State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

M e m o r a n d u m

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: April 25-26, 2012

Reference No.: 2.4a.(2)
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-20815 summarized on the following page. This Resolution is for widening the Interstate 5 Freeway in District 7 in the city of Burbank, county of Los Angeles.

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 is contesting the Resolution and has requested a written appearance before the Commission. At the request of the property owner, objections to the Resolution have been submitted in writing to be made part of the official record of the Commission meeting, 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 the Commission's

April 25-26, 2012 meeting. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-20815 - Northridge Properties, LLC, a California limited liability company
07-LA-5-PM 29.4 - Parcel 79660-1, 2 - EA 1218W9.
Right of Way Certification Date: 04/18/12; Ready to List Date: 04/18/12. Freeway - construct high occupancy lane and interchange modification. Authorizes condemnation of a permanent easement for State highway purposes, extinguishment of abutter's rights of access, and a temporary easement for construction purposes. Located in the city of Burbank at 777 North Front Street.
APN 2449-037-011.

Attachments:
- Attachment A - Owners Written Objections dated February 16, 2012
- Attachment B - Department Response dated March 26, 2012
- Attachment C - Fact Sheet
- Exhibits A, B and C - Maps

1 copy to Stephen Maller, to Right of Way 2-17-12

NOSSAMAN LLP

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Refer To File #: 270716-00015

VIA U.S. MAIL AND OVERNIGHT DELIVERY

RECEIVED BY CTC
FEB 17 2012

February 16, 2012

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

Re: Objection to Proposed Adoption of Resolution of Necessity for Acquisition of Real Property Identified as Caltrans Parcel No. 79660-1, -2, Located at 777 N. Front Street, Burbank, California

Dear Executive Director:

This firm represents Northridge Properties, LLC, the owner of the real property located at 777 N. Front Street, Burbank, California ("Property"). We have received notice of the California Transportation Commission's ("CTC") intent to adopt a resolution of necessity authorizing the California Department of Transportation ("Caltrans") to condemn certain portions of the Property, described as Caltrans Parcel No. 79660-1, -2.

Northridge Properties intends this letter to constitute its statements regarding -- and objections to -- the adoption of that resolution of necessity. Accordingly, we request that this letter be included as part of the formal record.

OBJECTIONS

Northridge Properties objects to the hearing regarding the intention of the CTC to adopt a resolution of necessity and to the CTC's adoption of such a resolution on the following grounds:

1. **Caltrans Failed to Make an Offer of Just Compensation Based on a Proper Appraisal of the Property:** Northridge Properties intends to develop the Property in the near future. The developability of the Property will be completely and adversely altered as a result of Caltrans' proposed acquisition. In addition, because any ultimate development will utilize the area sought to be acquired by Caltrans for its proposed temporary construction easement ("TCE"), development of the Property will be delayed until, at minimum, the TCE's expiration in 2015. Moreover, Northridge Properties is unable to sell the Property during this time period because the Property is subject to the TCE and because the freeway construction impacts

Attachment A

create detrimental uncertainty. Indeed, Caltrans' inability to provide any definitive timetable for construction has caused prospective purchasers to factor in longer delays than the TCE provides. These delay damages are substantial and place a cloud on the property. The permanent severance damages resulting from the narrowing of the remainder of the Property are also substantial.

In the interim, Northridge Properties has been leasing the Property for special events, such as Cavalia. These special events and the interim benefits and income generated from them will be hindered or completely precluded by Caltrans' construction of the project. This is true because: (1) Caltrans has been unable to provide a definitive construction schedule; (2) many uses are incompatible with the freeway construction; and (3) the size of the property is materially reduced. The uncertain construction schedule and the cloud created by Caltrans have already caused Northridge Properties to lose tenants. As an example, Cavalia would like to lease the entire Property early next year. However, Caltrans is unable to state whether it will be working on the Property, or the portion of the freeway next to the Property, at that time. Cavalia has informed Northridge Properties that it cannot chance leasing the Property under these circumstances. The loss of Cavalia as a lessee has resulted in six-figure losses alone. As a result of this oversight in Caltrans' appraisal, its offer -- which is based on that appraisal -- is improper and fails to satisfy Caltrans' statutory obligations.

These impacts including, but not limited to, Northridge Properties' inability to develop the Property until at least 2015 and Northridge Properties' inability to lease the Property in the interim until at least 2015, are caused directly by Caltrans' proposed acquisition and construction of the project, and they were completely ignored by Caltrans' appraiser. By ignoring these issues, Caltrans' appraiser failed to appropriately analyze the substantial permanent and temporary severance damages created from the project.

