

Memorandum

Tab 2

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: August 20, 2014

Reference No.: 2.4a.(1)
Action Item

From: NORMA ORTEGA
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-21273 summarized on the following page. This Resolution is for a transportation project on Interstate 5 in District 7, in Los Angeles 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 owner of record.

In this case, the property owner is contesting the Resolution and has requested an appearance before the Commission. The primary concerns and objections expressed by the property owner is that the proposed project is not designed, planned or located in the manner that will be most compatible with the greatest public good and the least private injury and that the offer of compensation does not comply with Government Code, specifically the arbitrary conclusion of nominal value for permanent easements. The owner's objections and the Department's responses are contained in Attachments B and C.

BACKGROUND:

Discussions have taken place with the property owner, who has been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which they may subsequently be entitled. Adoption of the Resolution will not interrupt the Department's efforts to secure an equitable settlement. In accordance with statutory requirements, the owner has 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.

Extensive discussions have been ongoing between the property owner and the Department to address and resolve the issues. Substantial progress has been made but in order to keep the project schedule, the Department is requesting that this appearance proceed to the August 20, 2014 Commission meeting. Legal possession will allow the construction activities on the parcels 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 to secure legal possession of the subject property.

C-21273 - Union Pacific Railroad Company, a Delaware corporation

07-LA-5-PM 1.0 - Parcel 79856-1 and 79857-1 - EA 215929.

Right of Way Certification Date: 08/22/14; Ready To List Date: 08/25/14. Freeway - widen Interstate 5 to add high occupancy vehicle and mixed-flow lanes. Authorizes condemnation of a permanent highway easement and leasehold interest of outdoor advertising company. Located in the cities of La Mirada and Cerritos near Valley View Avenue and Firestone Boulevard.

Assessor Parcel Numbers 7003-006-800 and 7003-006-803.

Attachments:

Attachment A - Project Information

Exhibit A1 and A2 - Project Maps

Attachment B - Parcel Panel Report

Exhibit B1 through B3 - Parcel Maps

Attachment C: Request for appearance letter from the owner

PROJECT INFORMATION

PROJECT DATA	07-LA-5-PM 0.0/1.5 Expenditure Authorization 215929
Location:	Interstate 5 (I-5) freeway, in Orange and Los Angeles County in the cities of Buena Park, La Mirada, Santa Fe Springs and Cerritos
Limits:	Between Artesia Blvd and North Fork Coyote Creek
Cost:	Programmed construction cost: \$175,000,000 (Capital) Current right of way cost estimate: \$370,849,000 (Capital)
Funding Source:	Traffic Congestion Relief Program (TCRP), Interregional Improvement Program (IIP), Regional Improvement Program (RIP), Transportation Equity Act for the 21st Century (Demo – TEA 21) Local Proposition C (PROP C) State Highway Operation Protection Program (SHOPP State and Federal) Congestion Mitigation Air Quality (CMAQ Local Federal)
Number of Lanes:	Existing: three mixed-flow lanes in each direction Proposed: four mixed-flow lanes plus one high occupancy vehicle lane (HOV) in each direction
Proposed Major Features:	<ol style="list-style-type: none">1) Re-align and widen I-5 mainline to add one mix flow lane, one HOV lane, 10-ft outside shoulder, and 14-ft inside shoulder in each direction2) Reconfigure the interchange at Valley View Ave to a modified tight diamond type3) Re-align Firestone Blvd frontage road4) Replace Mainline/Coyote Creek Bridge and N. Firestone Blvd/Coyote Creek Bridge5) Replace Valley View Avenue Overcrossing6) Grade separate railroad crossing at Valley View Ave7) Construct Valley View Ave/South Firestone Blvd local access connectors
Traffic:	Existing (year 2005): 171,000 Annual Daily Traffic (ADT) Proposed (year 2030): 281,000 ADT

NEED FOR THE PROJECT

The purpose of the project is to widen I-5. The I-5 freeway project corridor consists of six segments, and the project location is in relation to the rest of the surrounding freeway system. The I-5 corridor widening project starts from the Los Angeles/Orange County Line and ends just north of the Interstate 605 interchange. These projects continue the widening completed in Orange County (located to the south) into southern Los Angeles County. This segment 2 project is located in the cities of Buena Park, La Mirada, Cerritos, and Santa Fe Springs. The project proposes to improve mobility for goods and people across California; and improve safety and access to the freeway and is a high priority project for the California Department of Transportation (Department).

This project is needed as a result of increased traffic demand from population, housing, and employment growth in the project area. Combined with the limited capacity of the existing freeway facility, it is necessary to widen the freeway to accommodate increased traffic demand. Average daily traffic is expected to rise from 171,000 (2005) to 281,000 (2030). The proposed improvements will increase the capacity of the freeway from a six-lane facility (six mixed-flow lanes) to a ten-lane facility (eight mixed-flow lanes plus two HOV lanes); improve safety features for the freeway mainlines by providing full standard shoulders; improving the on and off ramps within the project limits; with realignment of some local streets to improve local circulation.

