

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: May 19-20, 2010

Reference No.: 2.4a.(2)
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Tony Tavares
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-20331 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 has requested an appearance before the Commission. The property owners question the proposed design and believe that the project, as proposed, is not compatible with the greatest public good and the least private injury. The primary concern expressed by the property owners' attorney is that the Department's design as planned is too limited in scope and does not resolve or address slope issues adjacent to Pacific Coast Highway on the subject property. The owners' 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-20331 - Scott Miller, et ux.

07-LA-1-PM 51.6 - Parcel 79508-1 - EA 4L2209.

Right of Way Certification Date: 05/24/10; Ready to List Date: 05/28/10. Conventional highway - place retaining structure on both sides of highway. Authorizes condemnation of a permanent tieback easement for State highway purposes. Located in the city of Malibu at 27036 Sea Vista Drive. Assessor's Parcel Number 4460-017-015.

Attachments:

Attachment A - Project Information

Exhibit A1 and A2 - Project Map and Photo

Attachment B - Parcel Panel Report

Exhibit B1 through B3 - Parcel Map and Photos

PROJECT INFORMATION

PROJECT DATA

07-LA-1-PM 51.4/51.8
Expenditure Authorization (EA) 4L2209

<u>Location:</u>	On Pacific Coast Highway (PCH) in the city of Malibu, Los Angeles County
<u>Limits:</u>	From 0.19 miles north of Sea Vista Drive to Via Escondido Drive
<u>Cost:</u>	Construction Cost: \$7,000,000 Right of Way Cost: \$2,300,000
<u>Funding Source:</u>	Federal Emergency Relief Program
<u>Number of Lanes:</u>	Existing: four lanes (two lanes each direction) Proposed: four lanes (two lanes each direction)
<u>Proposed Major Features:</u>	Construct ground anchors (also known as tiebacks) from the southbound shoulder under and across PCH towards the residential properties adjacent to the northbound shoulder; install a series of sheet piles and micro-piles on southbound shoulder; roadway improvements
<u>Traffic:</u>	Existing (year 2008): 64,400 Average Daily Traffic (ADT) Proposed (year 2010): 64,500 ADT

NEED FOR THE PROJECT

State Route 1, also known as PCH, is a north-south route that serves as a major arterial through the coastal communities. The Department's project proposes to stabilize a section of PCH that has been impacted by the Escondido Beach Landslide. The proposed project is located on PCH in the county of Los Angeles, city of Malibu, between Sea Vista and Via Escondido Drives.

Movement of the Escondido Beach Landslide was first documented in February 1978, affecting the southbound lanes of PCH near Via Escondido Drive. Observations in the following years noted the landslide's continued movement, prompting several projects to keep PCH operational. The projects included emergency work for highway fill reconstruction, roadbed reconstruction, and the installation of drainage devices in efforts to repair and stabilize the highway.

Severe winter storms in 2004 accelerated the earth movement as evidenced by cracks in the roadway pavement on the southbound lanes of PCH. Field observations also indicated movement in the highway fill that was constructed during emergency repairs in 1978,

necessitating the proposed project to stabilize the highway, and specifically keep the southbound lanes from further movement.

PROJECT PLANNING AND LOCATION

The PCH adjacent to the subject property has experienced continuous ground movement resulting in several projects to repair and stabilize the highway (e.g. drilled pile system, installation of slope indicators, horizontal drains, and submersible pump and the reconstruction of the roadbed).

On September 14, 2004 a Project Study Report (PSR) for EA 23970K was approved to establish a project whose design would stabilize the earth movement observed on PCH near Via Escondido and Malibu Cove Colony Drives. Four alternatives were evaluated: Alternate 1- Micro-pile System, Alternate 2 - Soldier Pile Tieback Wall System, Alternative 3 - Reinforced Soil Slope System, and Alternate 4 - No Build. Alternative 1 was the preferred alternative due in part to the following:

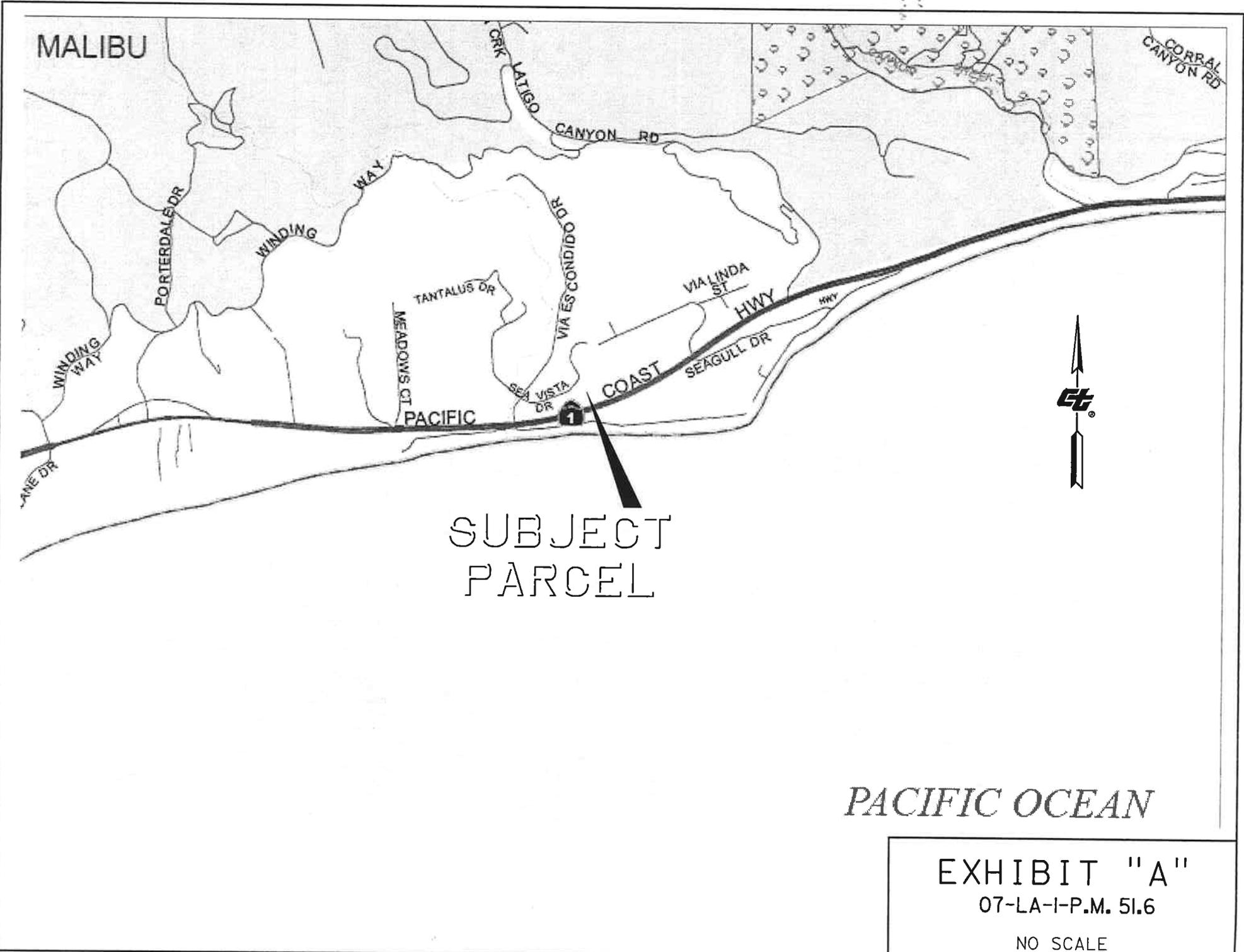
- No permanent right of way was required.
- The proposed installation of micro-piles would be done within the Department's existing right of way.
- The environmental document is a Categorical Exemption under the California Environmental Quality Act and a Categorical Exclusion under the National Environmental Policy Act.

Heavy winter storms in 2004 accelerated the earth movement along PCH. Due to the severity of these storms and subsequent damages to PCH, a Damage Assessment Form (DAF) was completed to secure federal emergency funding for the repairs. The Federal Highway Administration (FHWA) approved the DAF on August 23, 2005 and a supplemental DAF on September 23, 2008. The additional damage from the 2005 storms required a re-design from the 2004 PSR proposal. Department experts determined that combining elements included in the modified Alternatives 1 and 2 would be necessary to stabilize PCH. The proposed design now includes sheet piles, micro-piles and tiebacks. As a result of this re-design, the subject property is now impacted by a permanent tieback easement.

