

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: December 11-12, 2013

Reference No.: 2.4a.(6)
Action Item

From: STEVEN KECK
Acting Chief Financial Officer

Prepared by: Brent L. 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-21134 summarized on the following page. This Resolution is related to construction of the State Route 76 (SR-76) project in District 11 in San Diego County.

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 owners of record.

In this case, the property owners are contesting the Resolution and have requested an appearance before the Commission. The primary concern and objection expressed by the property owner relates to project design issues, and specifically that the proposed SR 76 will cross San Diego County Water Authority (SDCWA) aqueduct pipelines in a manner that the agency states will jeopardize their ability to economically operate, maintain, repair, and replace their pipeline facilities, thus impacting public health and safety. SDCWA objections and the Department's responses are contained in Attachment B.

BACKGROUND:

Discussions have taken place with the property 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. In addition, SDCWA and the Department have been actively negotiating a special agreement to address any increased operational and maintenance costs associated with constructing bridges over SDCWA's aqueduct facilities on the subject property. Both entities have agreed that relining of the existing pipelines at this location will be undertaken to mitigate SDCWA concerns regarding the above issues. However, SDCWA and the Department have been unable to reach an amicable settlement regarding the prorated costs for said relining activities, and negotiations have now reached an impasse. It is the Department's position that this compensation issue will need to be resolved through the condemnation process. The adoption of the Resolution will not interrupt the Department's continuing 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.

As noted above, discussions have been ongoing between SDCWA and the Department to address all unresolved issues. Progress has been made, but in order to keep the project on schedule, the Department is requesting that this appearance proceed to the December 11-12, 2013 Commission meeting. Legal possession will allow the construction activities on the parcel to commence, thereby avoiding and/or mitigating considerable right of way delay costs that will accrue if efforts to initiate the condemnation process are not taken immediately.

C-21134 – San Diego County Water Authority

11-SD-76 - PM 16.4 - Parcel 34798-1, 2, 3, 4 - EA 257159.

Right of Way Certification Date: 12/15/13; Ready to List Date: 12/31/13. Conventional highway - widening and realignment. Authorizes condemnation of land in fee for a State highway, a permanent highway easement, and a temporary easement for construction purposes. Located in the city of Bonsall near Pala Road. Assessor's Parcel Numbers: 125-080-19-00, 125-090-36-00.

Attachments:

- Attachment A - Project Information
- Exhibit A1 through A3 - Project Maps
- Attachment B - Parcel Panel Report
- Exhibit B1 through B2 - Parcel Maps

PROJECT INFORMATION

PROJECT DATA	11-SD-76-PM 16.4 Expenditure Authorization: 257159/11-00002-0489
<u>Location:</u>	State Route 76 in San Diego County
<u>Limits:</u>	In San Diego County near Bonsall and Fallbrook, from South Mission Road to just east of Interstate 15.
<u>Cost:</u>	Programmed Construction Cost: \$100,000,000.00 Current Right of Way Cost Estimate: \$ 13,500,000.00
<u>Funding Source:</u>	Federal: Regional Surface Transportation Program State: Truck Parking Grant Local: TransNet/Private Developer Funds
<u>Number of Lanes:</u>	Existing: 2-Lane Conventional Highway Proposed: 4-Lane Conventional Highway
<u>Proposed Major Features:</u>	Major widening and realignment.
<u>Traffic:</u>	Proposed (2030): 41,000-46,000 Annual Daily Traffic

NEED FOR THE PROJECT

The proposed State Route 76 (SR 76) South Mission Road to Interstate 15 (I-15) project is needed to help relieve local and regional congestion that has resulted from current and projected population growth, increased residential development, and increased commercial development located within areas surrounding the highway corridor.

Currently, SR 76 from South Mission Road to just east of I-15 does not meet current design standards established by the Highway Design Manual for shoulder widths, stopping distance, and sight distance. The proposed widening and realignment of SR 76 will relieve congestion by widening and upgrading the highway to current design standards.

PROJECT PLANNING AND LOCATION

SR 76 is in the process of being widened and realigned in multiple stages from Interstate 5 (I-5) to I-15, as part of a commitment made by the San Diego Association of Governments (SANDAG) and the California Department of Transportation (Department) with the passage of TRANSNET-1 AND TRANSNET-2, two local half-cent sales tax measures approved by voters in San Diego County.

