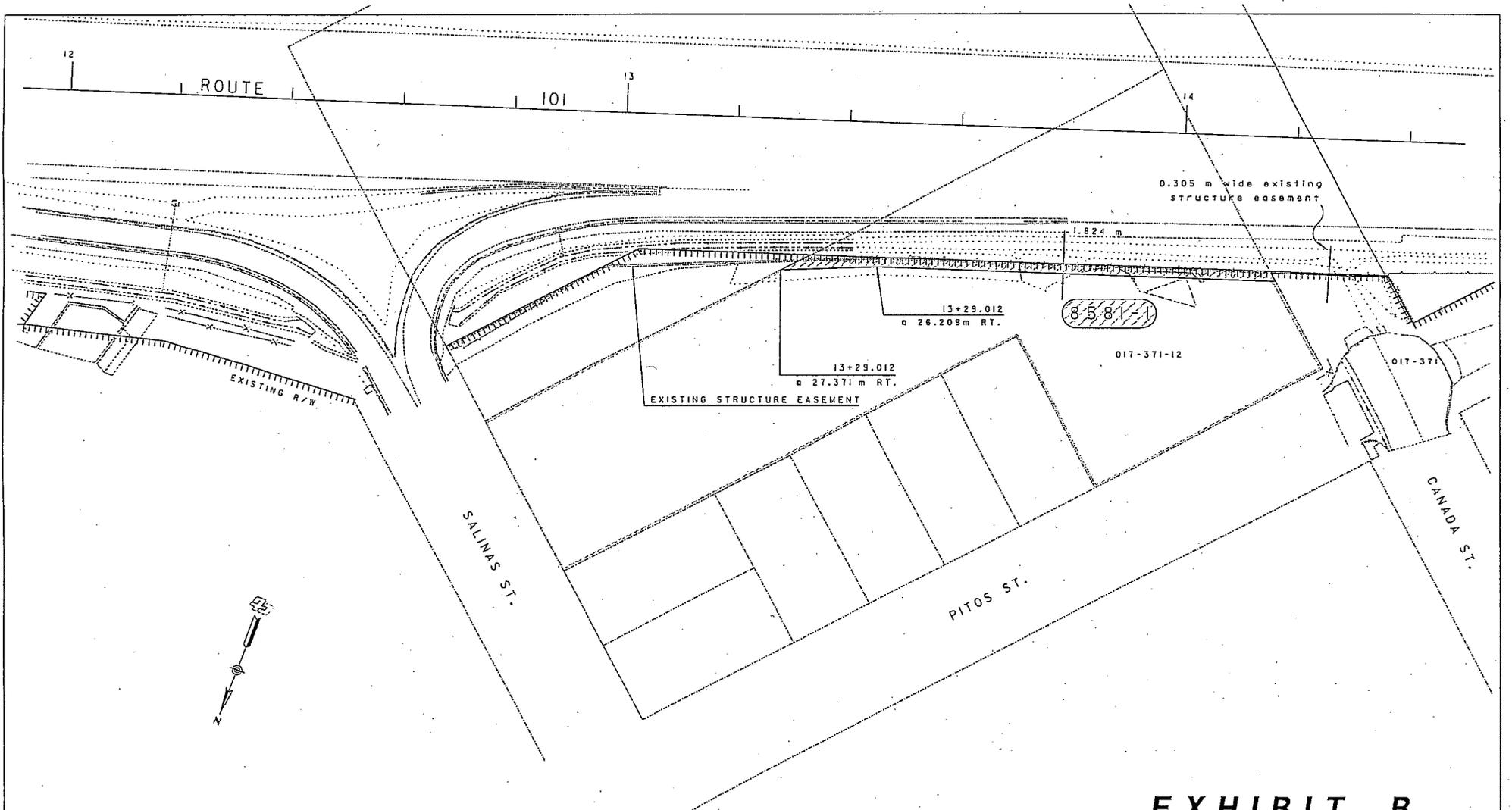
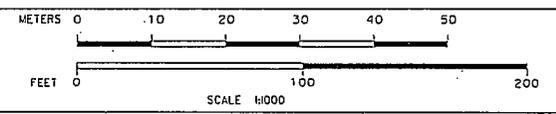


EXHIBIT B

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

RESOLUTION OF NECESSITY



PARCEL *	GRANTOR	REMARKS	DIST.	COUNTY	ROUTE	POST MILE
8581-1-1	JOHN AND HELEN FREE	DRAINAGE / SOUNDWALL EASEMENT	05	SB	101	12.2
			SOURCE	06	CHARGE	05
			E. A. 447802			