

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: May 7, 2013

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-21038 summarized on the following page. This Resolution is for a transportation project on Interstate 10 in District 7, in the cities of Baldwin Park and West Covina.

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 adoption of the Resolution and has requested an appearance before the Commission. The primary concern and objection expressed by the property owner is that the 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 owner's objections and the Department's responses are contained in Attachment B.

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 of the Resolution will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

Discussions have been ongoing between the property owner and the Department to address and resolve the issues. Progress has been made but in order to keep the schedule, the Department is requesting that this appearance proceed to the May 7, 2013 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 on the subject property.

C-21038 - Sears Development Co., a Delaware Corporation

07-LA-10-PM 35.0 - Parcel 79814 -1, 2, 3 - EA 1170U9.

Right of Way Certification Date: 05/30/13; Ready To List Date: 05/31/13. Freeway - construct high occupancy vehicle lanes and soundwalls. Amends Resolution No. C-20679, adopted December 14, 2011, which authorized condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, and a temporary easement for construction purposes. This Amendment reduces the area described for sub-parcel 79814-2, and adds sub-parcel 79814-3 which is a temporary demolition easement for the purpose of removing improvements. Located in the city of West Covina at 10 Fashion Plaza (Westfield Mall). Assessor Parcel Number 8474-003-081.

Attachments:

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

PROJECT INFORMATION

PROJECT DATA	07-LA-10-PM 33.2/37.2 Expenditure Authorization 1170U9
<u>Location:</u>	Interstate 10 (I-10) in Los Angeles county, in the cities of Baldwin Park and West Covina
<u>Limits:</u>	From 0.1 mile west of Puente Avenue Undercrossing to 0.2 mile east of Hollenbeck Street Undercrossing
<u>Cost:</u>	Programmed construction cost: \$134,760,000.00 Current right of way cost estimate: \$20,980,000.00
<u>Funding Source:</u>	Construction Mitigation and Air Quality Improvement Program (CMAQ), Traffic Congestion Relief Program (TCRP), and State Transportation Improvement Program (STIP)
<u>Number of Lanes:</u>	Existing: eight mixed-flow lanes and two auxiliary lanes Proposed: eight mixed-flow lanes, two high occupancy vehicle (HOV) lanes, and two auxiliary lanes
<u>Proposed Major Features:</u>	Freeway widening, constructing retaining walls, soundwalls, widening seven bridges, constructing two new bridges, realigning affected ramps, and removal and relocation of eastbound I-10 off-ramp to northbound Vincent Avenue
<u>Traffic:</u>	Existing (year 2001): 205,000 to 258,000 Annual Daily Traffic (ADT) Proposed (year 2031): 328,000 to 412,800 ADT

NEED FOR THE PROJECT

I-10 is an east-west freeway which provides commuter access from Riverside County, San Bernardino County, and the San Gabriel Valley, to the Los Angeles Central Business District. This project is part of a larger effort to extend HOV lanes from the existing El Monte Busway terminus at Baldwin Avenue in El Monte east to the Los Angeles/San Bernardino County line and beyond to Interstate 15. The extension of the HOV lanes in each direction is intended to reduce congestion by encouraging ridesharing, thus increasing the person-carrying capacity of the freeway and potentially decreasing the number of cars present on the freeway.

Within the project limits, I-10 currently is an eight-lane freeway with auxiliary lanes in both directions between local interchanges, with a concrete barrier median. Peak-hour operating

conditions are currently at level of service which exceeds capacity, and travel demand forecasts indicate that traffic volumes are expected to increase by almost 60 percent by the year 2031 if no improvements are made.

The I-10 corridor presently operates over capacity, resulting in traffic congestion, increased energy consumption, air quality impacts, increased traffic accidents, and general deterioration of commuter comfort levels. Projected growth in the region will exacerbate these problems, resulting in anticipated drops in the level of service in both the westbound direction of I-10 during the morning peak hours and the eastbound direction of I-10 during the afternoon peak hours.

The project will reduce congestion by encouraging ridesharing, thus increasing the person-carrying capacity of the freeway and improving the mobility. Additionally, the HOV lanes will improve traffic operations along the entire I-10 corridor, including the mixed flow lanes and local arterials while minimizing environmental and economic impacts. With projected population growth trends indicating increased transportation demand, the need for the HOV lane improvements along I-10 will continue to increase.