The proposed project would construct a series of tiebacks from the southbound shoulder of PCH under and across the highway to the bedrock underneath the neighboring slope adjacent to northbound lanes. These tiebacks anchor the highway to the bedrock and will stabilize the slide underlying the highway and minimize earth movements from the neighboring properties. A series of sheet piles and micro-piles would also be installed on the southbound shoulder to limit movement of the highway towards the properties adjacent to the southbound shoulder.

A Categorical Exemption/Categorical Exclusion Determination environmental document for the proposed highway stabilization work was approved on December 6, 2007.

The current estimated right of way cost is \$2,300,000 and the estimated construction cost is \$7,000,000. This project is programmed as a State Highway Operation and Protection Program project with 100% federal funding. The project has a Ready to List date of May 2010 and tentative Advertising date of July 2010.



SUBJECT
PARCEL

PACIFIC OCEAN

EXHIBIT "A"
07-LA-I-P.M. 51.6

NO SCALE

Exhibit A1

Exhibit A1

Project Location

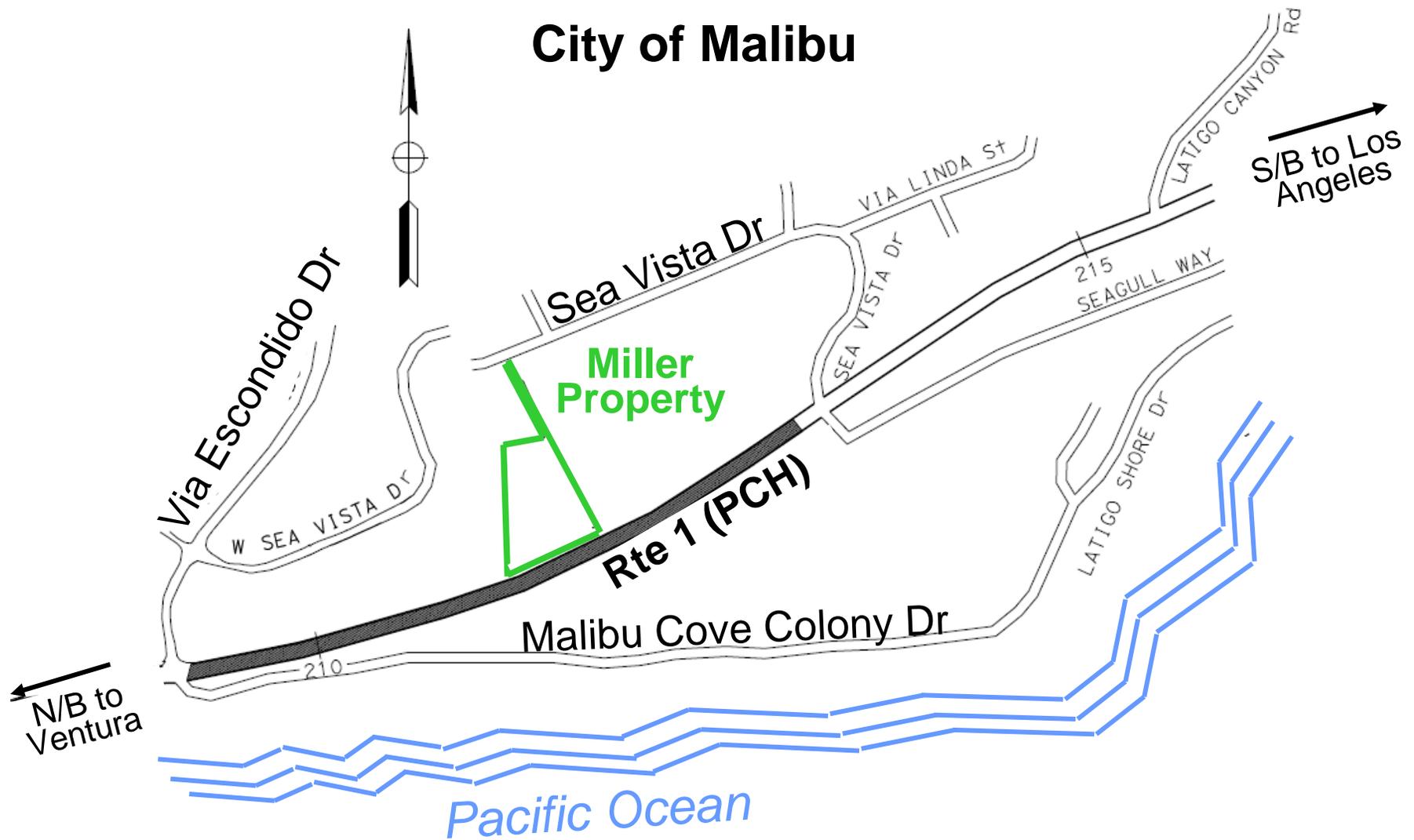


EXHIBIT A2

PARCEL PANEL REPORT

PARCEL DATA

Property Owner: Scott Miller and Melissa Miller, husband and wife as community property

Parcel Location: North of Pacific Coast Highway (PCH), east of Via Escondido Drive at 27036 Sea Vista Drive, Malibu. Assessor Parcel Number: 4460-017-015

Present Use: Single Family Residence

Zoning: RR-2 (Rural Residential)

Area of Property: 128,500 Square Feet (SF), (2.95 acres)

Area Required: Parcel 79508-1: 19,111 SF, (0.44 acres) – Permanent Subsurface Tieback Easement

PARCEL DESCRIPTION

The subject property is located on a bluff adjacent to PCH at 27036 Sea Vista Drive, in the city of Malibu. Zoned Rural Residential and irregular in shape, the property has an approximate area of 128,500 SF, or 2.95 acres. The property has an unobstructed ocean view and is improved with a single family residence. The property is generally level and slopes downward as it approaches PCH. Access to the site is from Sea Vista Drive located north of PCH. The proposed project impacts the southern most portion of the subject site, which is primarily slope area adjacent to PCH. This area is unimproved, and contains miscellaneous landscaping and a chain link fence.

NEED FOR SUBJECT PROPERTY