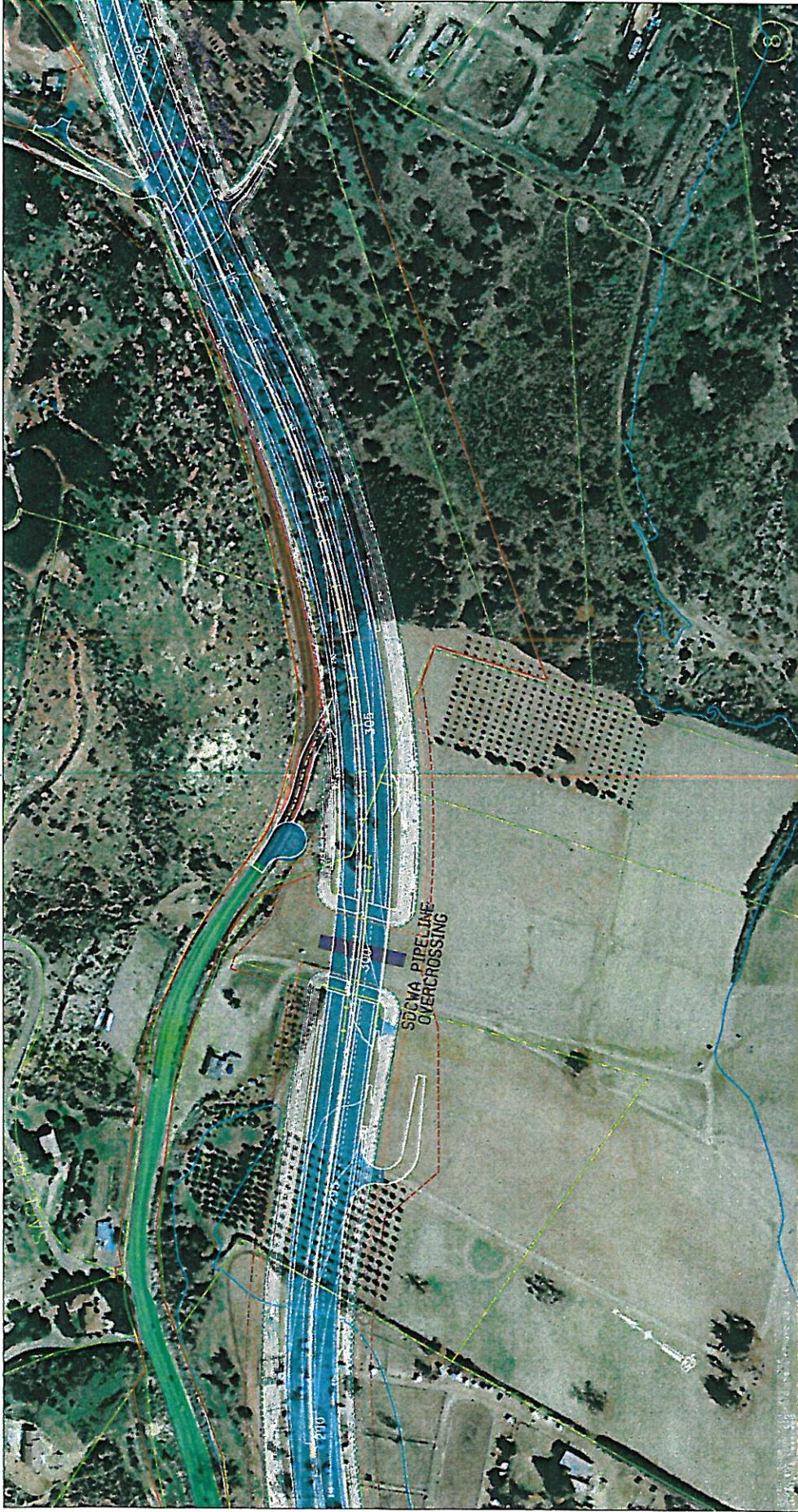
SR 76 widening and realignment activities are being completed via six separate projects, with much of the SR 76 corridor being improved under four projects that were commenced in 1986 and subsequently completed in 1995. These four projects widened and realigned SR 76 from I-5 to Melrose Drive in Oceanside. A fifth project widened and realigned SR 76 from Melrose Drive to South Mission Road in Bonsall. This segment was opened for traffic in November 2012.