PROJECT PLANNING AND LOCATION

The Project Report and initial Environmental Document were approved on 12/31/02, National Environmental Policy Act revalidation was approved on 05/24/12 and California Environmental Quality Act Environmental Impact Report was approved on 06/15/12. The current programmed construction cost is \$134,760,000.00 with the primary sources of funding coming from state (STIP and TCRP) and federal (CMAQ) funds. The project has a tentative date for Right of Way Certification of 05/30/13, with a Ready to List Date of 05/31/13 and a tentative Advertising date of 09/16/13.

The Preferred Alternative selected for this project is the “Non-Standard” HOV alternative. This alternative provides for the construction of an HOV lane in each direction along I-10. The typical features associated with this alternative are: ten foot left shoulder, eleven foot HOV lane, two foot buffer, eleven foot No. 1 mixed-flow lane, three-twelve foot mixed-flow outside lanes, a twelve-foot auxiliary lane where applicable, and a ten-foot outside shoulder in each direction. This alternative was selected as it maintains safety, operation benefits, and provides flexibility in the future, while minimizing right of way impact and project costs. The project also includes the widening of seven existing undercrossings, the construction of two new undercrossings, realignment of affected on/off ramps, and construction of retaining walls and soundwalls.

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

- “No Action”
This alternative represents future baseline conditions in the year 2031 and provides a baseline scenario for comparison with the proposed alternative.
The “No Action” (No Build) alternative assumes no changes will be made to the existing facility. This Alternative was eliminated because it is not consistent with local and regional plans of the Metropolitan Transportation Agency (MTA) and the

Department of Transportation (Department), as additional traffic demands will not be satisfied. Without improvements to I-10, safety, travel times, fuel consumption, and air quality will deteriorate throughout the project area.

- “Standard HOV”
The Standard HOV alternative also provides for the construction of a HOV lane in each direction, however, it proposes a standard ten foot median and twelve foot lanes. This will require typical mainline widening of approximately twenty-three feet in each direction. This would result in the a minimum acquisition of a ten foot sliver of right of way along Garvey Avenue, which in turn will result in the full acquisition of many residential and commercial properties. It would also have substantial utility impacts, and construction disturbances. In addition to the sliver acquisition along Garvey Avenue, significant right of way impacts are likely to happen at the local interchanges, as the ramps would have to be reconfigured to provide acceptable geometrics. Vertical clearance constraints would be magnified and, in turn, so would the drainage and utility work associated with the profile lowering. When compared to the Non-Standard HOV alternative (the preferred alternative), the Standard HOV alternative provides only nominal operational benefits and safety improvements, yet has a substantially higher cost and right of way impacts. For these reasons, this alternative was eliminated from further consideration.
- “Additional General Purpose Lanes”
This alternative adds one mixed flow lane in each direction instead of a HOV lane, and was discussed in the Project Study Report (PSR). It is no longer being considered as it is not compatible with the Federal Highway Administration (FHWA), Department, MTA, and the Southern California Associated Governments (SCAG’s) policies to increase the people carrying capacity of freeway widening.
- “Elevated Facility”
This alternative would have utilized the existing median to construct a viaduct over the existing freeway. It was discarded in the PSR because of excessive right of way costs for the elevated HOV viaduct especially at the egress ingress areas.
- “Traffic System Management (TSM)”
TSM measures such as ramp metering and auxiliary lanes have been or are being implemented. However, major construction would be necessary to improve traffic level of service significantly. Additionally, this alternative is not compatible with the FHWA, Department, MTA and SCAG’s policies to increase the people carrying capacity of freeway widening.