A portion of subject property is needed to stabilize and repair PCH due to earth movement caused by heavy winter storms. To accommodate construction of the proposed project, micro-piles and a series of subsurface ground anchors (also known as tiebacks) will be installed from the southbound shoulder of PCH under the highway, into the slope area of the subject property adjacent to the northbound shoulder of PCH. The tiebacks will extend approximately 45 feet into the southern portion of the subject property, at a depth of 50 to 150 feet below the surface of the slope. The tiebacks necessitate the acquisition of a 19,111 SF permanent subsurface tieback easement. The proposed permanent subsurface easement will not disrupt the owners' continued use of the slope area.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met in Los Angeles on December 1, 2009. The Panel members included Donald Grebe, Panel Chair, Department of Transportation (Department) Headquarters (HQ's) Division of Right of Way and Land Surveys; William Rittenburg, Department Los Angeles Legal Division; Jim Deluca, Department HQ's Division of Design; and Mark A. Zgombic, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property owners at the meeting was attorney David B. Cosgrove.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Department's Chief Engineer. The property owners do not contest the need for a project, but do challenge the proposed project as not being planned and located in a manner that has the greatest public good and least private injury. The primary concern expressed by the property owners' attorney is that the Department's design as planned is too limited in scope and does not resolve or address slope issues adjacent to PCH, on the subject property.

The following is a description of the concerns expressed by the owners' and/or their attorney, followed by the Department's response:

Owner:

The owners allege that past projects performed by the Department have damaged the slope area of their property adjacent to PCH. In particular, work performed by the Department in 1995.

Department:

In 1995, the Department constructed two projects along PCH. The first project was a non-emergency roadbed reconstruction that included the addition of a concrete barrier and guardrail wall along the southbound shoulder needed to provide the necessary shoulder width. This project was on the opposite side of PCH, from the subject property.

The second project was an emergency project to mitigate slide issues occurring on the neighboring properties to the west and east of the subject property. This project, allowed the Department to clear and grub, and re-grade the slopes that had failed in the area, sloughing onto PCH. In order to repair the slope damage, the Department was granted permission to enter onto the subject property by way of a Permit to Enter and Construct, dated May 10, 1995. The Permit to Enter was secured to gain access across the subject property to the neighboring properties. There is no apparent damage to the subject property, as a result of these projects and the work performed on the neighboring properties.

