

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: June 30-July 1, 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: **RESOLUTIONS OF NECESSITY - APPEARANCE**

## **RECOMMENDATION:**

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolutions of Necessity (Resolution) C-20358 and C-20359 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 or located in the 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 owner is contesting the Resolutions and has requested an appearance before the Commission. The primary concern and objections expressed by the property owner is the type of property rights to be acquired and the number of Construction and Maintenance Agreements needed for the project. The owner's objections and the Department's responses are contained in Attachments B and C.

## **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 Resolutions 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 Resolutions at this time. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-20358 - Union Pacific Railroad Company, a Delaware Corporation

07-LA-5-PM 2.34 - Parcel 79394 -1 - EA 2159C9.

Right of Way Certification (RWC) Date: 06/14/10; Ready to List (RTL) Date: 06/17/10. Freeway - Carmenita interchange improvement. Authorizes condemnation of a permanent easement and right of way for an overhead bridge structure, and extinguishment of abutter's rights to and from the bridge structure. Located in the city of Santa Fe Springs, south of Firestone Boulevard, west of Carmenita Road. APN 7005-001-802. Attachment B

C-20359 - Union Pacific Railroad Company, a Delaware Corporation

07-LA-5-PM 2.33 - Parcel 79684-1 - EA 2159C9.

RWC Date: 06/14/10; RTL Date: 06/17/10. Freeway - Carmenita interchange improvement. Authorizes condemnation of a permanent easement for State highway purposes. Located in the city of Santa Fe Springs, south of Firestone Boulevard, east of Carmenita Road. APN 7005-014-802. Attachment C

Attachments:

Attachment A - Project Information

Exhibit A1 and A2 - Project Maps

Attachment B - Parcel Panel Report for Union Pacific Railroad Company (Resolution C-20358)

Exhibit B1 and B2 - Parcel Maps

Attachment C - Parcel Panel Report for Union Pacific Railroad Company (Resolution C-20359)

Exhibit C1 and C2 - Parcel Maps

Attachment D - Owners Written Objections dated May 27, 2010

## PROJECT INFORMATION

### PROJECT DATA

07-LA-5-PM 1.6/3.1  
Expenditure Authorization 2159C9

<u>Location:</u>	Interstate 5 (I-5) in Los Angeles County in the cities of Santa Fe Springs and Norwalk
<u>Limits:</u>	Between Alondra Boulevard Overcrossing and Shoemaker Avenue Overcrossing
<u>Cost:</u>	Programmed construction cost: \$160,600,000 Current right of way cost estimate: \$168,330,000
<u>Funding Source:</u>	Traffic Congestion Relief Program (TCRP), Congestion Mitigation and Air Quality (CMAQ), State Transportation Improvement Program (STIP), State-Local Transportation Partnership Program (SLTPP), Federal Demonstration Fund (DEMO), Transportation Equity Act for the 21st Century (TEA21), and Local Proposition C (PROP C)
<u>Number of Lanes:</u>	Existing: three mixed-flow lanes in each direction Proposed: four mixed-flow lanes in each direction plus one high occupancy vehicle (HOV) lane in each direction
<u>Proposed Major Features:</u>	Tight Diamond interchange at Carmenita Road; replace two-lane Carmenita Road Overcrossing with ten-lane overcrossing structure that also provides for railroad grade separation; re-align Firestone Boulevard and Freeway Drive frontage roads; re-align and reconstruct local streets
<u>Traffic:</u>	Existing I-5 (year 2005): 96,130 Annual Daily Traffic (ADT) Proposed I-5 (year 2030): 156,655 ADT

### NEED FOR THE PROJECT

The purpose of the project is to widen the I-5 corridor from the Orange County line to Interstate 605 (I-605) to increase capacity for the I-5 freeway; improve mobility for goods and people across California; and improve safety and access to the freeway. The I-5 Carmenita Road Interchange Improvement project is the first phase of the I-5 Ultimate Corridor Project. This project and the I-5 Ultimate Corridor Project which consists of five segments, is a high priority project for the Department.

The existing Carmenita Road overcrossing structure consists of only one lane in each direction, which is inadequate to handle present traffic volumes. The existing hook off-ramps are short and lack adequate storage capacity. During peak traffic periods, high exit ramp volumes can cause congestion to overflow onto I-5. In a similar manner, the “hook” type on-ramps lack storage and congestion overflows onto Carmenita Road. Additional traffic congestion is due to an at-grade railroad crossing south of the freeway. Normal railroad traffic causes the southbound off-ramp to overflow onto the southbound lanes of I-5. When the railroad crossing is used for extended periods of time, congestion can occur in both directions of I-5. The congestion problems are compounded by projected increases in traffic demand due to population, housing and employment growth. The existing configurations of the Carmenita Road hook-ramps have a high incident rate of traffic collisions. These collisions occur where the hook-ramps end at the access roads adjacent to the freeway. The short hook-ramps at the Carmenita Road produce traffic backups on the freeway, which contribute to the “end-of-queue” (end of stopped lane of vehicles) collisions. In addition, I-5 mainline in this area does not have adequate shoulder width for cars to pull off during an emergency. There are only three mixed-flow lanes in each direction, while I-5 in Orange County includes four mixed-flow lanes and an HOV lane in each direction, which causes a bottleneck as traffic transitions from Orange to Los Angeles County.

The proposed improvement of the Carmenita Road Interchange will provide for future horizontal clearance required for the addition of a minimum of two HOV lanes and two mixed flow lanes, which will be proposed as part of the I-5 Ultimate Corridor Improvement Project. The proposed improvements will alleviate congestion and also provide a grade separation for the railroad crossing south of the freeway. The proposed realignment of the existing hook-ramps will eliminate the safety hazards associated with them, as well as improve freeway movement.