In particular, Government Code section 7267.2 requires that Caltrans make a legitimate offer of just compensation based upon an approved appraisal prior to initiating condemnation proceedings. Caltrans' precondemnation offer is invalid because it was based upon an appraisal that did not address the considerable damages that will result from the acquisition and the construction of the project. Moreover, the law provides that "[p]rior to the commencement of an eminent domain proceeding, if the evidence presented by an owner . . . indicates the need for a new appraisal . . . , the public entity shall have its appraisal updated." (Cal. Code Regs., tit. 25, § 6182, subd. (i)(2), emphasis added.) As noted above, Caltrans' appraisal was inaccurate and insufficient, and Caltrans is required to re-appraise the Property before the CTC may adopt a resolution of necessity. (See Johnston v. Sonoma County Agricultural Preservation & Open Space Dist. (2002) 100 Cal.App.4th 973, 988 [explaining that "a good faith offer based on a fair appraisal [is] a prerequisite to adopting the resolution of necessity."].)

Because Caltrans' appraisal of the Property fails to find permanent severance damages or properly consider temporary severance damages resulting from Northridge Properties' inability to lease, develop, or otherwise utilize its entire Property until at least 2015, Caltrans' appraisal is deficient and the CTC cannot take any action toward condemning the Property until Caltrans secures a corrected appraisal and makes a new offer to Northridge Properties.

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**: A public agency may not exercise the power of eminent domain for a proposed project unless it establishes that "the project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury." (Code Civ. Proc., § 1240.030, subd. (b).) Caltrans has not completed such an analysis.

As described above, the portions of the Property sought to be acquired by Caltrans will significantly limit Northridge Properties' ability to utilize its remaining property, effectively rendering the remainder useless until the expiration of the TCE. In addition, due to the Property's size and shape, the permanent acquisition will adversely impact the highest and best use of the Property and its ultimate development potential because the Property remaining after acquisition is substantially thinner and adversely impacted in terms of development possibilities. Because Caltrans failed to understand the impacts of its proposed acquisition, and the severance damages caused by the project, it will be impossible for the CTC to make the required "least private injury" determination. Indeed, CTC could hardly make a finding on the degree of private injury without first properly evaluating that injury.

Until Caltrans re-appraises the Property to understand the impacts and the severance damages resulting from Caltrans' project, the CTC cannot properly move forward with its resolution of necessity. At the very least, Caltrans should explore with Northridge Properties alternative plans that do not unnecessarily impact the Property; its failure to do so precludes Caltrans' planned condemnation.

3. **The Property is Not Necessary for the Project:** A public agency may not exercise the power of eminent domain for a proposed project unless it establishes that "the property sought to be acquired is necessary for the project." (Code Civ. Proc., § 1240.030, subd. (c).) Given that there have been a number of iterations of the proposed acquisition, it is Northridge Properties' belief that Caltrans is seeking to condemn more property than is necessary for the proposed project, and therefore the Property is not "necessary for the project."

4. **The CTC Cannot Make Legitimate CEQA Findings to Support its Action:** Caltrans' fundamental misunderstanding concerning the impacts to the Property as a result of the proposed acquisition and construction of the project also means that the CTC will run afoul of the California Environmental Quality Act. More specifically, because Caltrans' project will prevent any viable use of the Property during construction of the project, Caltrans' environmental documents fail to consider the environmental impacts of preventing that interim use or development. For example, what will be the impact of eliminating commercial capacity so close to the freeway? Where will that capacity be made up? How will traffic patterns be impacted? What will happen with major special events such as Cavalia? Caltrans needs to evaluate these matters before it proceeds.

CONCLUSION

For the reasons set forth in this letter, the CTC cannot validly adopt the proposed resolution of necessity. Northridge Properties therefore requests that the CTC not proceed with the hearing on that resolution or, if it proceeds, vote to reject the defective resolution.

Very truly yours,

David Graeler
of Nossaman LLP

DG2

DEPARTMENT OF TRANSPORTATION
Right of Way Division
100 S. Main Street, MS 6
Los Angeles, CA 90012
PHONE (213) 897-1901
FAX (213) 897-5603

Flex your power!
Be energy efficient!