Owner:

The owners questioned the need and location of a proposed debris wall that would be located along the northbound shoulder of PCH adjacent to their property.

Department:

The debris wall, to be located within existing Department right of way, was proposed to reduce maintenance of PCH by catching and preventing slope debris from falling onto the traveled way after storm events. Upon further review by the Department, it was determined that debris is

generally limited to the shoulder areas and that maintenance can be achieved without the proposed debris wall by sweeping away slope debris that may fall onto the shoulder. As such, the debris wall was eliminated from the project.

Owner:

The Department's project as planned is too limited in scope, and does not resolve or address slope issues that currently exist adjacent to PCH on the subject property. The fact that the Department initially proposed a debris wall as part of the project also indicates that there is an issue with the stability of the adjacent slope and thus a retaining wall should be constructed.

Department:

The Department's project as proposed is to stabilize and repair the highway. Upkeep and maintenance of slope areas of neighboring private properties adjacent to the highway, is the responsibility of those private property owners. Although minor sloughing of soil occurs along the highway in this area, a retaining wall is not warranted. The purpose of the debris wall, which was subsequently eliminated from the project, was intended for maintenance purposes as explained above. It was not proposed nor designed to act as a retaining wall to support the adjacent slope.

While the Department's project is to stabilize the highway, and specifically keep the southbound lanes from further movement, the adjacent private properties will receive some stabilization benefit. The proposed sheet piles and micro-piles will anchor the highway to solid bedrock to stabilize land movement above Malibu Cove Colony Drive. The proposed anchor tieback system will further stabilize land movement in this area.

Owner:

The Department's Geotechnical Design Report dated November 18, 2005 is outdated and doesn't support the proposed project as designed to stabilize the highway to a 1.5 safety factor.

Department:

The data contained in the Department's Geotechnical Design Report dated November 18, 2005 is still accurate and fully supports the current design for the proposed project which stabilizes the highway to a 1.5 safety factor.

Owner:

Will the "H" beams that are buried in the middle of PCH affect construction of the proposed project and can they be drilled through when the subsurface tiebacks are installed?

Department:

During the emergency repair work performed in 1978, a drilled pile system was installed on the north side of the highway median to protect the northbound lanes. The system consisted of "H" beams filled with concrete and wood lagging placed between the piles. The wood lagging can be drilled through during construction and will not impact the highway or adjacent slopes. Language has been included in the contract specifications to notify the Department's contractor of the previously installed pile system.

Owner:

The owners requested reimbursement for Geological tests they independently conducted at a cost of \$65,000.00.

Department:

The Department has conducted geologic studies of the slide area and has based its project design on those studies. The owner's geological tests were independently contracted and not related to the Department's efforts. The Department is not obligated to reimburse the property owner for those costs.

Owner:

The owners requested reimbursement for the costs incurred for their own Appraisal Report.

Department:

The property owners have been informed that pursuant to Code of Civil Procedure Section 1263.025, should they elect to obtain an independent appraisal, the Department will pay for actual reasonable costs up to \$5,000, subject in part to the following conditions: 1) in order to determine actual reasonable costs, a copy of the owner's appraisal be provided to the Department; 2) an invoice for the completed work by the appraiser be provided to the Department. To date, the Department has not received copies of the requested information.

Owner:

The owners have submitted a Public Records Act Request, requesting information regarding the proposed project. The information requested includes, but is not limited to, the following: The November 18, 2005 Geotechnical Design Report and supporting data, the August 23, 2002 Geotechnical Report, all Slope Inclinometer reports, Maintenance Records, and Project Plans.

Department:

The Department has complied with the Public Records Act Request and provided all the requested information.

DEPARTMENT'S CONTACTS

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

Type of Contact	Number of Contacts
Mailing of information	6
E-Mail of information	7+
Telephone contacts	17
Personal / meeting contacts	3

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record as required by Government Code Section 7267.2. The property owner has been notified that issues related to compensation are outside the purview of the Commission.

PANEL RECOMMENDATION

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

- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property rights to be condemned are necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the Commission.