PROJECT PLANNING AND LOCATION

The proposed project will add a mixed-flow lane and a HOV lane in each direction of travel on I-5. A number of project alternatives have been looked at in the past. The Project Report/Environmental Document for the project was approved on June 28, 2007. The construction cost is currently estimated at \$175 million for this project. This project is programmed under the State Transportation Improvement Program (STIP) with funding from Federal, State and local funds. The Right of Way Certification date is currently targeted for August 22, 2014. Ready to List is August 25, 2014, and advertising targeted for November 2014.

The current project proposes to minimize right of way impacts in the I-5 freeway corridor and resulted from the analysis of a number of different project alternatives as well as a value analysis study. The proposed project includes stretches of retaining walls to minimize right of way impacts and the current freeway alignment was selected to minimize the right of way impacts at strategic locations and is considered highly optimized in terms of minimizing the right of way impacts in the overall freeway corridor.

Location Map



Exhibit A1

Project Location

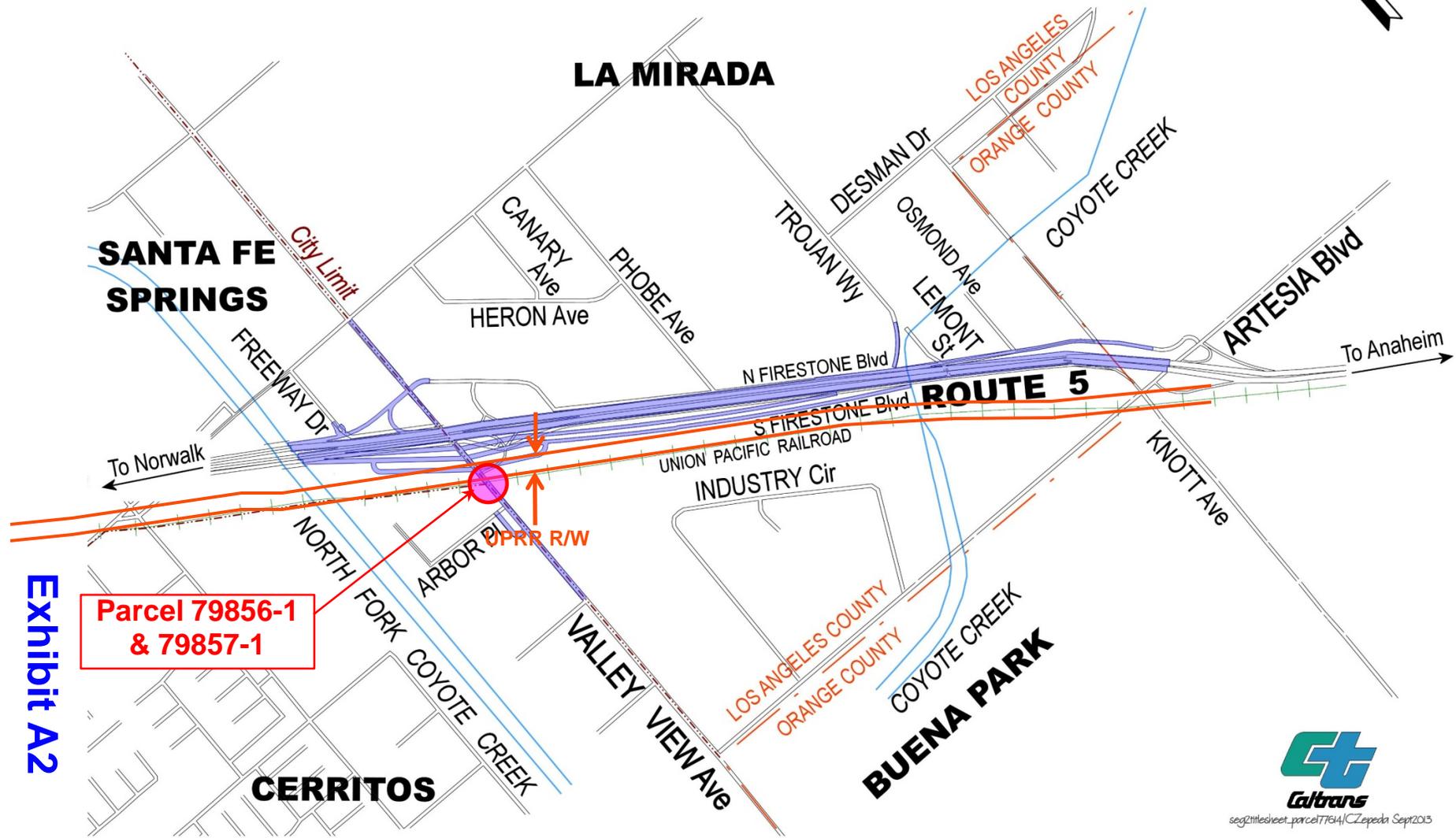
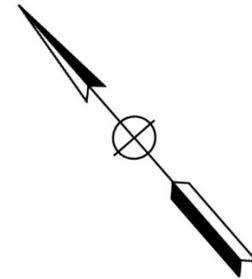


