

# Memorandum

**To:** CHAIR AND COMMISSIONERS  
CALIFORNIA TRANSPORTATION COMMISSION

**CTC Meeting:** March 23-24, 2011

**Reference No.:** 2.4a.(3)  
Action Item

**From:** NORMA ORTEGA  
Chief Financial Officer

**Prepared by:** Brent Green  
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-20474 summarized on the following page. The Resolution is for widening State Route 57 in District 12 in the city of Anaheim, county of Orange.

## 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 owner and lessee are contesting the Resolution and have requested a written appearance before the Commission to challenge the outstanding issues. At the request of the property owner and the lessee, objections to the Resolution have been submitted in writing to be made part of the official record of the Commission. The owner's and lessee's objections are included as Attachment A. The Department's responses to the owner's and lessee's objections are contained in Attachment B.

**BACKGROUND:**

Discussions have taken place with the owner and the lessee, who have been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which the owner and/or lessee 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 the Commission's March 23-24, 2011 meeting. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-20474 - Union Pacific Railroad Company, a Delaware Corporation, successor in interest to Southern Pacific Railroad Company; Regency Outdoor Advertising, Inc. (Lessee)  
12-Ora-57-PM 13.0 - Parcel 102675-1, 2 - EA 0F0409.

Right of Way Certification Date: 03/30/11; Ready to List Date: 04/01/11. Freeway - add northbound lane. Authorizes condemnation of a permanent easement and right of way for an overhead bridge structure, extinguishment of abutter's rights to and from the bridge structure, and a temporary easement for construction purposes. Located in the city of Anaheim at the intersection of the Union Pacific railroad corridor and State Route 57, north of Cerritos Avenue. Assessor's Parcel Number Undetermined.

Attachments:

- Attachment A - Owners Written Objections dated September 29, 2010 and Lessees Written Objections dated February 01, 2011.
- Attachment B - Departments Response dated February 17, 2011
- Attachment C - Fact Sheet
- Exhibits A and B - Maps

1 copy to Stephen Maller, to Right of Way  
10-1-10

**McKenna Long  
& Aldridge**<sub>LLP</sub>  
Attorneys at Law

Albany  
Atlanta  
Brussels  
Denver  
Los Angeles

300 South Grand Avenue • 14th Floor • Los Angeles, CA 90071-3124  
Tel: 213.688.1000 • Fax: 213.243.6330  
www.mckennalong.com

New York  
Philadelphia  
San Diego  
San Francisco  
Washington, D.C.

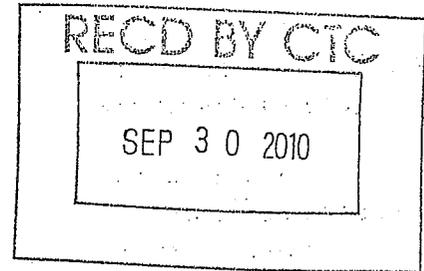
MICHAEL H. WALLENSTEIN  
(213) 687-2110

EMAIL ADDRESS  
mwallenstein@mckennalong.com

September 29, 2010

VIA FACSIMILE (916) 653-2134; (949) 724-2622  
AND OVERNIGHT MAIL

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



Re: 12-Ora-57-PM 12.9  
EA 0F0409  
Parcel 102675-1, -2

Dear Sir or Madam:

This office represents Union Pacific Railroad Company ("Union Pacific") in the above-referenced matter. We are in receipt of the Department of Transportation's ("Caltrans") Notice of Intent to Adopt Resolution of Necessity to Acquire Certain Real Property or Interest in Real Property by Eminent Domain, dated September 16, 2010 (the "Notice"). This letter shall constitute Union Pacific's Request to Appear and to be heard at the November 3-4, 2010, hearing to object to the adoption of the Resolution of Necessity contemplated in the Notice.