VIA U.S. CERTIFIED MAIL

March 27, 2012

Mr. David Graeler
Nossaman, LLP
777 S. Figueroa Street, 34th Floor
Los Angeles, CA 90017

07-LA-5-P.M.29.4
EA: 1218W9
EFIS: 0700021119
Parcel No. 79660-1, -2
APN: 2449-037-011
Grantor: Northridge Properties LLC

Re: Response to Objection to Proposed Adoption of Resolution of Necessity for Acquisition of Real Property Identified as Caltrans Parcel No. 79660-1, -2

Dear Mr. Graeler:

This letter is in response to your letter dated February 16, 2012 addressed to the Executive Director of the California Transportation Commission (the "Commission") for property located at 777 N. Front Street in the city of Burbank (the "Property").

Your letter addressed specific concerns and objections to the Commission's proposed action on several grounds regarding the above referenced parcel and as requested your letter will be submitted to the Commission in lieu of a personal appearance and will be part of the official record presented to the Commission at its April 25-26 2012 meeting to be held in Orange County, California.

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

1. **Caltrans Failed to Make an Offer of Just Compensation Based on a Proper Appraisal of the Property.**

The Department's first written offer was based on a fair market value appraisal for a portion of your client's property and was provided to you, Mr. Howard Coleman and Mr. Alan Skobin, your client's representative, on December 13, 2011. This offer addressed the highway and temporary construction easements required for the widening of Interstate 5 for a High Occupancy Vehicle lane. Your client was notified of the option to obtain another appraisal of the property: however, your client chose not to pursue this option. The Department' representative attempted to contact you to discuss the State's offer, however we did not receive a response from your office. The Department did not receive a request from you concerning the construction timetable for this project.

Attachment B

The estimated time period for the construction of the project is from January 2013, to January 2015. The estimated time period of the construction on Parcel 79960 is less than one year. The definitive construction schedule cannot be determined until the construction contract for the project is awarded to the contractor.

The Department did not receive any information regarding your client's intention to develop the property in the near future, its intention to sell the property during the temporary construction time period, as well as its problems leasing the property to Cavalia and resulting six-figure loss. The Department was not provided with any information that would warrant another appraisal of the property.

2. **The State's Proposed Project is Not 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 Interstate 5 freeway in order to improve mobility for motorists and improve safety and access. The work involves the addition of a High-Occupancy Vehicle lane as well as realignment of the Interstate 5 mainline and improvements to the ramps.

The manner in which the Interstate 5 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. As noted above, your client has not provided the Department with any evidence that substantiates your claims of severance damages which would warrant another appraisal of the property.

3. **The Property is Not Necessary for the Project.**

As previously discussed, the highway easement requirement is necessary to accommodate the HOV lane, southbound onramp and mainline realignment, and the temporary construction easement is necessary for construction activities.

4. **The CTC Cannot Make Legitimate CEQA Findings to Support its Action.**

The Department of Transportation has validated the CEQA/NEPA document that includes this parcel. The environmental impacts of the project were addressed in the document.

If you have any questions, please feel free to contact Kirk Hsu at (213) 897-0780.

Very truly yours,

ANDREW P. NIERENBERG
Deputy District Director
Right of Way
Department of Transportation
Caltrans – District 7