Exhibit A2

Parcel 79856-1
& 79857-1



seg2110sheet.parcel7764/CZepeda Sep12015

PARCEL PANEL REPORT

PARCEL DATA

Property Owner: Union Pacific Railroad Company, a Delaware Corporation (UPRR)

Parcel Location: South of Santa Ana Freeway and Firestone Blvd and West of Valley View Avenue
Assessor Parcel Numbers 7003-006-800 and 7003-006-803

Present Use: Transportation Corridor (Railroad)

Zoning: Not zoned

Area of Property: Parcel 79856 - 2.37 acres
Parcel 79857 - 3.48 acres

Area Required: 79856-1 - 9,210 Square Feet (SF) Highway Easement
79857-1 - 9,238 Square Feet (SF) Highway Easement

PARCEL DESCRIPTION

The subject parcel is within a Railroad Transportation Corridor owned and operated by Union Pacific Railroad Company (UPRR) and is within its operating railroad right of way. Both parcels are located south of the Interstate 5 Freeway.

Parcel No. 79856 -1 is located on the easterly half of Valley View Avenue in the city of La Mirada. Parcel No. 79857-1 is located on the westerly half of Valley View Avenue in the City of Cerritos. The parcel is improved with an at-grade railroad crossing and the area to the east of the tracks is unpaved soil with gravel overlay. This section of the railroad corridor is level in topography with transverse crossing through Valley View Avenue and Firestone Boulevard. Parcel 79856-1 is identified by the Los Angeles County assessor as APN 7003-006-800 and is located in the city of La Mirada. The larger parcel is 103,535 square feet (2.37 acres) and is improved with railroad tracks. Parcel 79857-1 is identified by the Los Angeles County assessor as APN 7003-006-803 and is located in the City of Cerritos. The larger parcel is 151,730 square feet (3.48 acres) and is also improved with railroad tracks.

The California Department of Transportation's (Department's) proposed acquisition from UPRR is in conjunction with the existing Interstate 5 (I-5) Project and will provide the additional area needed to construct the proposed grade separated Valley View Avenue overcrossing, new interchange, will eliminate two at grade crossings, and the realignment of Firestone Boulevard.

The project also proposes the removal of the existing four lane steel structure and construction of a new eight lane concrete structure, with improved design on and off ramps.

NEED FOR THE SUBJECT PROPERTY

The subject property is needed to construct Valley View Avenue Bridge which grade separates the railroad crossing at Valley View Avenue. It is not possible to avoid impacts to this property without jeopardizing the project.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met in Los Angeles on July 8, 2014. The Panel members included Rene Fletcher, Panel Chair, Department Headquarters (HQ's) Division of Right of Way and Land Surveys; Julie Del Rivo, Department Los Angeles Legal Division; Linda Fong, Department HQ's Division of Design; and Teresa McNamara, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property owner at the meeting was Chris Keckeisen and attorney Michael Wallenstein of McKenna Long & Aldrige, LLP.

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 concerns and objections expressed by the property owner is that the proposed project is not designed, planned or located in the manner that will be most compatible with the greatest public good and the least private injury and that the offer of compensation does not comply with Government Code, specifically the arbitrary conclusion of nominal value for permanent easements.

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

Owner:

The Department proposes to acquire an easement for highway purposes, approximately 77 feet wide over UPRR's 100-foot wide railroad corridor property in La Mirada, California. The width of the proposed easement is not sufficient to accommodate an overpass for the entirety of Valley View.

Department:

The Department proposes to acquire two easements totaling 200 feet wide over UPRR's corridor. UPRR's concerns above refer to parcel 79857-1 only and did not address parcel 79856 -1 which completes the 200-foot wide proposed acquisition. UPRR's original objection was based on receiving one Resolution of Necessity for parcel 79857 -1 instead of one Resolution of Necessity for both parcels 79856 -1 and 79857 -1. This has been rectified and is no longer a concern.

Owner:

Because UPRR has not received nor approved 100 percent (%) completed design plans, UPRR cannot conclude that the project is planned or located so that the design does not unreasonably interfere with railroad operations and interstate commerce.

Department:

Subsequent to the Condemnation Panel Review meeting, UPRR was provided with 100% plans. Said plans have been reviewed and approved by UPRR on April 17, 2014. This was recently re-confirmed with UPRR.

Owner:

The proposed project does not comply with Code of Civil Procedure Section 1240.510 et seq.

Department:

The Department is authorized to acquire property for a public use, in this case, a state highway project. The proposed acquisition does not unreasonably interfere with or impair the continuance of the public use as it currently exists or may reasonably be expected to exist in the future.

The Department's offer of just compensation considered the burden of the proposed easement on the UPRR 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:

The Department is not in compliance with Government Code Section 7267.2, because it arbitrarily concluded the value of the proposed right of way is nominal.