Location Map

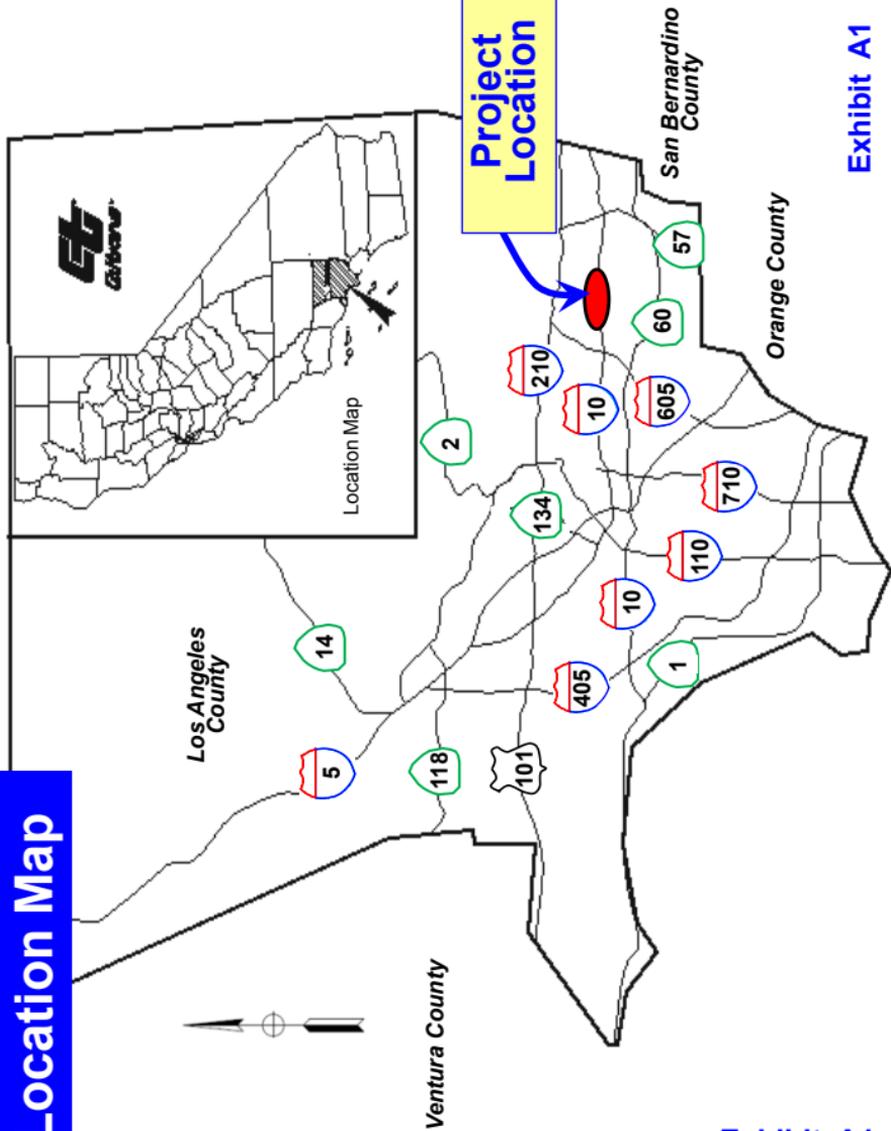


Exhibit A1

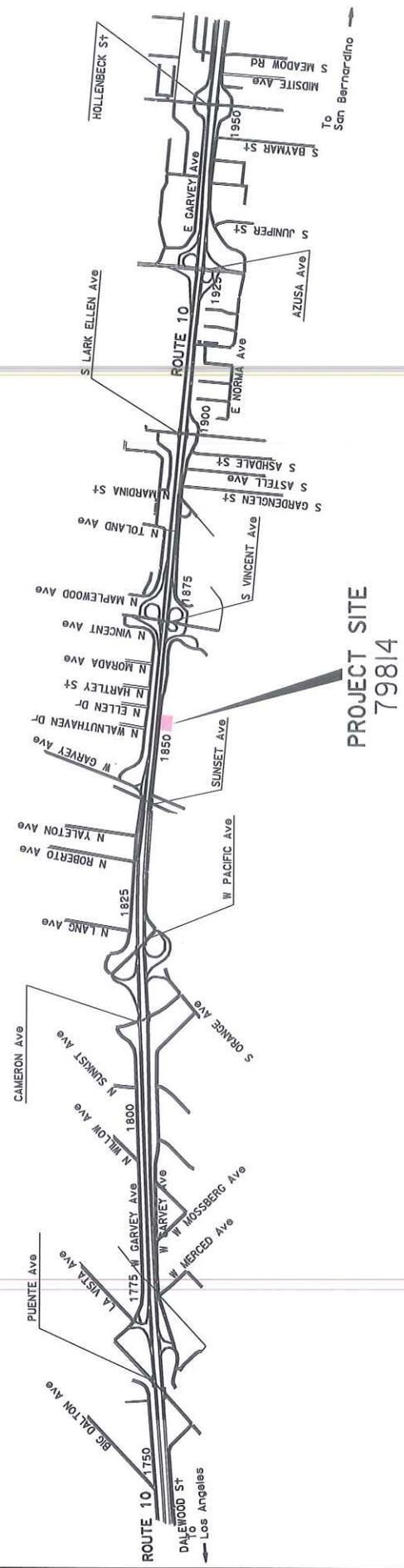
Exhibit A1

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
DEPARTMENT OF TRANSPORTATION