The current segment, known as the SR 76 East Project, is the sixth and final segment. This final segment was split into two phases. The first phase (now completed) improved the interchange of SR 76 and I-15 and was opened for traffic in August 2013. The second phase, for which the subject property is required, will widen and realign SR 76 from South Mission Road in Bonsall to I-15.

Critical Milestone Dates for the SR 76 East Project are identified below:

Final Project Report:	January 2012
Final EIR/EIS:	January 2012
R/W Certification:	December 2013
Ready to List Date:	December 2013
Construction Completion:	June/July 2016

In addition to the No Build Alternative, two build alternatives were investigated for the SR 76 East Project during the Project Approval/Environmental Document (PAED) stage. These were identified as the Existing Alignment Alternative, identified as the Preferred Alternative, and the Southern Alignment Alternative. The Existing Alignment Alternative was selected as it resulted in the least overall environmental impacts, met the proposed project's purpose and need, met current Department design standards, and was supported by involved resource agencies.



STA. 280+00

STA. 320+00



LEGEND:

- EXISTING RIGHT-OF-WAY
- 100-YEAR FLOODPLAIN
- PARCEL BOUNDARY
- PROPOSED GRADING LIMITS (1/4")
- WILD LIFE FENCE
- PROPOSED TRAVELED WAY
- PROPOSED EDGE OF SHOULDER
- PROPOSED LAKE STRIPS
- PROPOSED RIGHT-OF-WAY
- PROPOSED GRADING CONTROL

- PROPOSED TRAVELED WAY
- REMOVE EXIST SR-76
- EXIST SR-76
- PROPOSED BRIDGE
- EXISTING BRIDGE



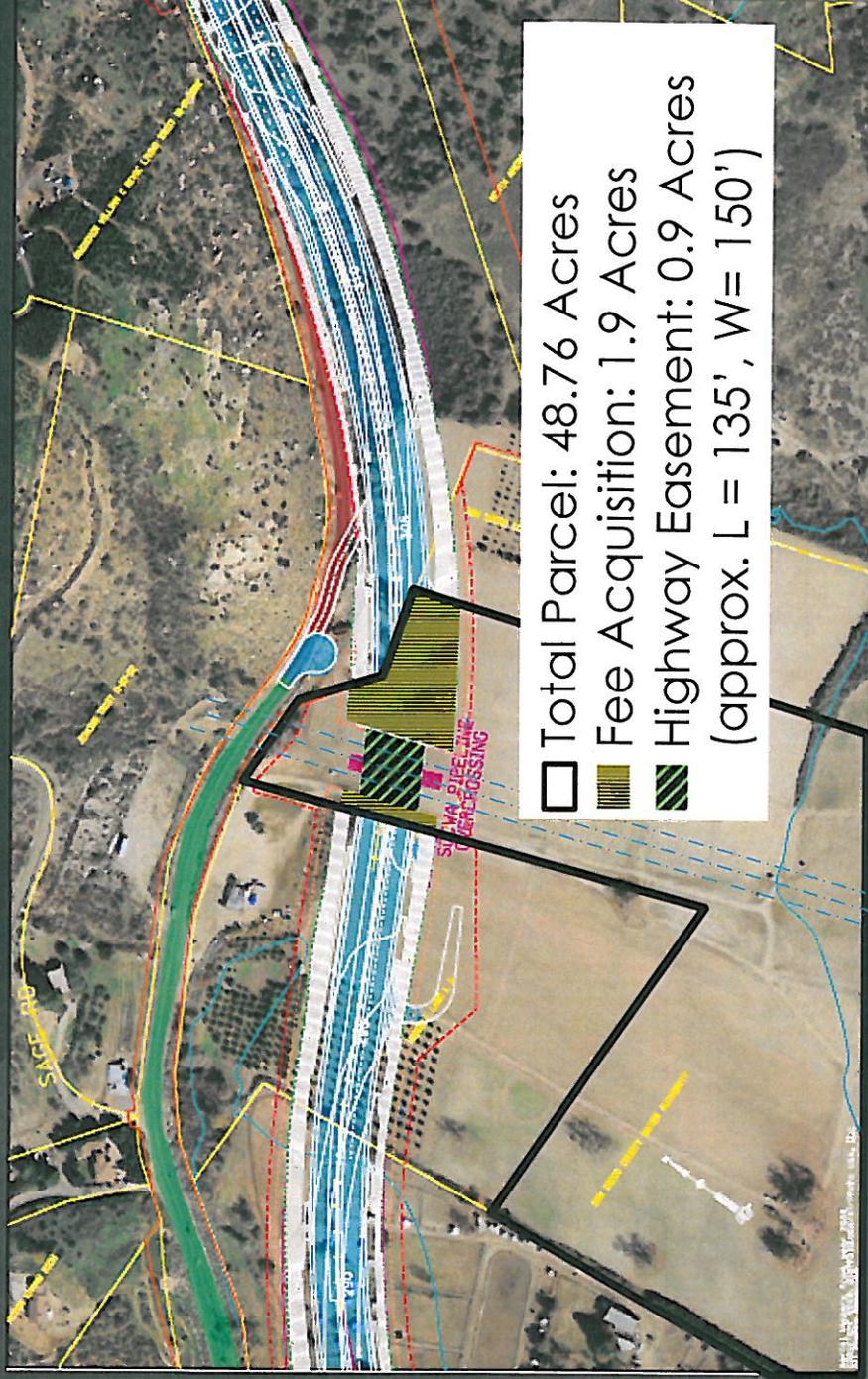
STATE ROUTE 76 EAST - ALTERNATIVE 2 (EXISTING)