Department:

The Department's offer of just compensation was presented on December 11, 2012 and made in compliance with Government Code Section 7267.2 and thus in compliance with Code of Civil Procure Section 1245.230.

The Department did not conclude an arbitrary value for the proposed right of way. The Department's nominal offer of just compensation is based upon an appraisal factoring the decision of *City of Oakland v. Schenck (1925) 197 Cal. 456*. This precedent setting case held, in part, that railroads are entitled to only nominal compensation for portions of their property actually used for the rail line.

Owner:

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.

Department:

The project is planned and located in a manner that will be most compatible with the greatest public good and the least private injury.

Owner:

The Department's offer is incomplete as it omits UPRR's lost income from the signboard that will result with the removal of the signboard for the project. The failure to include the lost income renders the Department's offer out of compliance with the statutory and constitutional requirements for such an offer.

Department:

The Department has requested on numerous occasions documentation from UPRR in regards to the signboard's income stream. The Department has not been able to address this matter as UPRR has failed to provide said documentation for review and analysis. Once provided, the income stream from the signboard will be appraised and an offer of just compensation will be presented to UPRR.

DEPARTMENT CONTACTS

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

Type of Contact	Number of Contacts
Mailing of information	5
E-Mail of information	10+
Telephone contacts	10+
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 owner 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 ON JULY 8, 2014**

Rene Fletcher, HQ's Division of Right of Way and Land Surveys, Panel Chair
Julie Del Rivo, Los Angeles Legal Office Attorney, Panel Member
Linda Fong, HQ's Division of Design, Panel Member
Teresa McNamara, HQ's Division of Right of Way and Land Surveys, Panel Secretary

Chris Keckeisen, Property Owner Representative
Michael Wallenstein, Attorney for the Property Owner

Carrie Bowen, District 7, District Director
Peter Vacura, HQ's Division of Design
Richard Chang, District 7, Design Manager, Office of Design A
Andrew P. Nierenberg, District 7, Deputy District Director, Right of Way
Yoshiko Henslee, District 7, Supervising Right of Way Agent