STATE HIGHWAY

IN BALDWIN PARK FROM 0.1 MILE WEST
OF PUENTE AVENUE TO 0.3 MILE WEST
OF CITRUS STREET IN WEST COVINA



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

**RIGHT OF WAY
RESOLUTION OF NECESSITY
EXHIBIT A**

NOT TO SCALE

EA:11700	ROUTE	SHEET	PM	SHEET NO.	TOTAL SHEETS
7	LA 10	34,9		1	1

DATE: 03-13-13

Project Location

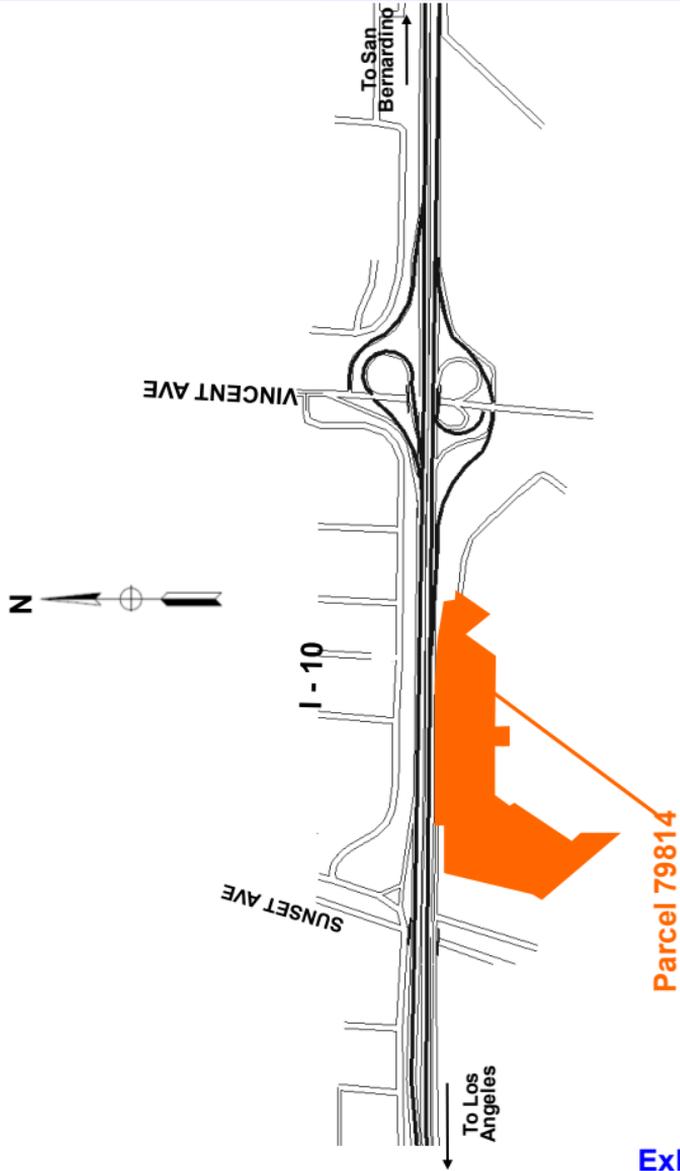


Exhibit A3

Exhibit A3

PARCEL PANEL REPORT

PARCEL DATA

Property Owner: Sears Development Co., a Delaware Corporation

Parcel Location: 10 Fashion Plaza (Westfield Mall) in the city of West Covina
Assessor Parcel Number: 8474-003-081

Present Use: Commercial Retail

Zoning: Regional Commercial

Area of Property: 640,290 Square Feet (SF)