SCALE 1:200



Revised: 07-31-13

SR 76 East Roadway Project Overview



PARCEL PANEL REPORT

PARCEL DATA

Property Owner:	San Diego County Water Authority (SDCWA)		
Parcel Location:	State Route 76 (SR 76) in San Diego County, CA APNs 125-080-19; 125-090-36		
Present Use:	Agriculture, Water Pipeline Facilities; Future Mitigation		
Zoning:	S-90 (Agriculture)		
Area of Property:	48.76 AC		
Area Required:	34798-1:	13,984 SF	Fee
	34798-2:	68,818 SF	Fee
	34798-3:	37,585 SF	Permanent Highway Easement
	34798-4:	28,216 SF	Temporary Construction Easement (Expiration Date: 12-31-2015)

PARCEL DESCRIPTION

The subject property is comprised of two Assessor's parcel numbers totaling 48.76 acres. The subject is currently zoned for agricultural uses, and is now being leased for the cultivation of row crops, while other areas are currently lying fallow. SDCWA has also advised that the subject property is being held for future environmental mitigation purposes. The parcel is comprised of disturbed and undisturbed areas, with native vegetation being removed in the areas now under lease/cultivation, with the rest of the property being undisturbed, retaining its natural vegetation, and predominately impacted by the San Luis Rey River floodway and floodplain. In order for the subject property to be used for mitigation purposes in the future, the property will need to be re-graded and re-leveled so that it drains northward towards the San Luis Rey River.

Beneath the subject property runs a section of SDCWA's Second Aqueduct, comprised of three high-pressure (400 psi) water pipelines, identified as Pipelines 3, 4, 5, which are critical to water delivery activities in San Diego County. Other sources of imported water to the County are limited. Pipelines 3, 4, & 5 now run north and south across existing SR 76, relying on a long standing compatible use of the highway right of way by both agencies. Pipelines 3, 4, & 5 have 72 inch, 90 inch, and 96 inch diameters respectively, and are now buried approximately 8-10 feet below the existing ground surface on the subject property.

NEED FOR SUBJECT PROPERTY

Existing SR 76 and the proposed new alignment, both cross SDCWA's Second Aqueduct facilities in an east/west direction. The new alignment bridges SDCWA's facilities to the south of the current crossing. Project requirements necessitate the acquisition of two fee areas, a permanent

highway easement, and a temporary construction easement (expiring in December 2015). The fee acquisition areas are located to the east and west of the existing aqueduct facilities, where bridge columns will be constructed and maintained. The permanent highway easement is the bridged area between the fee acquisition areas above SDCWA's aqueduct facilities. This area is proposed as an easement to accommodate a compatible use for both SDCWA aqueduct purposes and the Department's highway related uses. Such a compatible and shared use also perpetuates SDCWA's existing rights to access, operate, and maintain the aqueduct and appurtenant infrastructure in this easement area.