Proposed Project Condition & R/W Requirement

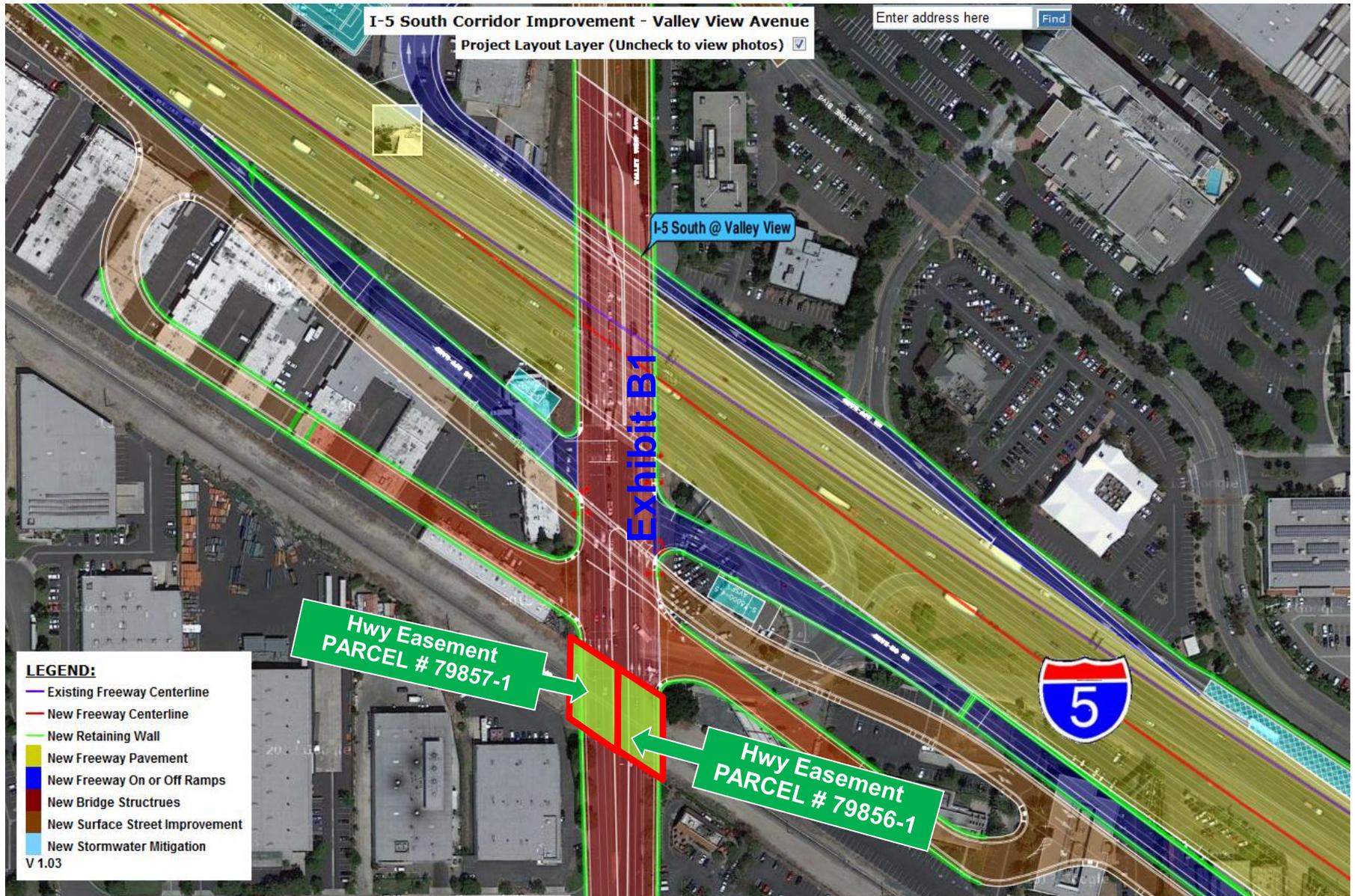


Exhibit B1

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

**RIGHT OF WAY
 RESOLUTION OF NECESSITY**

EXHIBIT B

NO SCALE

EA:21592	MAP NO.:F-1997B-5		DATE:04-01-14		
DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
7	LA	5	1.0	1	1

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.

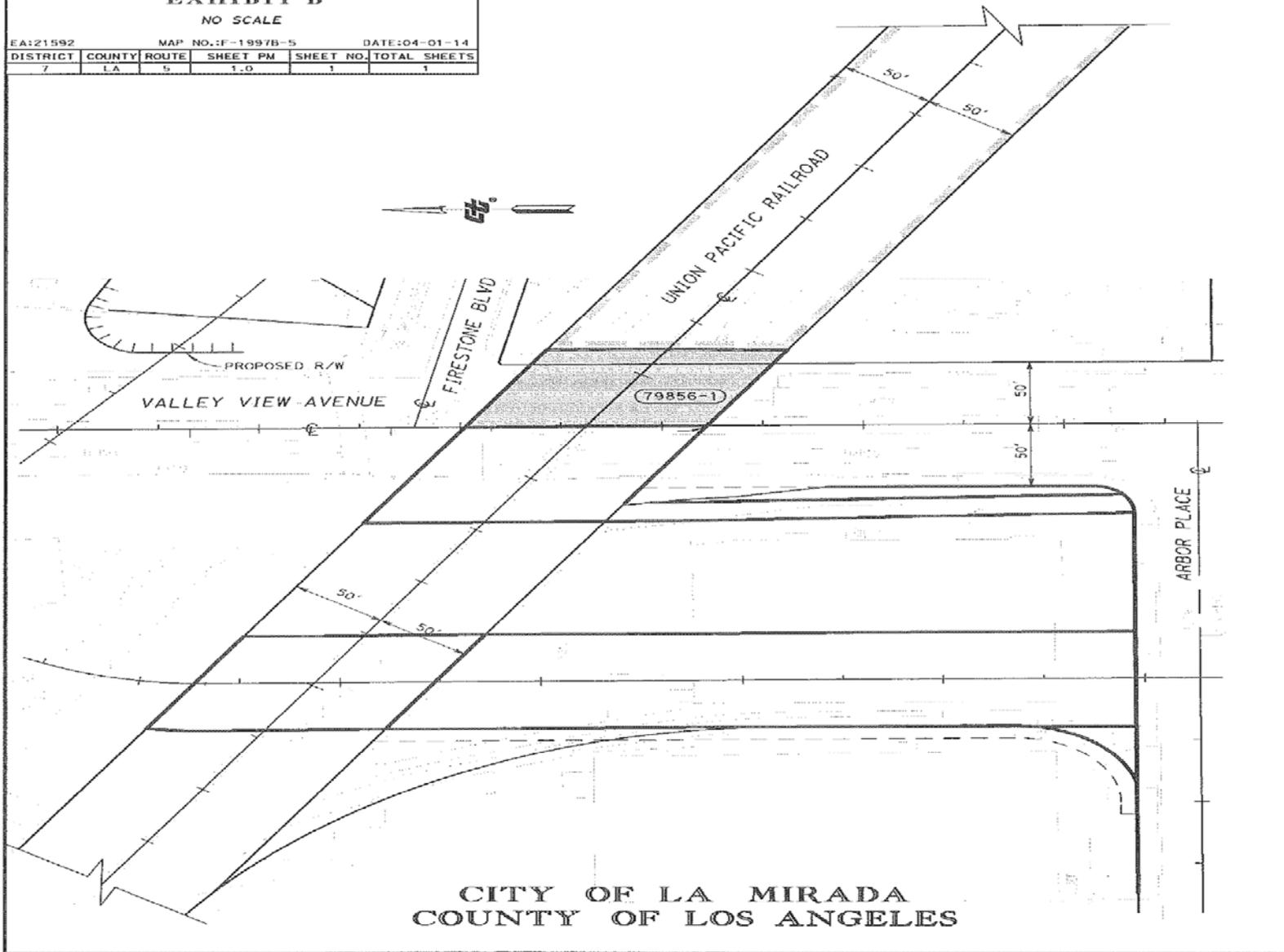


Exhibit B2

STATE OF CALIFORNIA
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY
 DEPARTMENT OF TRANSPORTATION
**RIGHT OF WAY
 RESOLUTION OF NECESSITY**
EXHIBIT B
 NO SCALE

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.