## **PROJECT PLANNING AND LOCATION**

The Project Report and Environmental Document (Negative Declaration / Finding of No Significant Impact) were approved on March 29, 2002 for the project. Due to the escalation of real estate values, the cost of the project increased considerably. As a result, in 2004 the funding agency, Los Angeles County Metropolitan Transportation Authority, requested the Department to re-evaluate the design alternatives to reduce the right of way cost. Design modifications were then made to some local access routes to reduce right of way impacts for the overall project. Due to these design changes, a Supplemental Project Report and an Environmental Document Re-Evaluation was prepared to document the design changes in May of 2007.

The following Alternatives were considered for this project, but were rejected for the reason as stated:

- a) No Build Alternative – This alternative would retain the existing roadway configuration. If no improvements are made there will be further deterioration in the circulation of traffic at the I-5

Carmenita Road Interchange, as well as the hook ramps that connect to Firestone Boulevard and Freeway Drive. In addition, this alternative does not address the at-grade railroad crossing south of the Freeway. Given these factors, this alternative was not acceptable to all stakeholders, as it only prolongs the existing safety, traffic congestion, and operation problems for the region. As a result, the No Action alternative was rejected as it does not address the purpose and need for the proposed project.

- b) The Single Point Interchange – This alternative was rejected because of potential sight distance problems that cause some safety concerns, and it does not provide more benefit compared to the proposed Tight Diamond Interchange alternative.
- c) The Arterial Overcrossing Structure with Railroad Overhead keeping the center line for Carmenita Road at its current alignment – This alternative proposed to reconstruct the existing Carmenita Road overcrossing at approximately its current location and a new structure to extend over the railroad corridor. The existing hook ramps that access the freeway from Firestone Boulevard and Freeway Drive would be removed. Freeway access would be provided at Carmenita Road where a Diamond Interchange is proposed. The railroad crossing will remain at-grade for this alternative. This alternative was rejected, in part, because this alignment would not allow traffic on existing Carmenita Road while constructing the new bridge, which would considerably disturb traffic circulation in the area. Access to surrounding properties would also be severely impaired, which may require the purchase of additional properties, and the relocation of additional businesses.
- d) Arterial Overcrossing Structure with Railroad at-grade crossing at Carmenita Road – This alternative proposed removal and replacement of the existing overcrossing structure at the I-5 Carmenita Road Interchange. The existing hook ramps that access the freeway from Firestone Boulevard and Freeway Drive would be removed at Carmenita Road where a Diamond Interchange is proposed. This alternative proposed to retain the existing at-grade railroad crossing on Carmenita Road. This alternative was not selected, because the traffic congestion caused by trains blocking the through traffic on Carmenita Road was not addressed. Also, in this alternative, the design speed would be reduced and the slopes for the local streets would exceed the maximum allowed design slope. As a result, Union Pacific Railroad and the Federal Highway Administration do not support this alternative.
- e) Arterial Undercrossing Structure with Railroad at-grade – This alternative proposed removal and replacement of the existing structure at the I-5 Carmenita Road Interchange. The existing hook ramps that access the freeway from Firestone Boulevard and Freeway Drive would be removed. Freeway access would be provided at Carmenita Road where a Diamond Interchange is proposed. This alternative proposed to raise the freeway profile to allow Carmenita Road to cross under the freeway. The railroad crossing would remain at-grade for this alternative. This

alternative was withdrawn from consideration and rejected because it did not successfully address the traffic problems associated with the at-grade railroad crossing. It was also considered unacceptable as it required the extended closure of Carmenita Road for approximately two year during construction.

- f) Direct Access Road from Carmenita Road to Arctic Circle – This alternative was modified in 2007 to reduce right of way cost for the project.
- g) Eliminate railroad at-grade crossing – This alternative was not acceptable to the local agencies and the Liberty Vegetable Oil (LVO) property because by eliminating Alternative d) above, LVO would have no access to the local frontage road, nor rail access, both of which are required for continued its continued operations .

The scope of the proposed Carmenita Interchange Improvement project is to modify the existing interchange to a tight Diamond Interchange, replace the existing two-lane Carmenita Road overcrossing structure with a ten-lane overcrossing structure, provide for railroad grade separation; add one mixed-flow lane and an HOV lane on the mainline I-5 in each direction. In addition, existing hook ramps, frontage roads, and local streets will be re-aligned and reconstructed. As a result, this project will improve operational and safety components of the freeway, overall mobility for the region, while providing the greatest public good and least impact on adjacent properties in the area.

The project currently has programmed and approved funding for Right-of-Way Capital of \$168,330,000 and Construction Capital of \$160,600,000. The primary funding sources for the project are: TCRP, CMAQ, STIP, SLTPP, DEMO, TEA21, and PROP C. The project has a Ready to List date of June 2010 and tentative Advertising date of August 2010.