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 DECEMBER 1, 2009**

Donald Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair
William Rittenburg, Los Angeles Legal Office Attorney, Panel Member
Jim Deluca, HQ's Division of Design, Panel Member
Mark A. Zgombic, HQ's Division of Right of Way and Land Surveys, Panel Secretary

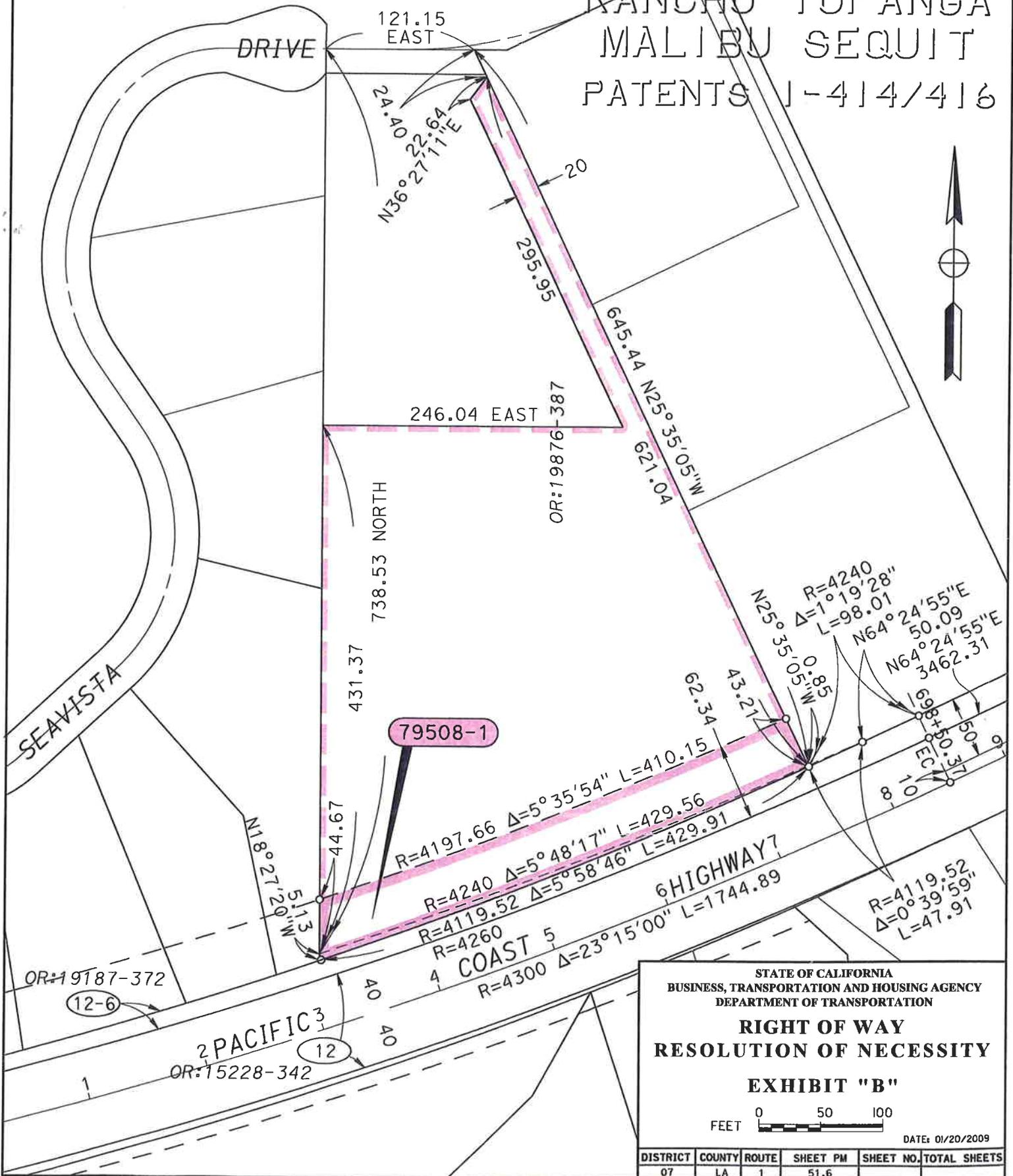
David B. Cosgrove, Attorney for the Property Owner

Richard D. Land, District 7, Interim District Director
Maria Quinonez, District 7, Office Chief, Design Branch C
Mike K. Nguyen, District 7 Project Engineer, Design Branch C
Andrew P. Nierenberg, District 7, Deputy District Director, Right of Way
Yoshiko Henslee, District 7, Supervising Right of Way Agent
Joy Granflor, District 7, Senior Right of Way Agent