Union Pacific objects to the adoption of the Resolution of Necessity for the condemnation of its property, described as Parcels 102675-1 (a permanent easement) and 102675-2 (a temporary construction easement) (the "Subject Property") in the Notice, on the grounds that: (1) the public interest and necessity do not require the project as presently described in the Proposed Easement Deed included with Caltrans' First Written Offer dated June 29, 2010 (the "Offer", a copy of which is attached); (2) the project is not, as presently described, 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 entirely necessary for the project; and (4) the Offer does not comply with Government Code section 7267.2 and the Notice thereby does not comply with Code of Civil Procedure section 1245.230. In addition, Union Pacific has not been provided with a copy of the proposed Resolution of Necessity and requests that a copy be provided to this office no fewer than seven calendar days before the hearing.

Attachment A

Executive Director  
California Transportation Commission  
September 29, 2010  
Page 2

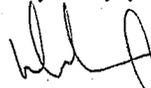
Furthermore, the Subject Property is part of an active common-carrier freight railroad corridor. Therefore, Caltrans may only take the Subject Property if it meets the requirements of the California Eminent Domain Law for acquiring property already devoted to a public use (Code of Civil Procedure section 1240.510 et seq. and/or section 1240.610 et seq.) including, without limitation, providing for the protection against interference with Union Pacific's operations.

In addition to active rail lines, the Subject Property contains high pressure petroleum pipelines and other subsurface and surface installations that may be impacted by the Project and whose protection must be provided for. The Project, as presently contemplated, includes unnecessary use of the surface and subsurface of the Subject Property for portions of the contemplated structure and otherwise imposes unnecessary limitations on the present and future use of the corridor by Union Pacific and by the above-mentioned facilities. Furthermore, the Proposed Easement Deed fails to make the use of the Subject Property and construction of the Project by Caltrans subject to a binding and satisfactory Construction and Maintenance Agreement, as has been the practice of the parties in the past. Union Pacific further objects on the grounds that Caltrans has failed to provide proposed language for the Temporary Construction Easement (Parcel 102675-2) and Union Pacific cannot thereby evaluate the appropriateness, validity and/or necessity of the proposed taking.

Union Pacific further objects to the adoption of the Resolution of Necessity on the grounds that the Offer fails to comply with the provisions of Government Code section 7267.2 in that, *inter alia*, it: (1) fails to provide sufficient information to indicate clearly the basis for the offer; (2) fails to meet the constitutional, statutory and common law requirement for just compensation for Parcel 102675-1 by allocating no value to that parcel; and (3) fails to take into account lost revenue from the loss, or reduction in value of an existing signboard facility on the Subject Property.

Union Pacific hereby reserves the right to present additional written and/or oral objections at any time prior to the hearing. The Commission does not have the authority to restrict the time period within which written or oral objections or observations may be filed or submitted, nor to restrict its consideration of objections to only those on file within 15 days of the issuance of the Notice.

Very truly yours,



Michael H. Wallenstein, Partner  
Attorneys for Union Pacific Railroad Company

MHW:kl

cc: Erica Irizarry, Associate Right of Way Agent, Caltrans



"Cosgrove, David"  
<dcosgrove@rutan.com>  
02/01/2011 08:56 AM

To "erika\_irizarry@dot.ca.gov" <erika\_irizarry@dot.ca.gov>  
cc  
bcc

Subject: Condemnation Panel Review Hearing

Ms. Irizarry:

I am writing to advise you that I do not intend to attend the Condemnation Panel Review hearing on Thursday. My client continues to believe that in the absence of a firm assurance from the ODA that a permit will issue for the relocated sign, the findings regarding the greatest public good and least private injury cannot be met. That being said, I appreciate the efforts the local District 12 office has made to coordinate communications with ODA, and appreciate also that ODA has indicated it cannot opine definitively without an application on file. I have advised my client that Caltrans now has advised it believes Regency should pursue the necessary application.

I continue to believe that my client is, and should be, eligible for relocation assistance to defray the costs of pursuing the relocation application, including professional design costs, related to the proposed move of the billboard structure, and payment for loss of business goodwill relating to the reduction in overall display area. I realize these issues may not be considered to be within the rubric of the Condemnation Panel Review hearing, however.

I would request that this communication be entered into your records, and that it be deemed to constitute my client's appearance at the hearing.

I look forward to continuing to work with you on this matter.