# Location Map

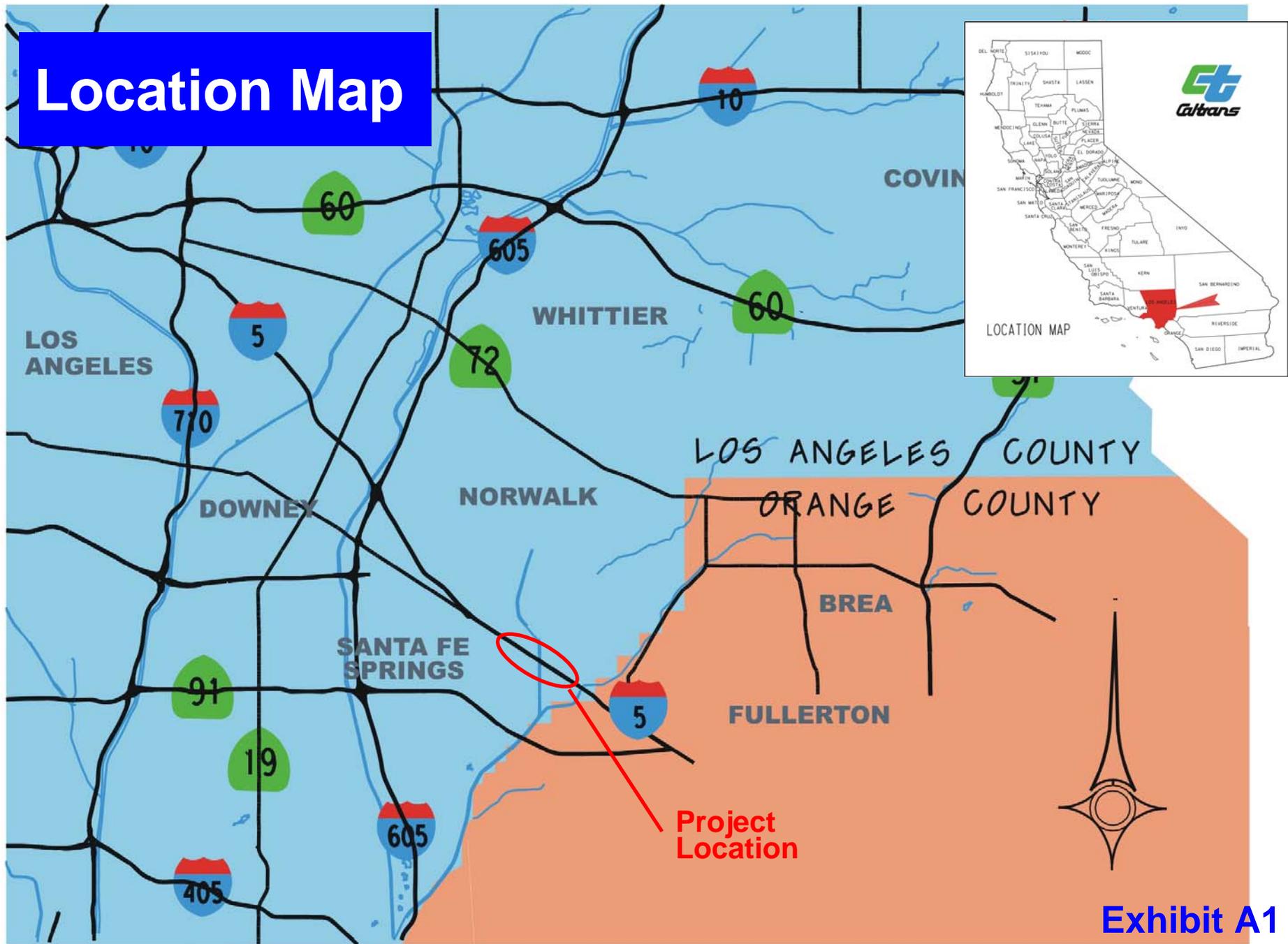
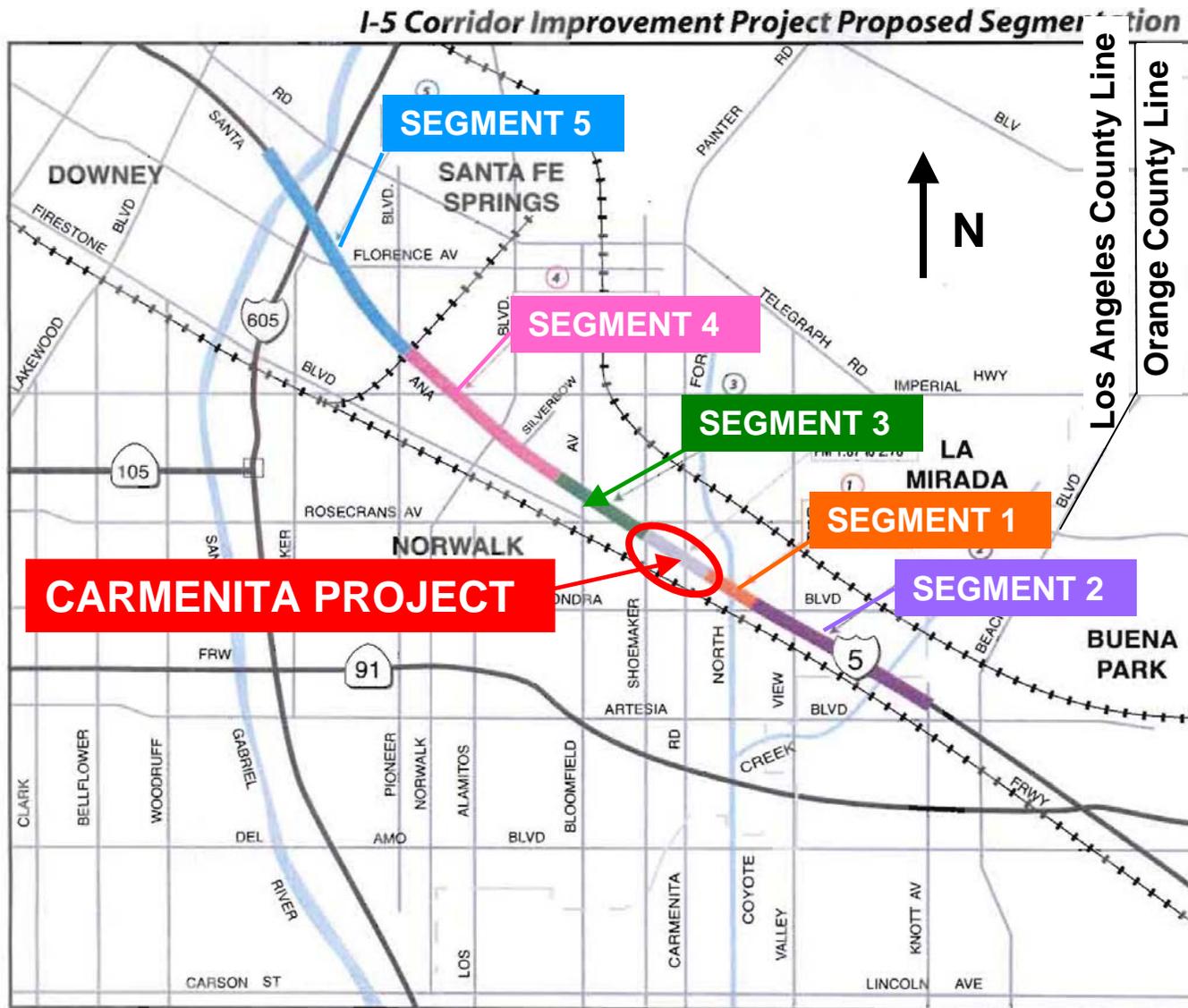