CITY OF MALIBU

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

RANCHO TOPANGA
MALIBU SEQUIT
PATENTS 1-414/416



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

**RIGHT OF WAY
RESOLUTION OF NECESSITY**

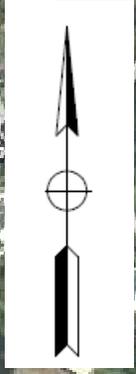
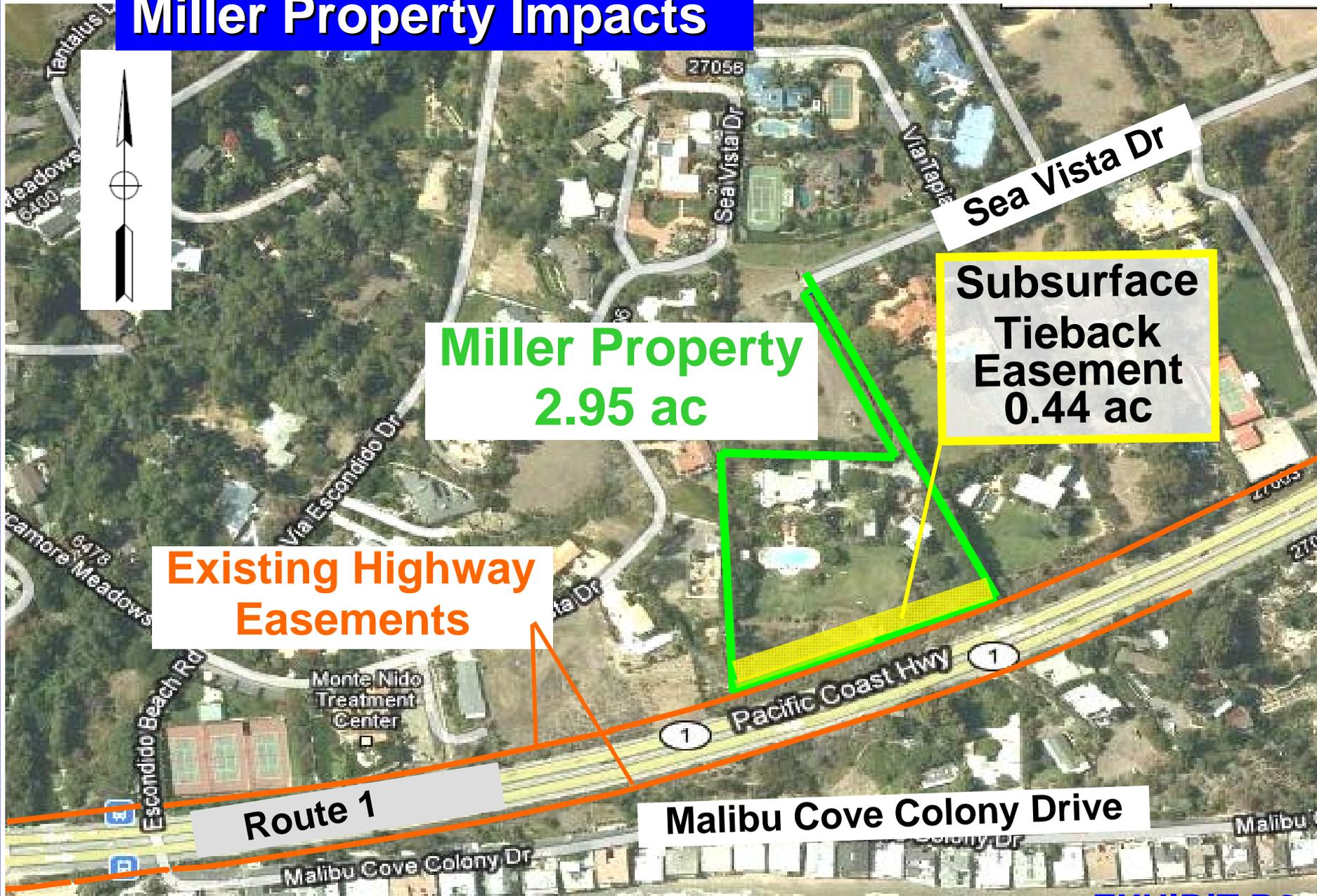
EXHIBIT "B"