David B. Cosgrove  
**Rutan & Tucker, LLP**  
611 Anton Boulevard, 14th Floor  
Costa Mesa, CA 92626  
714-662-4602 Direct  
714-546-9035 Fax  
dcosgrove@rutan.com  
[www.rutan.com](http://www.rutan.com)

Any tax advice contained in the body of this e-mail (and any attachments thereto) was not intended or written to be used, and cannot be used, by the recipient for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions.

**Privileged And Confidential Communication.**

This electronic transmission, and any documents attached hereto, (a) are protected by the Electronic Communications Privacy Act (18 USC §§ 2510-2521), (b) may contain confidential and/or legally privileged information, and (c) are for the sole use of the intended recipient named above. If you have received this electronic message in error, please notify the sender and delete the electronic message. Any disclosure, copying, distribution, or use of the contents of the information received in error is strictly prohibited.

 Please consider the environment before printing this e-mail.

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 12

OFFICE OF RIGHT OF WAY

3347 MICHELSON DRIVE, SUITE 100

IRVINE, CA 92612-8894

PHONE (949) 724-2884

FAX (949) 724-2622

*Flex your power!  
Be energy efficient!*

February 17, 2011

12-ORA-57-PM 13.0

EA: 0F0409

Parcel: 102675-1, -2

Grantor: Southern Pacific Railroad  
Company dba Union Pacific  
Railroad Company**Via Certified Mail**

Southern Pacific Railroad Company

c/o McKenna Long &amp; Aldridge

Attention: Michael Wallenstein

300 South Grand Avenue, 14<sup>th</sup> Floor

Los Angeles, CA 90071

Dear Mr. Wallenstein:

This letter is in response to your letter dated September 29, 2010. In your letter you addressed specific concerns and objections to the California Transportation Commission's (hereinafter "CTC") proposed action on several grounds regarding the above referenced parcel.

The following is the State of California, Department of Transportation's ("Department") response to the concerns and objections set forth in your letter:

**1. The public interest and necessity do not require the project as presently described in the Proposed Easement Deed.**

As previously discussed, the proposed highway easement (1,712 square feet) is necessary for the widening of the northbound Orange (SR-57) freeway from Katella Avenue to Lincoln Avenue. The proposed easement deed is necessary in particular for the construction of an extension to the existing bridge structure, Douglass Overhead, over the railroad corridor.

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

The overall purpose of the project is to increase the capacity of the SR-57 freeway in order to reduce congestion, increase traffic flow and enhance the safety of one of Orange County's signature freeways. The proposed project starts 0.31-mile south of Katella Avenue to 0.31-mile north of Lincoln Avenue, referred to as Segment 2. The work involves the addition of one northbound general-purpose lane along with merging lanes and reconfiguration of certain on-ramps and off-ramps. Ancillary improvements will include widening of the Katella Avenue, Ball Road and Lincoln Avenue northbound on-and-off ramps.

Segmenting a larger project is done with the greatest public good and least private injury in mind. The State plans a large project such as this in phases or segments in order to manage the construction and the funding efficiently. Closing all ramps at once for the approximate 8-4/5 mile stretch would create great damage to the communities and the businesses in the area. The traffic circulation problems would be prolonged as well. Also, the start of the project may be delayed because of the additional time that would be needed to obtain possession of all the required right of way which is necessary prior to the award of the construction contract.

The manner in which the SR-57 Project is planned is basically reducing the impact on the communities as well as reducing the impact on the right of way activities on this parcel.

**3. The property sought to be acquired, as presently described, is not entirely necessary for the project.**

The proposed highway easement (1,712 square feet) is necessary for the freeway widening of Orange (SR-57) freeway, and in particular for the construction of an extension to the existing bridge structure, Douglass Overhead, over the railroad corridor. The non-exclusive temporary construction easement (2,654 square feet) is necessary for the construction of the overhead improvements and support columns.