Exhibit A1

# I-5 Corridor Improvement Project



Graphic Services - I-5 Segments - 8/28/08

**Exhibit A2**

## PARCEL PANEL REPORT

### PARCEL DATA

Property Owner: Union Pacific Railroad Company, a Delaware Corporation

Parcel Location: South of Interstate 5 (I-5), west of Carmenita Road in the city of Santa Fe Springs, Los Angeles County. Assessor Parcel Number: 7005-001-802

Present Use: Railroad Transportation Corridor

Zoning: Not Zoned

Area of Property: Continuous; Indeterminate

Area Required: Parcel 79394-1: 19,623 SF, (0.45 acres) - Easement for Overhead Bridge Structure

### PARCEL DESCRIPTION

The subject property is a long and continuous transportation corridor owned by Union Pacific Railroad. The proposed project impacts a portion of the larger corridor identified as assessor parcel number 7005-001-802, which is located south of the I-5 freeway, west of Carmenita Road in the city of Santa Fe Springs. At this location, the corridor operates at-grade with Carmenita Road and is improved with one set of railroad tracks east of Carmenita Road and two sets of tracks and a spur line west of Carmenita Road.

### NEED FOR SUBJECT PROPERTY

A portion of the subject property (Union Pacific Railroad Corridor) is needed primarily for the construction of a new tight Diamond Interchange at Carmenita Road and I-5, located in the city of Santa Fe Springs. The existing two-lane Carmenita Road overcrossing will be replaced with a re-aligned ten-lane overcrossing structure located westerly of its current location. The new Carmenita Road overcrossing will span and extend over I-5 as well as the Union Pacific Railroad Corridor. To facilitate construction, a 19,623 SF permanent easement and right of way is required. It should be noted that although there are columns and footings associated with the new ten-lane overcrossing structure, they are located entirely outside the footprint of the Union Pacific Railroad Corridor.

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

The Condemnation Review Panel (Panel) met in Los Angeles on December 10, 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; Luis Betancourt, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property owner at the meeting was Freddy Cheung, Senior Manager Industry & Public Projects, Union Pacific Railroad Company, and attorney, Vicki Land.

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 primary concern and objections expressed by the property owner is the type of property rights to be acquired and the number of Construction and Maintenance (C&M) Agreements needed for the project.

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

### **Owner:**

The proposed easement language is overly broad and gives the Department unlimited and undefined future highway uses of Railroad right of way underneath the structure. Therefore, the Department should acquire an aerial easement for the bridge structure and a temporary easement for the surface rights. Once construction is complete, future needs for access would be covered by negotiated Rights of Entry or temporary construction easements.

### **Department:**

The proposed permanent easement language contains both air and surface rights and is required to construct and maintain the structure to perpetuate the public crossing, as well as provide access to the public crossing area above and below the bridge structure for future inspection and maintenance purposes. The proposed permanent easement is also needed to protect the public's interest should the Railroad sell the property in the future or convert its right of way to other uses that would interfere with highway purposes.

The Department's offer of just compensation considered the burden of the proposed easement on the Railroad property and its operations. The easement rights being sought obligate the Department to a compatible use which cannot unreasonably interfere with or impair continued Railroad operations, and is consistent with Code of Civil Procedure Section 1240.510.

### **Owner:**

Separate C&M Agreements are needed for both the overhead bridge structure and the two other at-grade crossings included in this project.

### **Department:**

The purpose of the C&M Agreement between the Department and the Railroad is to identify the roles, responsibilities, terms and conditions for the on-going construction and maintenance of the

overhead structure. Since only one structure is being constructed, only one C&M Agreement is needed.

The two at-grade crossings included in this project, at Carmenita Place and Arctic Circle, are local roads that will continue to be maintained by the City of Santa Fe Springs after the project is built. Any pre-existing relationship the Railroad has with the City of Santa Fe Springs for these two at-grade crossings should not be impacted by this project.