Area Required: Parcel 79814-1: 13,685 SF, - Fee
Parcel 79814-2: 7,942 SF, - Temporary Construction Easement (TCE)
Parcel 79814-3: 140 SF, - Temporary Demolition Easement (TDE)

PARCEL DESCRIPTION

The subject parcel is located in the City of West Covina adjacent to Interstate 10 (I-10) and has a physical address of 10 Fashion Plaza (Westfield Mall). The site is irregular in shape with an approximate size of 640,290 SF. The subject parcel is utilized by Sears, but is also used by the Westfield Mall's consumers/visitors, as well as employees of the adjacent commercial establishments. Sear's main store and primary improvement is a three story building containing approximately 137,820 SF, located outside the proposed right of way. However, it should be noted that there is a large "Westfield" pylon sign that is located within the proposed right of way. The parcel is zoned commercial (retail).

NEED FOR SUBJECT PROPERTY

The subject property is impacted as a result of the I-10 freeway widening to accommodate the addition of HOV lanes, and is primarily needed due to the realignment of the eastbound I-10 off-ramp to Vincent Avenue. The project requirements consist of a 13,685 SF fee acquisition and a 7,942 SF TCE which encompasses an elongated strip of land consisting of landscaping and asphalt paved areas. There is also a 140 SF temporary demolition easement which is required for the removal of the large "Westfield" pylon sign that is located within the proposed right of way. As a result of discussions with the property owners, the Department did reduce the width of the TCE in order to maintain a three lane configuration to the parking access road along the freeway. Although this right of way requirement has been reduced to minimize impacts to the subject property, overall project impacts to the property cannot be avoided.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met in Los Angeles on February 13, 2013. The Panel members included Robert Dauffenbach, Panel Chair, Department of Transportation (Department) Headquarters (HQ's) Division of Right of Way and Land Surveys; Linda Harrel, Department's Los Angeles Legal Division; Linda Fong, Department HQ's Division of Design; and Mark Zgombic, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property owner at the meeting was Ivor Samson (via telephone) and Sarah Chui from the law firm of SNR Denton, and Marten Anderson and Brian Stephenson from Rick Engineering Company.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Department's Chief Engineer. The primary concern and objection expressed by the property owner is that the 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 following is a description of the concerns/contentions expressed by the owner's representatives, followed by the Department's response:

Owner Contends:

The proposed project will result in the temporary removal of the left turn lane of the internal ring road on the subject property.

Department Response:

The Department reduced the width of the temporary construction easement from ten to four feet to perpetuate the existing three lane configuration of the internal ring road, including the left turn lane.

Owner Contends:

The eastbound lane of the internal ring road will include the drainage gutter as part of the lane, which creates an unsafe condition for traffic circulation.

Department Response:

The Department's design is adequate and allows for safe traffic circulation within the subject property. The eastbound lane will be consistent with other existing segments of the internal ring road that include the drainage gutter as part of the lane.

As an option to help alleviate the owner's concern, the Department did offer to provide compensation to the property owners, in the event they feel they need to reconfigure their parking and/or site improvements. To date the owners have not responded to the Department regarding this option.

Owner Contends:

Ramp closures and construction scheduling will impact their business by making access to their property difficult for their customers.

Department Response:

Written specifications have been added to the project that prohibits the highway contractor from closing any two consecutive off-ramps at the same time, as well as performing construction activities on eastbound I-10 in the vicinity of the Westfield Mall during the peak holiday season between the Monday proceeding the Thanksgiving holiday weekend and January 2nd.

DEPARTMENT'S CONTACTS

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

Type of Contact	Number of Contacts
Mailing of information	4+
E-Mail of information	9+
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 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 California Transportation Commission (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.

ROBERT W. DAUFFENBACH
Acting 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 FEBRUARY 13, 2013**