**4. The Offer does not comply with Government Code section 7267.2 and the notice thereby does not comply with Code of Civil Procedure section 1245.230**

A First Written Offer was mailed to Paul Ferrell of Union Pacific Railroad, on June 29, 2010 which included the following documents: First Written Offer for Parcels 102675-1 and 102675-2, Summary Statement Relating to the Purchase of Real Property or an Interest Therein, Appraisal Summary Statement, Title Report, Appraisal Report, Appraisal Map, Easement Deed, Legal Certificate of Occupancy and Receipt of Relocation Information, Title VI Statutes and Regulations, Title VI Complaint Process, Title VI Discrimination Complaint, *Your Rights Under Title VI and Related Statutes* booklet, and *Your Property Your Transportation Project* booklet.

A Notice of Intent Letter was mailed to you on September 16, 2010, detailing the process of eminent domain and the property owner's rights under the Eminent Domain Law.

An updated Appraisal Summary Statement containing a Summary of the Basis For Just Compensation was mailed to you on October 14, 2010:

**5. Union Pacific has not been provided with a copy of the proposed Resolution of Necessity.**

A proposed Resolution of Necessity will be mailed to you on or before March 1, 2011.

**6. Caltrans may only take the Subject Property if it meets the requirements of the California Eminent Domain Law for acquiring property already devoted to a public use.**

It is our understanding that Union Pacific Railroad has executed a Construction and Maintenance Agreement; therefore, this issue should be resolved.

**7. The Project includes unnecessary use of the surface and subsurface of the Subject Property for portions of the contemplated structure and otherwise imposes unnecessary limitations on the present and future use of the corridor by Union Pacific and by other facilities.**

It is our understanding that Union Pacific Railroad has executed a Construction and Maintenance Agreement; therefore, this issue should be resolved.

**8. The Proposed Easement Deed fails to make the use of the Subject Property and construction of the Project by Caltrans subject to a binding and satisfactory Construction and Maintenance Agreement.**

The proposed easement deed is still in the negotiation process and is subject to modifications and change as agreed upon by the railroad and the Department.

**9. Caltrans has failed to provide proposed language for the Temporary Construction Easement.**

Proposed language for the Temporary Construction Easement will be provided on or before March 1, 2011.

**10. The Offer fails to provide sufficient information to indicate clearly the basis for the offer.**

An Appraisal Report and Appraisal Summary Statement were mailed to Paul Ferrell of Union Pacific Railroad on June 29, 2010, which contain the Summary for the Basis of Just Compensation. An updated Appraisal Summary Statement was mailed to you on October 14, 2010.

**11. The Offer fails to meet the constitutional, statutory and common law requirement for just compensation for Parcel 102675-1 by allocating no value to that parcel.**

An updated Appraisal Summary Statement was mailed to you on October 14, 2010, reflecting a value of \$2,500.00 for Parcel 102675-1.

**12. The Offer fails to take into account lost revenue from the loss, or reduction in value of an existing signboard facility on the Subject Property.**

*A Goodwill Information Sheet and a Notification of Right to Claim Loss of Business Goodwill* was provided to Regency Outdoor Advertising, Inc., on July 21, 2010. However, they have not submitted any documentation to our office to this date. The Department will review their Business Goodwill information upon receipt of required documentation.

In order to meet the project deadlines and prevent further delays, the Department is proceeding to the March 23-24, 2011 CTC meeting that will be held in San Diego, California. Per your written request, your letters will be included as part of the formal record of the March CTC meeting, where the CTC will be asked to adopt a Resolution of Necessity for Parcels 102675-1, -2.

If you have any questions, please feel free to contact Erika Irizarry at (949) 724-2432.

Sincerely,



for RICKY RODRIGUEZ  
Office Chief  
Office of Right of Way – District 12

Enclosure(s)

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 12

OFFICE OF RIGHT OF WAY

3347 MICHELSON DRIVE, SUITE 100

IRVINE, CA 92612-8894

PHONE (949) 724-2884

FAX (949) 724-2622

*Flex your power!  
Be energy efficient!*

February 17, 2011

12-ORA-57-PM 13.0

EA: 0F0409

Parcel: 102675-1, -2

Lessee: Regency Outdoor  
Advertising, Inc.**Via Certified Mail**

Regency Outdoor Advertising, Inc.

c/o Rutan &amp; Tucker, LLP

Attention: David Cosgrove

611 Anton Boulevard, Suite 1400

Costa Mesa, CA 92626

Dear Mr. Cosgrove:

This letter is in response to your email dated February 1, 2011. In your email you addressed specific concerns and objections to the California Transportation Commission's (hereinafter "CTC") proposed action on several grounds regarding the above referenced parcel.