The proposed bridges may obstruct clearance over the SDCWA pipelines if large scale pipe replacement and/or maintenance activities (requiring cranes or other like equipment) become necessary. However, bridging the highway over SDCWA's aqueduct facilities avoids any potential loading onto the pipelines, resulting in no direct impact to these pipelines, causes no disruption in service, and does not interfere with routine maintenance activities.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met in San Diego on October 15, 2013. The Panel members included Rene Fletcher, Panel Chair, Department-Headquarters (HQ) Division of Right of Way and Land Surveys; Glenn Mueller, Department-San Diego Legal Division; Linda Fong, Department-HQ Division of Design; and Robert Dauffenbach, Department-HQ Division of Right of Way and Land Surveys, Secretary to the Panel.

Representing SDCWA was William J. Rose, Director of Engineering, John Kross, Right of Way Manager, Vic Bienes, Engineering Manager, Jeff Shoaf, Principal Engineer, Dan Hentschke, General Counsel.

This report summarizes the findings of the Panel with regard to the four criteria required for adoption of a Resolution of Necessity and makes a recommendation to the Department's Chief Engineer.

The primary concerns and objections expressed by SDCWA relate to project design issues, and specifically, that the project will cross the property owner's pipelines in a manner that jeopardizes the owner's ability to economically operate, maintain, repair, or replace these pipelines, thus impacting public health and safety, while also impacting areas on the subject property identified for future mitigation purposes. In addition, SDCWA has suggested that the Department has not made a valid offer under Government Code Section 7267.2 as its appraised value does not include an offer to compensate SDCWA for its increased operational/maintenance costs resulting from having a bridge structure crossing its pipeline facilities in the "after-condition".

The following is a description of concerns expressed by SDCWA, followed by the Department's responses:

Property Owner Concern:

The SR 76 East Project will cross SDCWA pipelines in a manner that jeopardizes this agency's ability to economically operate, maintain, repair, and/or replace these pipelines, thus impacting public health and safety.

Department Response:

The project's proposed design, utilizing a bridge structure to cross SDCWA's existing pipeline facilities, perpetuates the current state of separate compatible facilities. This design results in no harm to public health and safety, results in no direct impact to such pipelines, and thus causes no disruption in water service.

To address concerns regarding the eventual rehabilitation of SDCWA's aqueduct pipelines at this location, and to address perceived inefficiencies of doing this work with a new bridge in place, the Department has agreed to coordinate its construction activities with SDCWA in order to provide SDCWA with ample opportunity to *reline its three aqueduct pipelines* on the subject property prior to the Department's construction of bridge structures for this project.

SDCWA and the Department have agreed that relining all three aqueduct pipelines on the subject parcel (versus other investigated alternatives) is the appropriate pipeline rehabilitation strategy at this location. As addressed in more detail below, the Department is in negotiations with SDCWA to determine the Department's prorated share of such relining costs.

Property Owner Concern:

The SR 76 East Project will permanently disturb land acquired and held for environmental mitigation.

Department Response:

A fair market value offer of just compensation has been made to SDCWA for required right of way areas based on the subject property having a highest and best use (and corresponding market value) as mitigation land.

Furthermore, the Department and SDCWA have agreed in concept to a potential exchange of mitigation land that may be acquired by the Department from willing sellers in excess of its needs for the project. Such an exchange of land between the agencies would be in lieu of a cash payment for the required right of way areas. This option is being actively pursued by both agencies.

Property Owner Concern:

The District has not made a good faith statutory offer because the appraisal did not include an offer for future inefficiencies due to construction of the bridge over their facility.