**Owner:**

The estimated remediation cost for contaminated soil should not be deducted from the Department's appraised property value and offer of just compensation.

**Department:**

This is a compensation issue. Ultimate settlement of this issue will be through continued negotiations or through court proceedings via the condemnation process.

**DEPARTMENT'S CONTACTS**

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

<b>Type of Contact</b>	<b>Number of Contacts</b>
Mailing of information	3
E-Mail of information	14+
Telephone contacts	3+
Personal / meeting contacts	2

**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.

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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:

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RICHARD D. LAND  
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING  
HEARING ON DECEMBER 10, 2009**

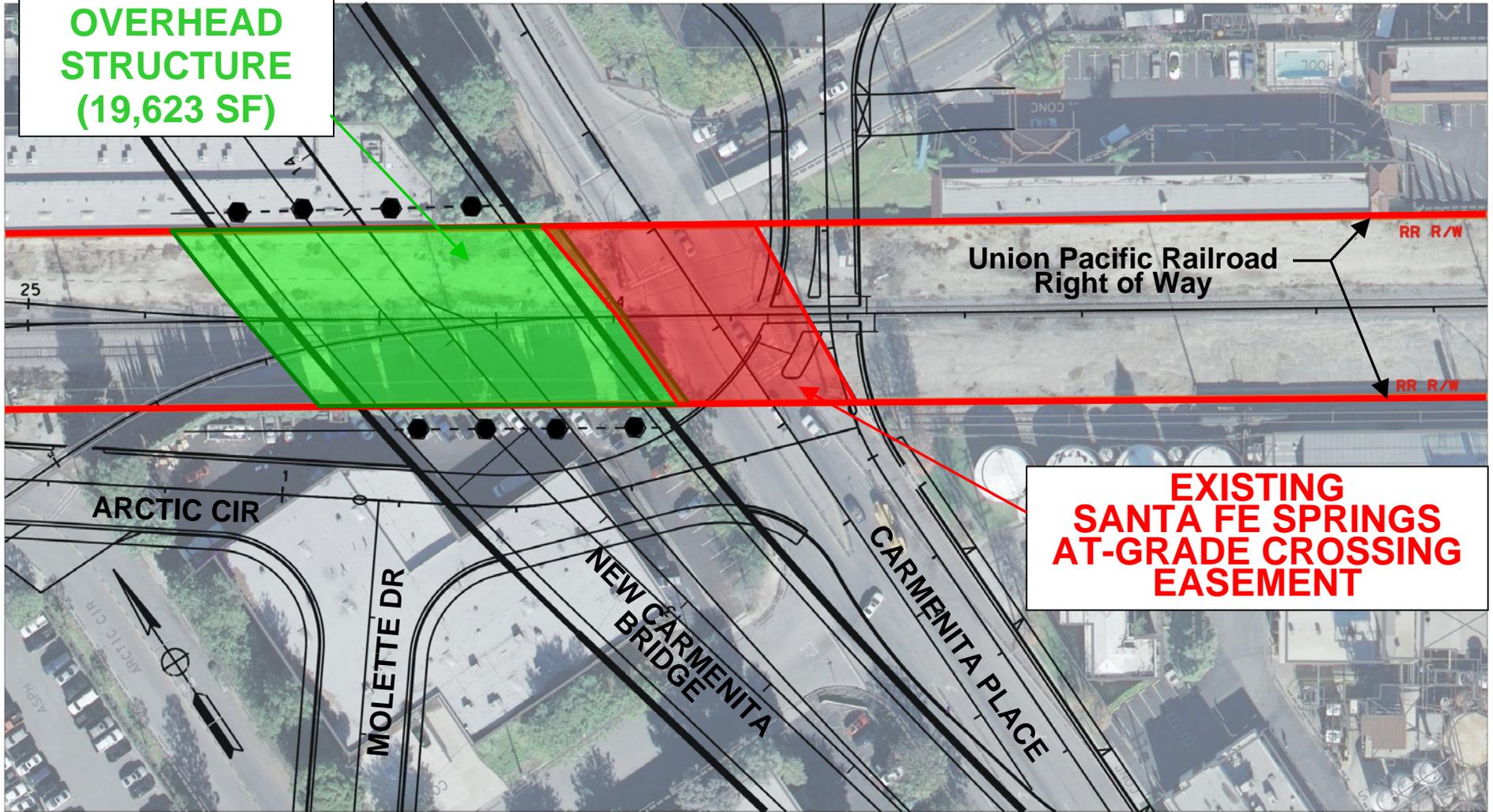
Donald Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair  
William Rittenburg, Los Angeles Legal Office Attorney, Panel Member  
Luis Betancourt, HQ's Division of Design, Panel Member  
Deborah Gebers, HQ's Division of Right of Way and Land Surveys, Panel Secretary

Freddy Cheung, Senior Manager - Industry & Public Projects, Union Pacific Railroad Company  
Vicki Land, Attorney for the Property Owner

Raja Mitwasi, District 7, Chief Deputy District Director  
Nancy Pe, District 7 Design Manager, Office of Design A  
Jerrel Kam, District 7 Office Chief, Office of Design A  
Andrew P. Nierenberg, District 7, Deputy District Director, Right of Way  
Dan Murdoch, District 7, Supervising Right of Way Agent  
Linda Tong, District 7, Senior Right of Way Agent  
Lowell Anderson, District 7, Right of Way Agent  
Arlene Chung, District 7, Right of Way Agent