The following is the State of California, Department of Transportation's ("Department") response to the concerns and objections set forth in your email:

**1. There is an absence of a firm assurance from ODA that a permit will be issued for the relocated sign.**

As previously communicated in our letter dated January 19, 2011, the Department requested your client to initiate a request for an application through the Department's Outdoor Advertising unit.

**2. Your client should be eligible for relocation assistance to defray the cost of pursuing the relocation application.**

The Department is in the process of verifying if the Relocation Assistance Program is able to cover your client's costs of pursuing a relocation application. The department is also investigating other administrative means to cover these costs and will inform you as soon as further information is received.

**3. Payment for loss of Business Goodwill.**

The Department provided your client with a *Goodwill Information Sheet* and a *Notification of Right to Claim Loss of Business Goodwill* on July 21, 2010; however, your client has not submitted any documentation to our office to this date. The Department will review your client's Business Goodwill information upon receipt of required documentation.

In order to meet the project deadlines and prevent further delays, the Department is proceeding to the March 23-24, 2011 CTC meeting that will be held in San Diego, California. Per your written request, your letters will be included as part of the formal record of the March CTC meeting, where the CTC will be asked to adopt a Resolution of Necessity for Parcels 102675-1, -2.

If you have any questions, please feel free to contact Erika Irizarry at (949) 724-2432.

Sincerely,



RICKY RODRIGUEZ  
Office Chief  
Office of Right of Way – District 12

Enclosure(s)

## Resolution of Necessity Appearance Fact Sheet

**PROJECT DATA** 12-Ora-57-PM 12.1/15.2  
Expenditure Authorization 0F0409

Location: State Route (SR) 57 in Orange County in the city of Anaheim

Limits: 0.3 mile south of Katella Avenue Undercrossing to 0.3 mile north of Lincoln Avenue Overcrossing

Cost: Programmed construction cost: \$27,613,000  
Current right of way cost estimate: \$1,784,453

Funding Source: Renewed Measure M, Proposition 1B - Corridor Mobility Improvement Account

Number of Lanes: Existing: four mixed-flow lanes and one high occupancy vehicle lane (HOV) in each direction  
Proposed: five mixed-flow lanes and one HOV lane in each direction

Proposed Major Features: Douglass Road Overhead

Traffic: Existing SR 57 (year 2008): 122,630 - 127,860 Annual Daily Traffic (ADT) at different freeway segments  
Proposed SR 57 (year 2035): 155,540 - 160,320 ADT at different freeway segments