0 50 100
FEET

DATE: 01/20/2009

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
07	LA	1	51.6		

Miller Property Impacts



Miller Property
2.95 ac

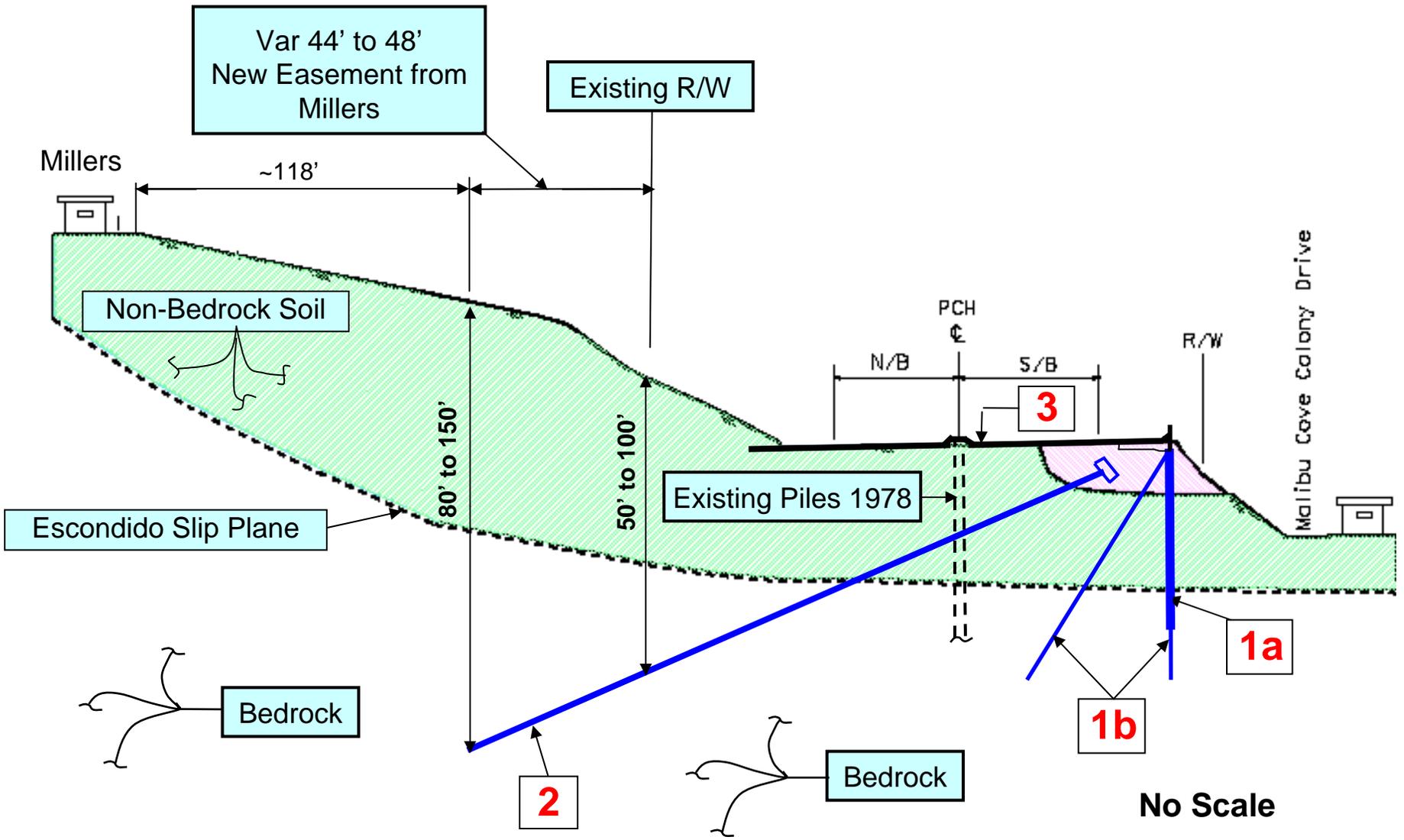
Subsurface Tieback Easement
0.44 ac

Existing Highway Easements

Route 1

Malibu Cove Colony Drive

Design Cross Section



No Scale

EXHIBIT B3