# PROPOSED IMPACTS

**EASEMENT A  
OVERHEAD  
STRUCTURE  
(19,623 SF)**



**EXISTING  
SANTA FE SPRINGS  
AT-GRADE CROSSING  
EASEMENT**



## PARCEL PANEL REPORT

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Present Use: Railroad Transportation Corridor

Zoning: Not Zoned

Area of Property: Continuous; Indeterminate

Area Required: Parcel 79684-1: 3,413 SF, (0.08 acres) - Highway Easement

### PARCEL DESCRIPTION

The subject property is a long and continuous transportation corridor owned by Union Pacific Railroad. The proposed project impacts a portion of the larger corridor identified as assessor parcel number 7005-014-802, which is located south of the I-5 freeway, east of Carmenita Road in the city of Santa Fe Springs. At this location, the corridor operates at-grade with Carmenita Road and is improved with one set of railroad tracks east of Carmenita Road and two sets of tracks and a spur line west of Carmenita Road.

### NEED FOR SUBJECT PROPERTY

A portion of the subject property (Union Pacific Railroad Corridor) is needed primarily for the construction of a new tight Diamond Interchange at Carmenita Road and I-5, located in the city of Santa Fe Springs. The existing two-lane Carmenita Road overcrossing will be replaced with a re-aligned ten-lane overcrossing structure located westerly of its current location. The new Carmenita Road overcrossing will span and extend over I-5 as well as the Union Pacific Railroad Corridor. As a result of the grade separation, a 3,413 SF permanent highway easement is required for the new proposed Carmenita Place. Carmenita Place will replace the existing at-grade Carmenita Road railroad crossing, and be used to connect realigned and relocated local streets serving the vicinity, such as Firestone Boulevard, Molette Street and Arctic Circle to maintain traffic flow and circulation.

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

The Condemnation Review Panel (Panel) met in Los Angeles on December 10, 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; Luis Betancourt, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property owner at the meeting was Freddy Cheung, Senior Manager Industry & Public Projects, Union Pacific Railroad Company, and attorney, Vicki Land.

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 primary concern and objection expressed by the property owner is the number of Construction and Maintenance (C&M) Agreements needed for the project.

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

### **Owner:**

Separate C&M Agreements are needed for both the overhead bridge structure (Parcel 79394-1) and the two other at-grade crossings included in this project.

### **Department:**

The purpose of the C&M Agreement between the Department and the Railroad is to identify the roles, responsibilities, terms and conditions for the on-going construction and maintenance of the overhead structure. Since only one structure is being constructed, only one C&M Agreement is needed.

The two at-grade crossings included in this project, at Carmenita Place and Arctic Circle, are local roads that will continue to be maintained by the City of Santa Fe Springs after the project is built. Any pre-existing relationship the Railroad has with the City of Santa Fe Springs for these two at-grade crossings should not be impacted by this project.

### **Owner:**

The estimated remediation cost for contaminated soil should not be deducted from the Department's appraised property value and offer of just compensation.

### **Department:**

This is a compensation issue. Ultimate settlement of this issue will be through continued negotiations or through court proceedings via the condemnation process.

## **DEPARTMENT'S CONTACTS**

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<b>Type of Contact</b>	<b>Number of Contacts</b>
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## **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 10, 2009**

Donald Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair  
William Rittenburg, Los Angeles Legal Office Attorney, Panel Member  
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Linda Tong, District 7, Senior Right of Way Agent  
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Arlene Chung, District 7, Right of Way Agent