**PARCEL DATA**

Property Owner: Union Pacific Railroad Company, a Delaware Corporation

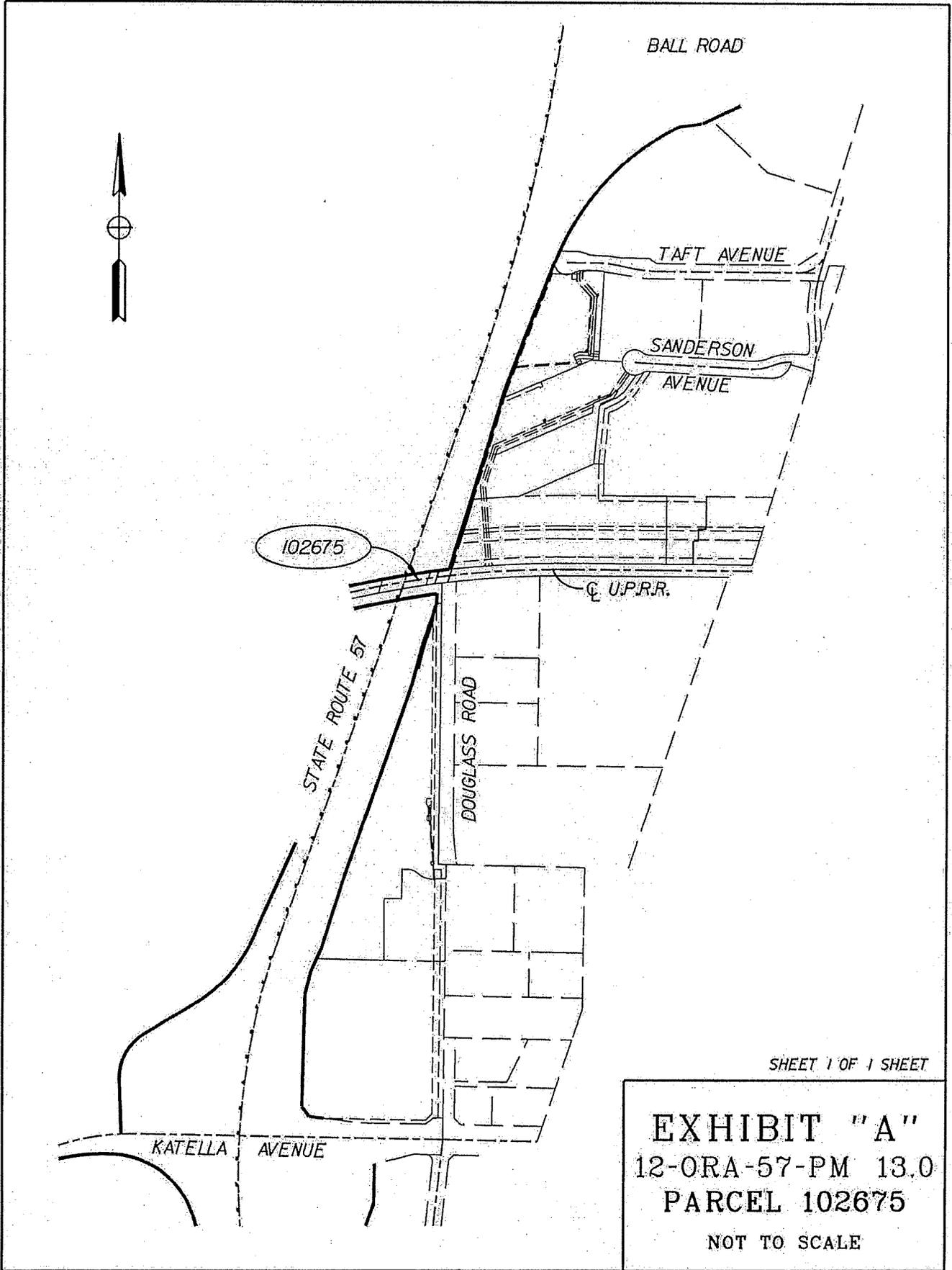
Lessee: Regency Outdoor Advertising, Inc.

Parcel Location: At the intersection of SR 57 and the Union Pacific Railroad Corridor, west of SR 57 at the intersection of Douglass Road and Cerritos Avenue