Department Response:

The Department has made a fair market value offer pursuant to Code of Civil Procedure Section 1245.230 and California Government Code Section 7267.2. As noted previously, the District and SDCWA have agreed that relining the three aqueduct pipelines located on the subject property is the most appropriate strategy to address any and all future operational and maintenance inefficiencies resulting from having the Department's bridge structure constructed over these pipelines. The Department has proposed a separate cost sharing agreement with SDCWA, based on the cost of relining agreed upon portions of the three pipelines located on the subject property, while also taking into account the remaining economic life of said pipeline facilities. Ongoing attempts by both agencies to negotiate an amicable settlement regarding the above issues have now reached impasse, and the Department believes this compensation issue will need to be resolved through the condemnation process

DEPARTMENT'S CONTACTS

The following contacts have been made with the property owner:

Type of Contact	Number of Contacts
Mailing of information	3
E-Mail of information	19
Telephone contacts	17
Personal / meeting contacts	4

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.

RENE FLETCHER, Chief
Office of Project Delivery
Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

KARLA SUTLIFF
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING HEARING
ON October 15, 2013**

Rene Fletcher, HQ's Division of Right of Way and Land Surveys, Panel Chair
Glen Mueller, Attorney, San Diego Legal Office, Panel Member
Linda Fong, HQ's Division of Design, Panel Member
Robert Dauffenbach, HQ's Division of Right of Way and Land Surveys, Panel Secretary

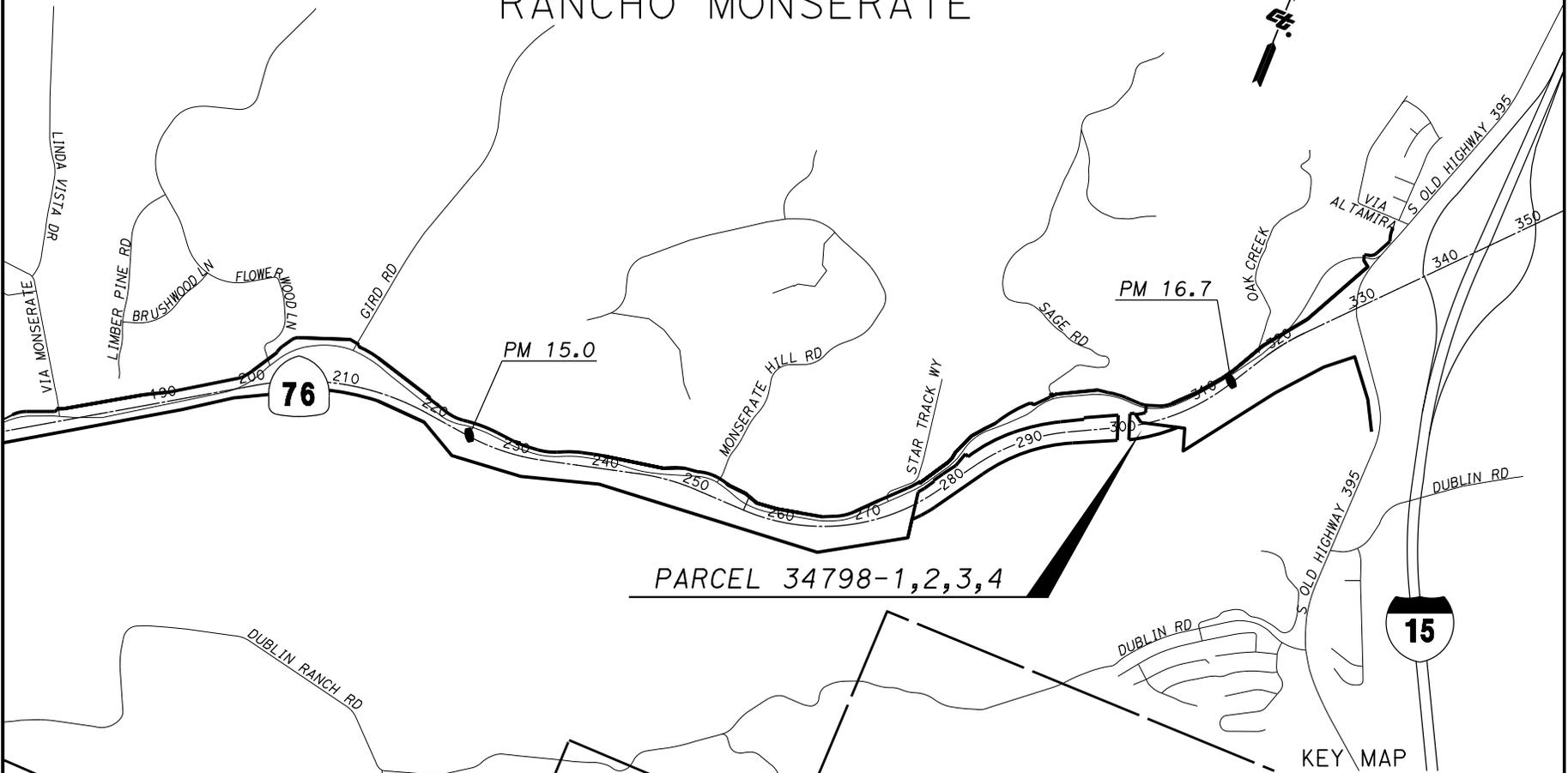
William J. Rose, SDCWA Director of Engineering,
John Kross, SDCWA Right of Way Manager
Vic Bienes, SDCWA Engineering Manager
Dan Hentschke, SDCWA General Counsel
Jeff Shoaf, SDCWA Principal Engineer