# PROPOSED IMPACTS

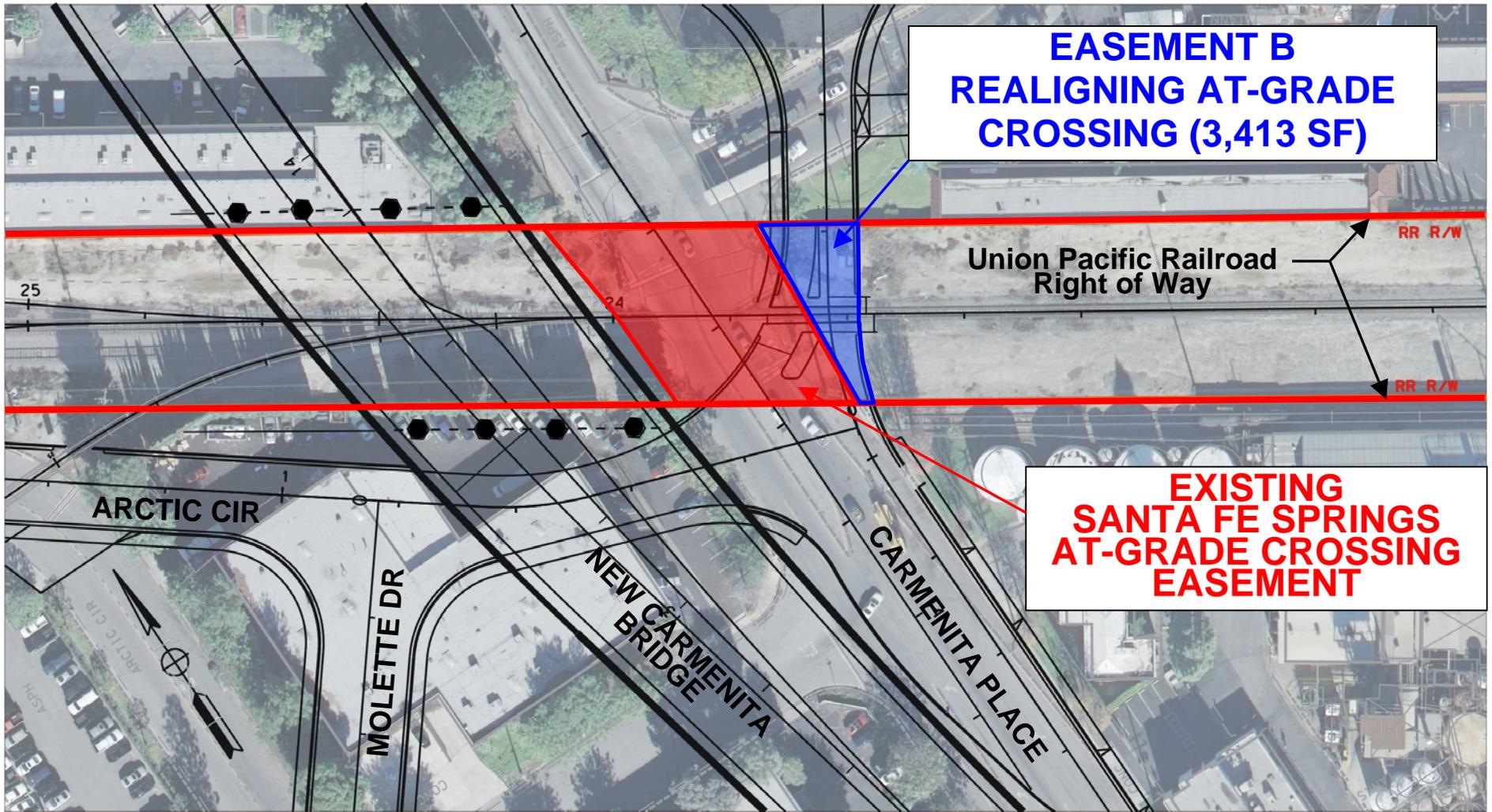
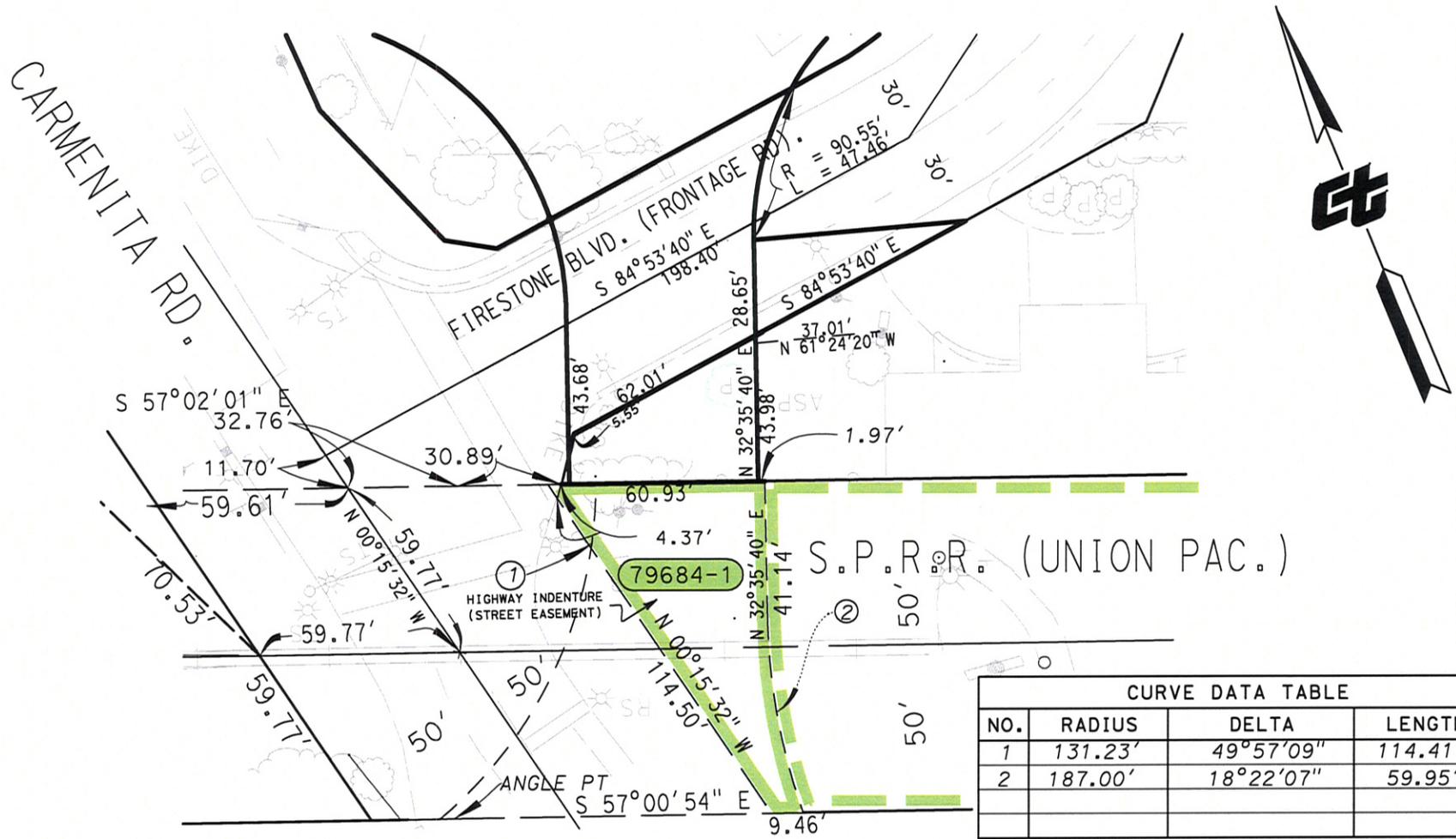