Present Use: Railroad Corridor, with Outdoor Advertising Signboard

Area of Property: Undetermined

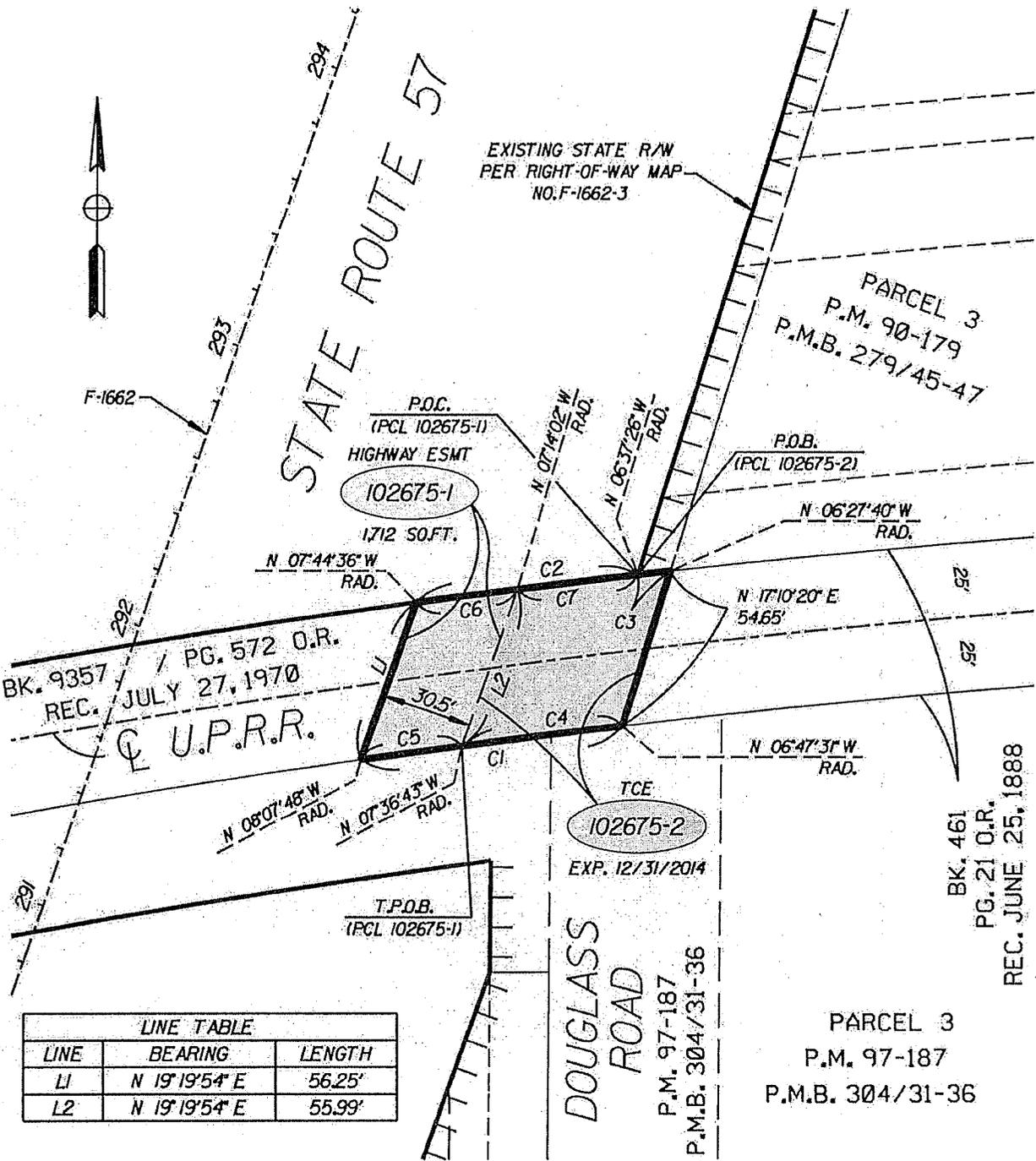
Area Required: Parcel 102675-1 - 1,712 Square Feet (SF) - Permanent Easement for overhead bridge structure  
Parcel 102675-2 - 2,654 SF - Temporary Construction Easement



SHEET 1 OF 1 SHEET

**EXHIBIT "A"**  
12-ORA-57-PM 13.0  
PARCEL 102675  
NOT TO SCALE

Exhibit A



LINE	BEARING	LENGTH
L1	N 19°19'54" E	56.25'
L2	N 19°19'54" E	55.99'

CURVE	DELTA	RADIUS	LENGTH
C1	01°20'17"	379472'	88.62'
C2	01°07'10"	384472'	75.12'
C3	00°09'46"	384472'	10.92'
C4	00°49'12"	379472'	54.31'
C5	00°31'05"	379472'	34.31'
C6	00°30'34"	384472'	34.19'
C7	00°36'36"	384472'	40.93'

SHEET 1 OF 1 SHEET

**EXHIBIT "B"**  
 12-ORA-57-PM 13.0  
 PARCEL 102675  
 NOT TO SCALE