EA121592	MAP NO. JF-1997B-5	DATE: 04-01-14			
DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
7	LA	5	1.0	1	1

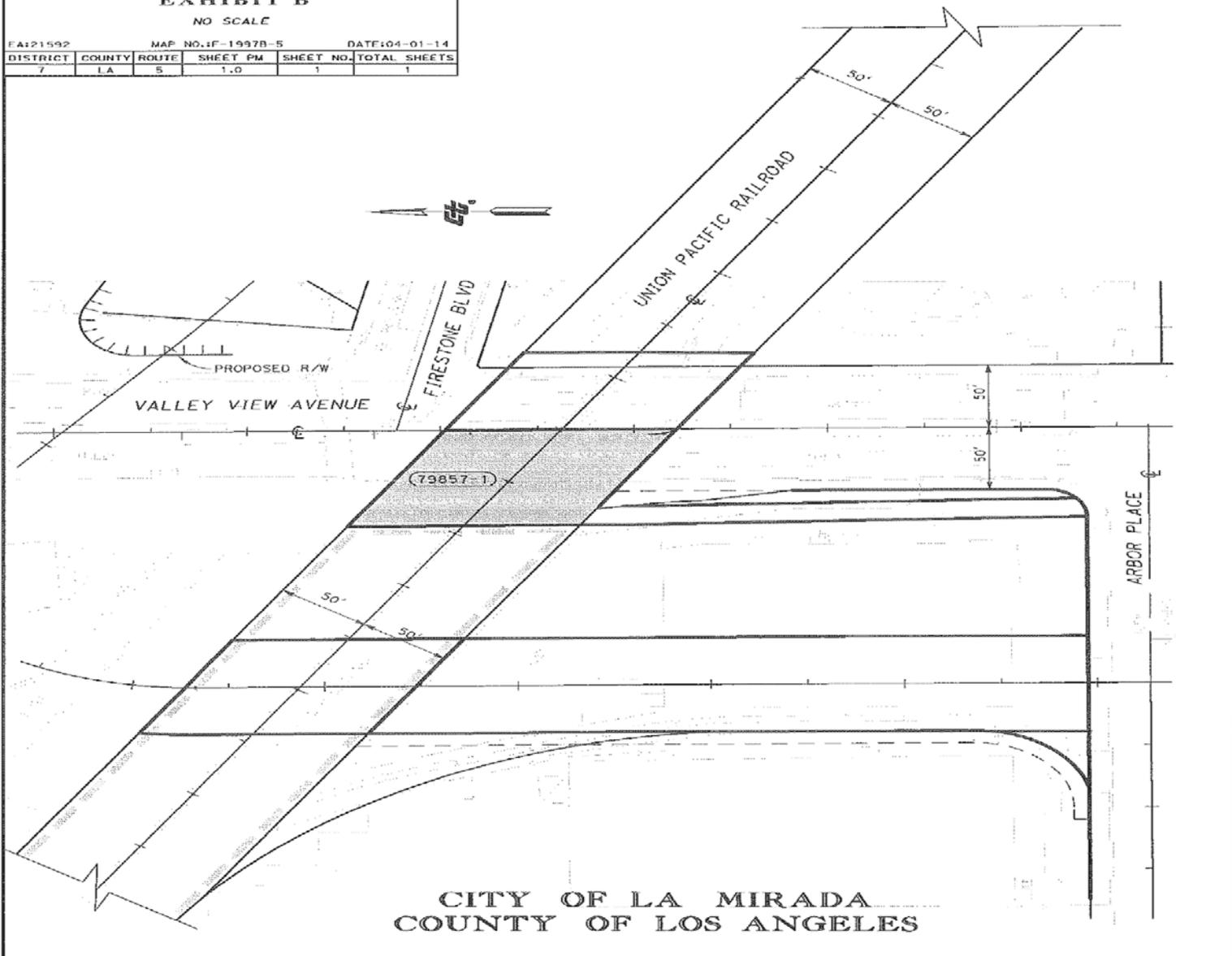


Exhibit B3

Albany
Atlanta
Brussels
Denver
Los Angeles
Miami
New York

McKenna Long & Aldridge^{LLP}

300 South Grand Avenue • 14th Floor
Los Angeles, CA 90071
Tel: 213.688.1000
mckennalong.com

Northern Virginia
Orange County
Rancho Santa Fe
San Diego
San Francisco
Seoul
Washington, DC