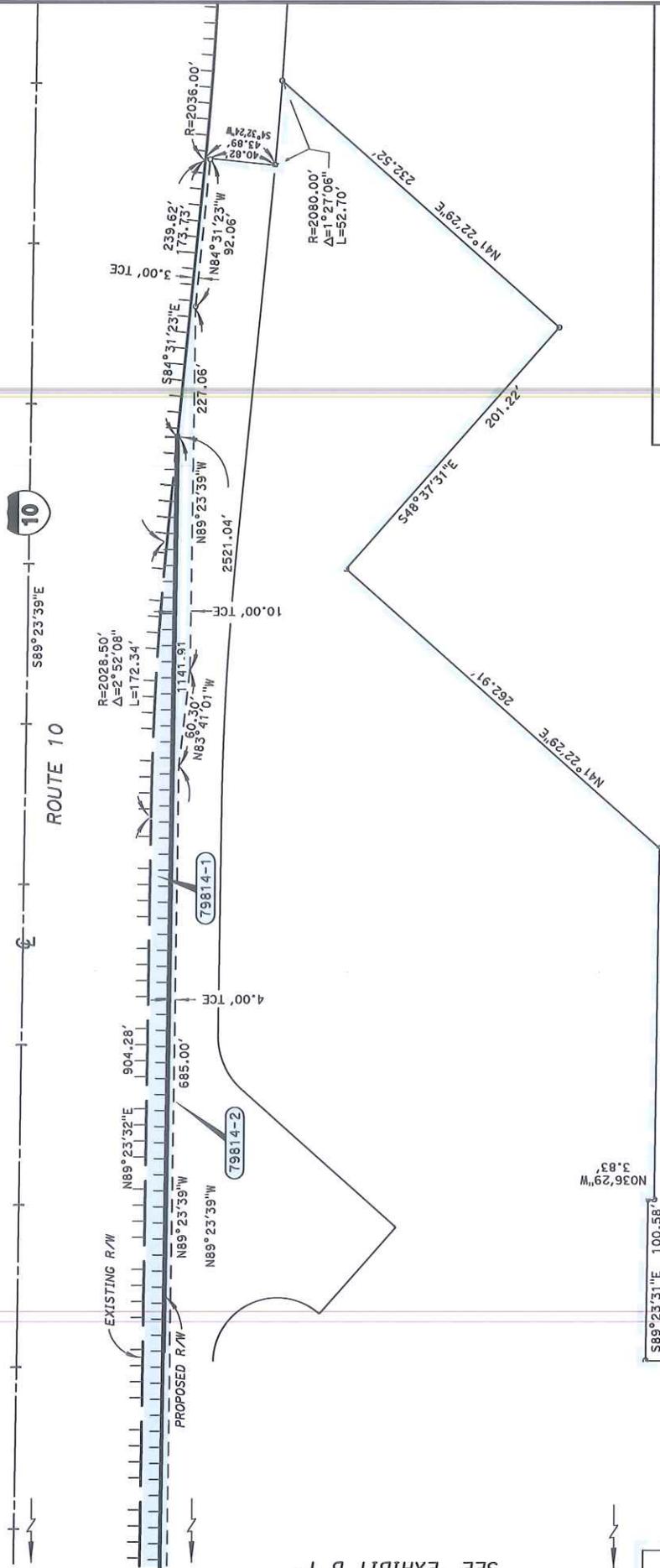
Robert Dauffenbach, HQ's Division of Right of Way and Land Surveys, Panel Chair
Linda Harrel, Los Angeles Legal Office Attorney, Panel Member
Linda Fong, HQ's Division of Design, Panel Member
Mark Zgombic, HQ's Division of Right of Way and Land Surveys, Panel Secretary

Ivor Samson, SNR Denton, Attorney for Sears (participation via telephone)
Sarah Chui, SNR Denton
Marten Anderson, Rick Engineering Company
Brian Stephenson, Rick Engineering Company

Michael Miles, District 7, District Director
Gregg Magaziner, District 7, Acting Deputy District Director, Design
Nader Gobran, District 7, Design Manager
Andrew P. Nierenberg, District 7, Deputy District Director, Right of Way
Yoshiko Henslee, District 7, Supervising Right of Way Agent
James Marsella, District 7, Senior Right of Way Agent
Edward Francis, District 7, Senior Right of Way Agent
Stan Jacobs, District 7, Right of Way Agent

CITY OF WEST COVINA COUNTY OF LOS ANGELES

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SEE "EXHIBIT B 1"

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

RIGHT OF WAY RESOLUTION OF NECESSITY EXHIBIT B

NOT TO SCALE

EA:1170U MAP NO.:F-186A-10 DATE:03-13-13
DISTRICT | COUNTY | ROUTE | SHEET | PM | SHEET NO. | TOTAL SHEETS
7 | LA | 10 | 34.9 | 2 | 2