Reference No.: 2.4a.(2)
April 25-26, 2012
Attachment C

Resolution of Necessity Appearance Fact Sheet

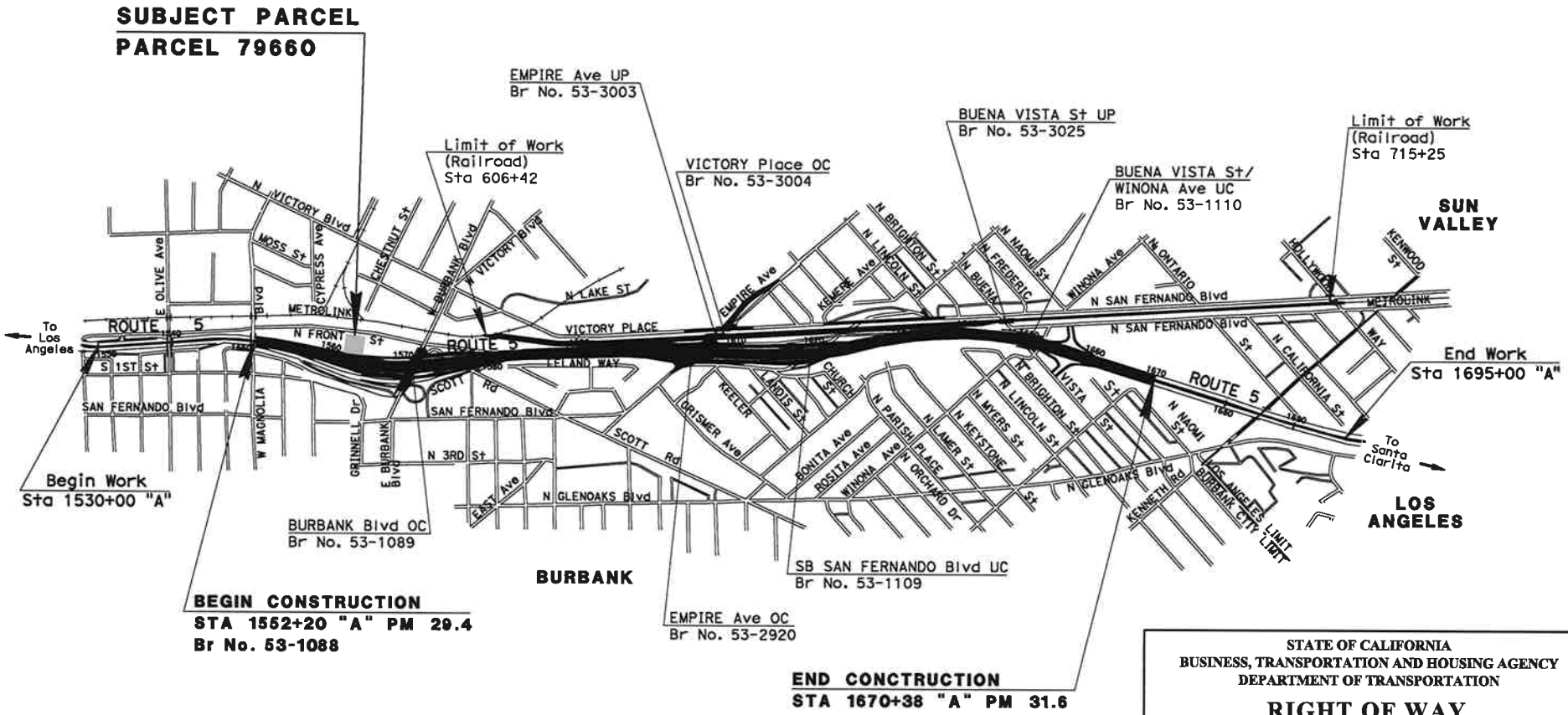
PROJECT DATA	07-LA-5-PM 29.4/31.6 Expenditure Authorization 1218W9
Location:	Interstate 5 (I-5) in Los Angeles County in the city of Burbank
Limits:	From West Magnolia Boulevard Overcrossing to 0.3 miles north of Buena Vista Street/Winona Avenue Undercrossing
Cost:	Programmed construction cost: $270,000,000.00 Current right of way cost estimate: $74,500,000.00
Funding Source:	Corridor Mobility Improvement Account, State and Local Partnership Bond Funds, Interregional Improvement Program Funds, Regional Improvement Program Funds, and Local Proposition Funds
Number of Lanes:	Existing: four mixed-flow lanes in each direction Proposed: four mixed-flow lanes plus one high occupancy vehicle lane and one auxiliary lane in each direction
Proposed Major Features:	Reconfigure interchange at Burbank Boulevard and modify Empire Avenue into Diamond Type interchange; reconstruct Burbank Boulevard Overcrossing, extend Empire Avenue underneath I-5 to San Fernando Boulevard, realign and elevate railroad tracks and construct railroad separations at Empire Avenue and Buena Vista Street
Traffic:	Existing I-5 (year 2006): 216,000 Annual Daily Traffic (ADT) Proposed I-5 (year 2030): 249,000 ADT
PARCEL DATA	
Property Owner:	Northridge Properties, LLC, a California limited liability company
Parcel Location:	777 North Front Street, Burbank Assessor's Parcel Number 2449-037-011
Present Use:	Vacant unimproved land. Zoned AD (Burbank Auto Dealership)
Area of Property:	353,032 Square Feet (SF)
Area Required:	Parcel 79660-1 - 46,378 SF - Highway Easement Parcel 79660-2 - 31,061 SF - Temporary Construction Easement

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

STATE HIGHWAY

IN LOS ANGELES COUNTY
IN BURBANK
FROM WEST MAGNOLIA BOULEVARD OVERCROSSING TO 0.3 MILE NORTH OF BUENA VISTA STREET/ WINONA AVENUE UNDERCROSSING

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.