MICHAEL H. WALLENSTEIN
(213) 687-2110

EMAIL ADDRESS
mwallenstein@mckennalong.com

April 17, 2013



**VIA FACSIMILE (916) 653-2134
AND OVERNIGHT MAIL**

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

Re: 07-LA-05-PM 1.0
EA 215929
Project #0700001832
Parcel 79857

*Forwarded To:
Right of way
4/21/14*

*Copied To:
Stephen
Malter*

Dear Sir or Madam:

This office represents Union Pacific Railroad Company ("Union Pacific") in the above-referenced matter. We have received 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 April 3, 2014 (the "Notice"). This letter shall constitute Union Pacific's Request to appear and to be heard at the May 21-22, 2014, hearing of the Commission to object to the adoption of the Resolution of Necessity contemplated in the Notice.

Caltrans proposes to acquire an easement for highway purposes, approximately 77 feet wide over Union Pacific's 100-foot wide railroad corridor property in La Mirada, California. The easement is reportedly required for a grade separation project which will elevate Valley View Avenue above and over Union Pacific's rail corridor. Valley View is 100 feet wide. Inexplicably, however, the proposed easement runs only from the centerline of Valley View Avenue and then westward over Union Pacific's property – i.e. only the southbound lanes of Valley View Avenue. The width of the proposed easement is not sufficient to accommodate an overpass for the entirety of Valley View. It is unclear how Valley View can be grade separated over Union Pacific's property if Caltrans does not seek to acquire rights over the rail corridor for the entirety of the contemplated new roadway.

Furthermore, Union Pacific was provided 65% plans for the project nearly a year ago, which plans required revisions to meet Union Pacific's engineering and safety requirements. And although subsequent plans have been provided, the complete final plans have not been provided to, nor approved by, Union Pacific.

Accordingly, Union Pacific objects to the adoption of the Resolution of Necessity on the grounds that the project is not, as far as Union Pacific been made aware, designed, planned or located in the manner that will be most compatible with the greatest public good and the least private injury. In turn, because of the unresolved design, engineering and maintenance issues, the proposed taking is in violation of Code of Civil Procedure section 1240.510 et seq.

Union Pacific further objects to the adoption of the Resolution of Necessity on the grounds that Caltrans' offer of compensation does not comply with Government Code section 7267.2 and the Resolution thereby does not comply with Code of Civil Procedure section 1245.230.¹

LEAST PRIVATE INJURY/FEDERAL PREEMPTION

As presently designed, Union Pacific cannot conclude that the Project meets Union Pacific's mandated engineering and safety standards. Union Pacific was provided 65% plans for the Project in mid-2013 by Caltrans. These plans were returned to Caltrans in October 2013 with certain noted exceptions. Caltrans has not provided final plans for the Project since that time and Union Pacific has not approved any such final plans.

Accordingly, Union Pacific cannot evaluate whether the Project meets its design and safety standards and whether the project will unreasonably interfere with railroad operations and interstate commerce such that the Project may be preempted by Federal Law. Until such time as Union Pacific is provided with, and approves, final plans for the project, neither Union Pacific nor the Commission can reasonably conclude that the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

Furthermore, because the easement rights sought by Caltrans appear to be inadequate to accommodate the construction of the new grade-separated roadway, the Project would unlawfully encumber and encroach upon portions of Union Pacific's property without payment of just compensation.

¹ CCP Section 1245.230(c)(4) requires that, to adopt a Resolution of Necessity, the governing body must specifically find and declare that the condemning agency has made a *valid* Government Code section 7267.2 offer of just compensation.

**THE PROJECT VIOLATES STATE LAW FOR TAKING PROPERTY
ALREADY DEVOTED TO A PUBLIC USE.**

For similar reasons, the proposed taking violates state law. Accordingly, the Resolution of Necessity is flawed and may not be adopted.

It is beyond dispute that, as part of an active common-carrier freight railroad corridor, Union Pacific's property is already devoted to a public use. Code of Civil Procedure section 1240.510 provides that a public entity may only condemn property already devoted to a public use "if the proposed use will not unreasonably interfere with or impair the continuance of the public use as it then exists or may be reasonably expected to exist in the future." (*See, e.g., SFPP L.P. v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 476, 477-78 (finding placement of pipeline too close to track unreasonably interfered with railroad's operations).) Until such time as the final plans for the Project are reviewed and approved by Union Pacific, neither Union Pacific nor the Commission can reasonably conclude that the Project will be in compliance with eminent domain law governing the taking of property already devoted to a public use. Accordingly, the proposed taking violates Section 1240.510 et seq. and Caltrans' Project – at least as it stands today – is barred.

A condemning agency that proposes to take property already devoted to public use must specifically cite this statute in its resolution of necessity. (Code Civ. Proc. §1240.510.) But a project that unreasonably interferes with an existing public use under Section 1240.510 necessarily also violates Section 1240.030 because it cannot be planned in a "manner that will be most compatible with the greatest public good and the least private injury." (*See Burlington Northern, supra*, at 476-78 (finding that taking violated both sections 1240.030 and 1240.510 based on the same interference with railroad operations).)