Laurie Berman, District 11 Director
Allan Kosup, District 11 SR 76 Corridor Director
Ann Fox, District 11 Project Manager
Carl Savage, SR-76 Corridor Design Manager
Bob Dougherty, District 11 Structure Design
Janet Schaffer, District 11 Right of Way
Steve Aragon, District 11 Right of Way
Mendi Houx, District 11 Right of Way
Pamela Lemar, District 11 Right of Way

Suit No. 1435

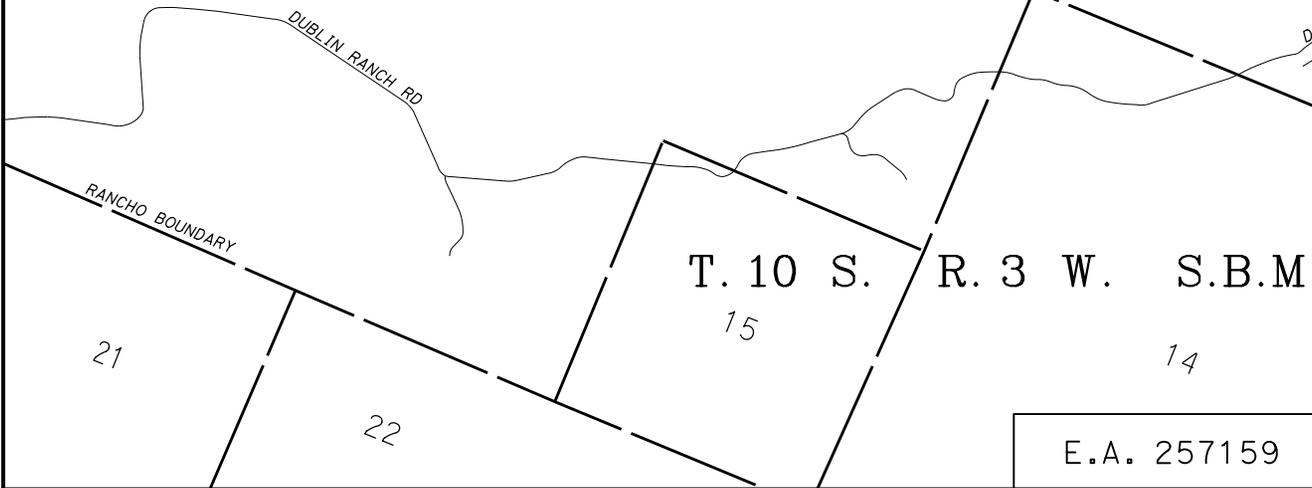
COUNTY OF SAN DIEGO

RANCHO MONSERATE



PARCEL 34798-1,2,3,4

KEY MAP



E.A. 257159

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

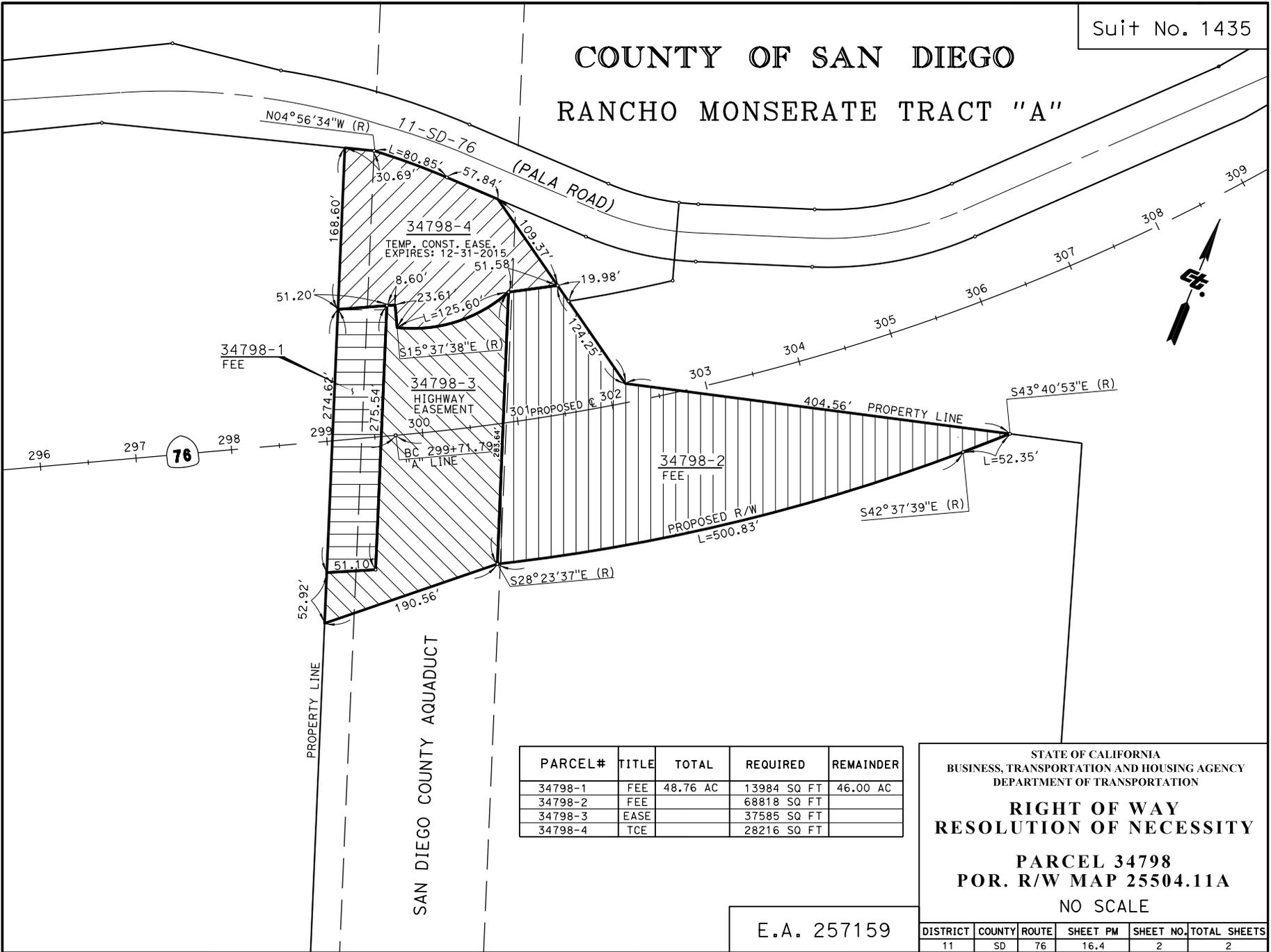
**RIGHT OF WAY
 RESOLUTION OF NECESSITY**

**PARCEL 34798
 POR. R/W MAP 25504K**

NO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
11	SD	76	16.4	1	2

COUNTY OF SAN DIEGO
RANCHO MONSERATE TRACT "A"



PARCEL#	TITLE	TOTAL	REQUIRED	REMAINDER
34798-1	FEE	48.76 AC	13984 SQ FT	46.00 AC
34798-2	FEE		68818 SQ FT	
34798-3	EASE		37585 SQ FT	
34798-4	TCE		28216 SQ FT	

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

**RIGHT OF WAY
RESOLUTION OF NECESSITY**

**PARCEL 34798
POR. R/W MAP 25504.11A**

NO SCALE

E.A. 257159

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
11	SD	76	16.4	2	2