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

RIGHT OF WAY
RESOLUTION OF NECESSITY

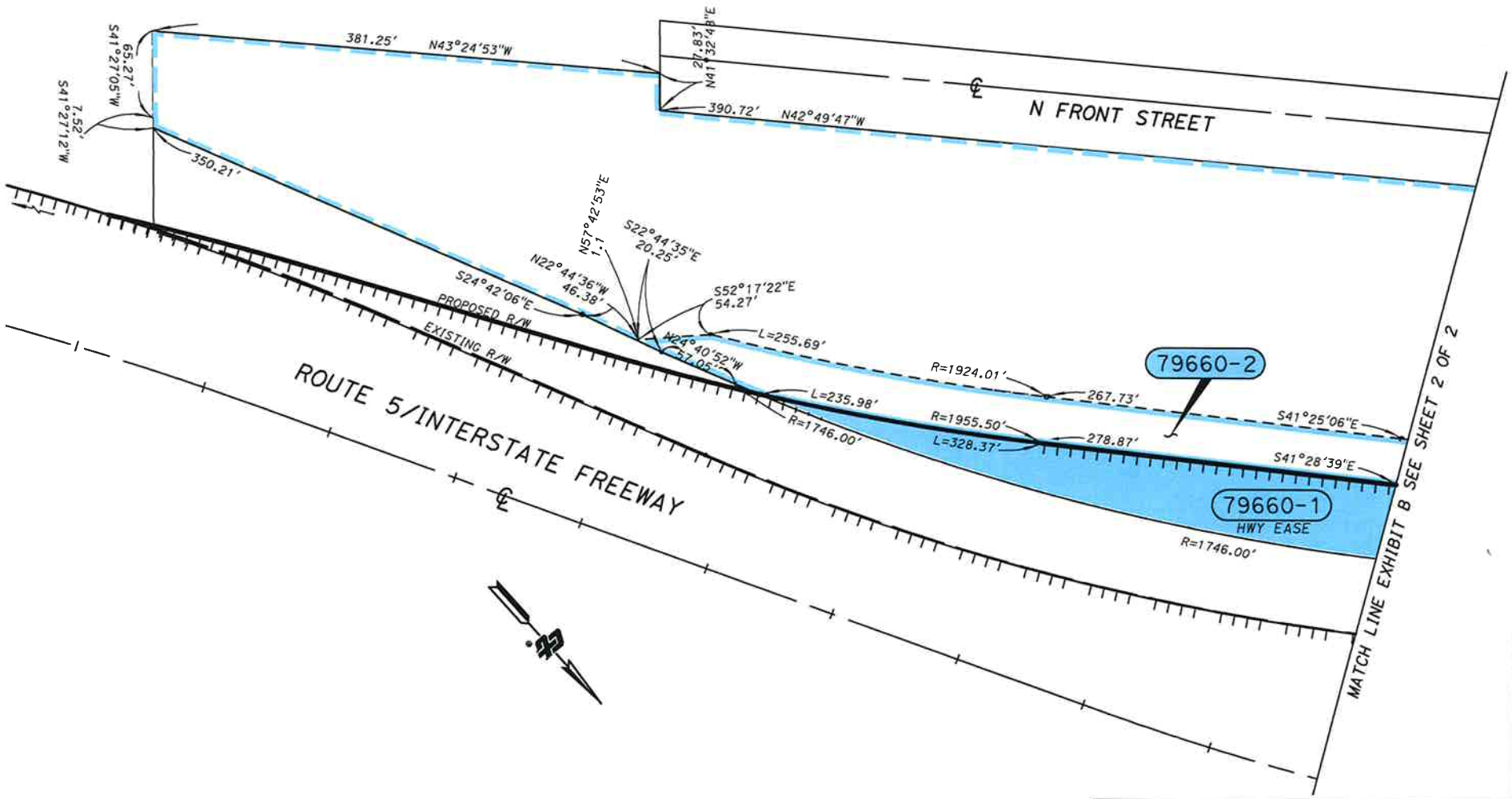
EXHIBIT A

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
7	LA	5	29.4	1	1

Exhibit A

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.