Because the proposed taking cannot, at this point in time, comply with sections 1240.030 and 1240.510, and the Resolution of Necessity is dependent on a finding that it does (see CCP §1245.230), the Commission cannot make the findings necessary to adopt the Resolution.

Caltrans can likely remedy this problem by obtaining approval of the final plans for the Project from Union Pacific and by entering into a construction and maintenance agreement with Union Pacific that contains terms for construction of the Project and for future maintenance for the resulting structure over the rail corridor. (See Code Civ. Proc. §1240.530 (providing that where property already devoted to a public use is proposed to be taken, the parties "shall make an agreement determining the terms and conditions upon which the property is taken and the manner and extent of its use by each of the parties.")) However, at a minimum, unless and until it does so, Caltrans cannot meet its burden to show that the project is planned in a manner most compatible with the greatest public good and least private injury.

**CALTRANS' OFFER DOES NOT COMPLY WITH GOVERNMENT CODE §
7267.2**

Pursuant to the holding in *Department of Transportation v. Cole* (1992) 7 Cal.App.4th 1281, 1284-86 (holding that, in certain circumstances, property owner must object to adequacy of basis for offer of compensation at hearing on Resolution of Necessity to avoid waiver of issue), Union Pacific objects to the adoption of the Resolution of Necessity on the grounds that Caltrans has failed to fully and adequately comply with the provisions of Government Code section 7267.2, and the Notice does not, thereby, comply with Code of Civil Procedure section 1245.220 et seq. Compliance with these statutes is a prerequisite to the adoption of a Resolution of Necessity.

The offer to acquire Union Pacific's property, dated February 15, 2014, fails to comply with the provisions of Government Code section 7267.2 in that it fails to meet the constitutional, statutory and common law requirement for just compensation in numerous ways, including but not limited to the following:

Arbitrary Conclusion of Nominal Value for Permanent Easements

Caltrans' offer is based on an appraisal opinion of the Subject Property that is not an opinion of the *fair market value* of the property, as required by law. Rather, the appraiser's conclusion of value is apparently based on an internal Caltrans policy. That policy *requires* the valuation of what Caltrans calls "transverse crossings" to be nominal if the appraiser determines there is no interference with railroad uses, without regard to fair market value.

Caltrans policy flies in the face of Union Pacific's constitutional right to just compensation for the taking of its property. Just compensation requires payment of "the *highest price . . . that would be agreed to*" by a willing seller and a willing buyer. (Code of Civ. Proc. § 1263.310 et seq.) Arbitrary and mandated application of Caltrans' "nominal value" policy, without regard to actual market data or a consideration of the real fair market value of the Property, results in an offer that does not constitute just compensation, irrespective of the actual amount offered.²

² We recognize that the dollar amount of compensation offered is not before the Commission for purposes of the Resolution of Necessity. For purposes of the hearing, however, Union Pacific's objection does not go to the amount of compensation offered but rather to the failure of Caltrans, in making its offer of just compensation, to comply with statutory and constitutional prerequisites to condemnation.

Appraisal Fails to Consider Lost Income From Taking of Signboards

On the southeast corner of the intersection of Valley View Avenue and Union Pacific's corridor, there is a signboard on Union Pacific's property. The Project will likely result in the loss of this signboard site and/or render it commercially unviable. Union Pacific licenses its property to the signboard company pursuant to a master license agreement and is entitled to compensation for lost rental income from the taking of these signboards. The offer of compensation fails to account for this compensable loss.

Adoption of the Resolution of Necessity requires that the Commission have evidence of, and find that, the offer required by Section 7267.2 of Government Code has been made. Although technically a purported offer has been made, because it doesn't comply with the statutory and constitutional requirements for such an offer, a finding by this Commission that it does would be a gross abuse of discretion, invalidating the Resolution. (*See City of Stockton v. Marina Towers LLC* (2009) 171 Cal. App. 4th 93, 114 ("A gross abuse of discretion occurs where the public agency acts arbitrarily or capriciously, *renders findings that are lacking in evidentiary support, or fails to follow the required procedures* and give the required notices before condemning the property.")) Accordingly, unless and until Caltrans makes a valid offer of compensation the Commission should not adopt the Resolution.

CONCLUSION

Union Pacific seeks to work with Caltrans to resolve the issues raised in this letter and is confident that solutions will be found. Many similar Caltrans grade-separation projects involving Union Pacific's property have been approved by Union Pacific with the execution of a mutually satisfactory Construction and Maintenance Agreement and an appropriate offer of Just Compensation. There would appear to be no reason why the same will not occur here. Until it does, however, the Commission cannot, and should not adopt a resolution of necessity.

Union Pacific hereby reserves the right to present additional written and/or oral objections at any time prior to or at the Meeting. 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
Attorney for Union Pacific Railroad Company

cc: Lowell Anderson (via e-mail)
Andrew Nierenberg (via e-mail)