Exhibit C1



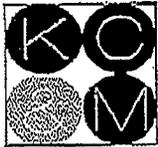
CURVE DATA TABLE			
NO.	RADIUS	DELTA	LENGTH
1	131.23'	$49^{\circ}57'09''$	114.41
2	187.00'	$18^{\circ}22'07''$	59.95'

**EXHIBIT "B"**  
**07-LA-5-PM. 2.33**  
 FEET

SCALE 1" = 50'

8-5-09

Exhibit C2



**KING CHENG & MILLER LLP**

117 E. Colorado Blvd., Suite 260

Pasadena, CA 91105

626-304-9001 fax. 626-304-9002

Alhambra Office • 1216 South Garfield Ave., Suite 102, Alhambra, CA 91801

May 27, 2010

**Via Facsimile 916-653-2134**

**Via Facsimile 213-897-8902**

Executive Director  
California Transportation Commission  
P.O. Box 942873  
Mail Station 52  
Sacramento, CA 94273-001

RE: 07-LA-5-PM 2.34  
EA 2159C9  
Parcels 79394 and 79684

To Whom It May Concern:

A Notice of Intent to Adopt Resolution of Necessity with reference to the above-referenced parcels was previously issued on August 28, 2009, and Union Pacific Railroad Company ("Union Pacific") previously informed the California Transportation Commission ("Commission") by letters dated September 10, 2009 of its intent to appear at the hearing on the resolution for those parcels, as well as of its objections to the adoption of the resolution for those parcels. Union Pacific has now received a letter from the California Department of Transportation ("Caltrans") dated May 13, 2010, stating that the hearing will be held June 30 or July 1, 2010 instead of the initially scheduled date.

Although Union Pacific has already notified the Commission of its intention to appear at the hearing and of its objections to the resolution in its September 10, 2009 letters regarding parcels 79394 and 79684, which are incorporated herein by reference, Union Pacific in this letter reaffirms its intention to appear at the hearing and updates its objections to the resolution.

Union Pacific objects to the adoption of a Resolution of Necessity for the condemnation of its property interests described as parcels 79394 and 79684 in the Caltrans Notice of Intent to Adopt Resolution of Necessity dated August 28, 2009, as amended in the Memoranda of Adjustment dated March 10, 2010 (copies attached) and second revised offer of compensation dated March 23, 2010 (copy attached), on the grounds that: (1) the public interest and necessity do not require the project as presently described in the proposed Easement Deeds for Parcel 79394 and 79684 attached to the March 10, 2010 Memoranda of Adjustment; (2) 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; (3) the property sought to be acquired, as presently described, is not necessary for the project; and (4) the offer required by Government Code Section 7267.2 and by Code of Civil Procedure Section 1245.230 has not properly been made. Union Pacific also has not been provided with a copy of the proposed resolution(s) of necessity, and requests that it be provided a copy prior to the hearing.

Attachment D

Executive Director  
California Transportation Commission  
Page 2  
May 27, 2010

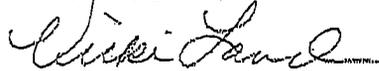
Union Pacific further states that Caltrans' proposes to take these parcels for crossings of Union Pacific's active interstate right-of-way. Therefore, it has the right to take only if it meets the requirement of the California Eminent Domain law for acquiring property rights for a compatible public use (Code of Civil Procedure sections 1240.510 through 1240.530), including, without limitation, providing for the protection against any interference with Union Pacific's operations as an interstate transportation corridor. The subject corridor contains not only Union Pacific's interstate rail line but also pipelines, fiber optic lines and an access road for Union Pacific's customers, and the capacity for future such uses. The Easement Deeds attached to the March 10, 2010 Memoranda of Adjustment improperly restrict Union Pacific's and the above-mentioned users of Union Pacific's corridor (i) by imposing express limitations and conditions on their use of the right-of-way that interfere with their rights and obligations, (ii) by failing to make the language of the property description in the Easement Deeds subject to a satisfactory Construction and Maintenance Agreement that protects the rights and obligations of Union Pacific and the above-mentioned users, and (iii), as to Parcel 79394, by seeking an unnecessary permanent easement of the surface, subsurface and above-surface of Union Pacific's property underneath the proposed Structure.

Also, unless and until those rights and obligations are protected, the right to take is preempted by federal law under the Supremacy Clause of the United States Constitution. The Surface Transportation Board has exclusive or primary jurisdiction over any action that would interfere with Union Pacific's transportation corridor operations.

Union Pacific also objects to the adoption of the proposed Resolution on the grounds that the offer does not meet the constitutional or statutory requirements for a pre-condemnation offer in that the offer is improperly restricted to a nominal value.

Union Pacific hereby reserves the right to present written objections at any time prior to the hearing, and to address those and any additional objections and observations at the time of the hearing. The statutes do not give the Commission authority to restrict the time period within which written objections or observations may be filed, or to restrict its consideration of objections only to those on file within 15 days of the issuance of its Notice of Intent.

Very truly yours,



Vicki E. Land

Attorney for Union Pacific Railroad Company

Cc: Patrick R. McGill, Esq., Union Pacific Railroad Company  
Lisa Braham, Esq., California Department of Transportation Legal Division  
Lowell W. Anderson, Right of Way Agent, California Department of Transportation  
(all via email)

Attachment D