TRACT MAP NO. 2792
MB 28-15

CITY OF BURBANK
COUNTY OF LOS ANGELES

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

RIGHT OF WAY
RESOLUTION OF NECESSITY

EXHIBIT B

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
7	LA	5	29.4	1	2

Exhibit B

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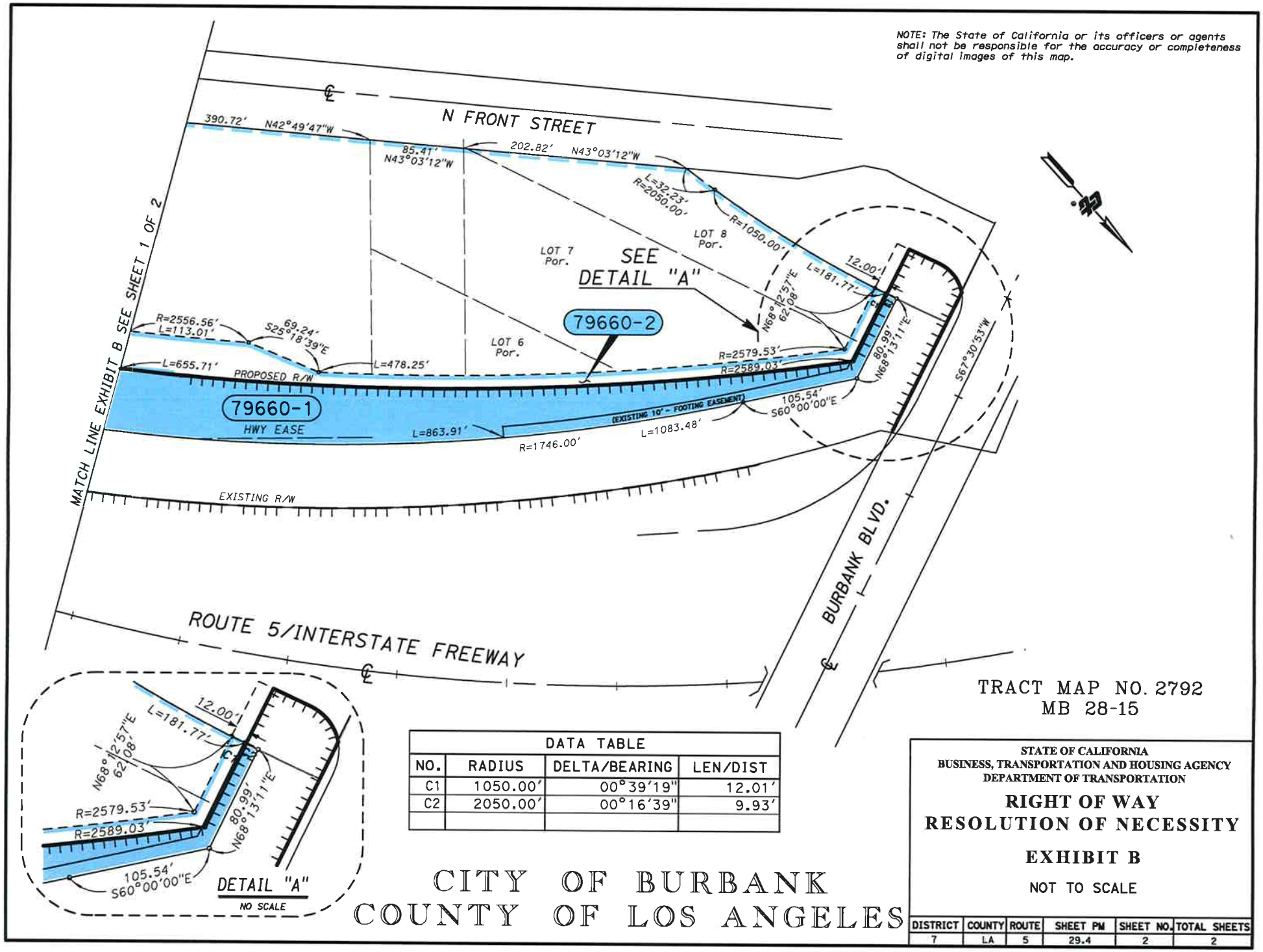

TRACT MAP NO. 2792
MB 28-15

DATA TABLE			
NO.	RADIUS	DELTA/BEARING	LEN/DIST
C1	1050.00'	00°39'19"	12.01'
C2	2050.00'	00°16'39"	9.93'

CITY OF BURBANK
COUNTY OF LOS ANGELES

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

RIGHT OF WAY
RESOLUTION OF NECESSITY

EXHIBIT B

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
7	LA	5	29.4	2	2

Exhibit C