

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: May 23, 2012

Reference No.: 2.4a.
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-20851 summarized on the following page. This Resolution is for reconstructing the interchange at the Interstate 10 Freeway and Tippecanoe Avenue in District 8 in the city of San Bernardino, county of San Bernardino.

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. The property owner's 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 May 23, 2012 meeting. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-20851 - Allen L. Berry, Trustee, etc., et al.

08-SBd-10-PM 26.36 - Parcel 21765-1, 2, 3, 4, 5, 6 - EA 448129.

Right of Way Certification Date: 07/01/13; Ready to List Date: 08/01/13. Freeway - Reconstruct interchange at Interstate 10 and Tippecanoe Avenue. Authorizes condemnation of land in fee for a State highway, extinguishments of abutter's rights of access, temporary easements for construction purposes, and a permanent easement for public utilities purposes to be conveyed to the City of San Bernardino. Located in the city of San Bernardino at east of Tippecanoe Avenue, between Lee Street and Laurelwood Drive. Assessor's Parcel Numbers 0281-151-19, -21, -50, -75.

Attachments:

Attachment A - Owners Written Objections dated April 16, 2012

Attachment B - Department Response dated April 19, 2012

Attachment C - Fact Sheet

Exhibits A, B, C, and D - Maps

1 copy to Stephen Maller, to Right of Way 4-17-12

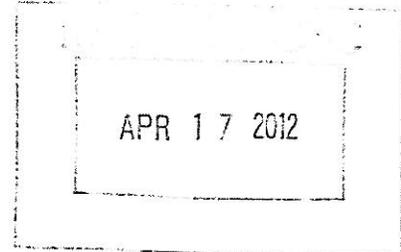
HUBBARD LAW FIRM

David F. Hubbard
3877 12th Street
Riverside, CA 92501

April 16, 2012

Phone (951) 686-2660
Fax (951) 686-5970
HubbardLawFirm@gmail.com

Executive Director, Cal. Transp. Comm'n
PO Box 942873
Mail Station 52
Sacramento, CA 94273-0001



Re: Berry Trust, Parcel 21765-1,2,3,4,5,6

Dear Executive Director:

I am attorney of record for the Berry Trust. This letter relates to your Notice of Intent to Adopt Resolution of Necessity to Acquire Certain Real Property or Interest in Real Property by Eminent Domain with respect to Project #0800020467 and the above-referenced parcels [your parcel numbers].

I have no intention of making the trip to Sacramento, but am submitting my observations concerning issues (A), (B), and (C) as identified in your letter, as well as the Government Code §7267.2 offer that must be made.

My observation is that I object to the offer that has been extended to my client. I do not believe a serious appraisal was performed. I reach that conclusion because of the absence of severance damages in the appraisal.

My client reserves the right to raise additional objections upon review of the state of the project, the takings and the deposit of probable compensation at the time the complaint is filed.

Sincerely,

Handwritten signature of David F. Hubbard.

David F. Hubbard for
HUBBARD LAW FIRM

Attachment A

DEPARTMENT OF TRANSPORTATION

DIVISION OF RIGHT OF WAY

DISTRICT 8

464 WEST FOURTH STREET, MS 1228

SAN BERNARDINO, CA 92401-1400

MAIN (909) 383-4561

DIRECT (909) 381-2903

FAX (909) 383-6877

TTY 711

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Be energy efficient!***VIA U.S. MAIL AND ELECTRONIC MAIL**

April 19, 2012

Mr. David F. Hubbard
Hubbard Law Firm
3877 12th Street
Riverside, CA 92501

WRITTEN APPEARANCE RESPONSE

File: 8 SBD SBD-10-26.36
E.A. 448129 Project ID: 0800020467
Parcel No. 21765-1,2,3,4,5,6
Grantor: Berry Trust

Dear Mr. Hubbard:

This letter is in response to your letter dated April 16, 2012 addressed to the Executive Director of the California Transportation Commission (the "Commission") for property located east of Tippecanoe Avenue, between Lee Street and Laurelwood Drive, also known as Assessor Parcel Numbers 0281-151-19, 0281-151-21, 0281-151-50, and 0281-151-75, in the city of San Bernardino (the "Property").

Your letter addressed your objections to the Commission's proposed action regarding the above reference parcel. Be advised, 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 May 23-24, 2012 meeting to be held in Sacramento, California.

The following is the State of California, Department of Transportation's ("Department") response to the objection set forth in your letter.

A serious appraisal was not performed because of the absence of severance damages in the appraisal.

The Department did consider and analyze severance damages in its appraisal. As noted in the appraisal:

"Severance damages refer to the loss in value of the remaining subject larger property after the acquisition and construction in the manner proposed. The subject larger parcel is an irregularly shaped parcel located along a busy thoroughfare with access and commercial development potential. In the after condition, the parcel is still irregular in shape and its highest and best use does not change. It will still be located along this busy thoroughfare and continue to have excellent

Attachment B

Mr. David F. Hubbard
April 19, 2012
Page 2

freeway influence. The remaining property will retain access on Lee Street and will have 90.20 linear feet of access along Tippecanoe Avenue. Based on the above analysis and the information obtained from the City of San Bernardino, it is estimated that there are no severance damages accruing to the remaining land by the construction in the manner proposed." The appraiser also states "Damages to the remainder have not been found. The subject larger parcel will continue to have the same highest and best use as in the before condition."

If you have any question, please feel free to contact John Tiller at (909) 383-5493.

Sincerely,



BRENDA MORRISON
Right of Way Project Delivery Manager
Right of Way
Department of Transportation
Caltrans - District 8

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA	08-SBD-10-PM-26.0/27.3 Expenditure Authorization 448129
<u>Location:</u>	Interstate 10 (I-10) in San Bernardino County in the cities of Loma Linda and San Bernardino at Tippecanoe Avenue
<u>Limits:</u>	From 0.3 mile west of Tippecanoe Avenue to 1.02 miles east of Tippecanoe Avenue
<u>Contract Limits:</u>	From 0.3 mile west of Tippecanoe Avenue to 0.6 mile east of Tippecanoe Avenue
<u>Cost:</u>	Programmed construction capital cost: \$17,806,000.00 Current right of way capital cost estimate: \$32,165,000.00
<u>Funding Source:</u>	Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy For Users, Transportation Equity Act for the 21 st Century, Interstate Maintenance Discretionary, City and Measure
<u>Number of Lanes:</u>	Existing: Eight lanes Proposed: Eight lanes plus one auxiliary lane in the eastbound direction
<u>Proposed Major Features:</u>	Modify/Construct westbound ramps, widen Tippecanoe Avenue and Redlands Boulevard, construct new local Street (Laurelwood Drive), construct soundwalls, drainage and landscape improvements
<u>Traffic:</u>	Existing I-10 (year 2009): between Waterman and Tippecanoe Avenues: 232,900 Annual Daily Traffic (ADT); between Tippecanoe and Mountain View Avenues: 225,500 ADT Proposed I-10 (year 2035): between Waterman and Tippecanoe Avenues: 353,100 ADT; between Tippecanoe and Mountain View Avenues: 330,100
PARCEL DATA	
<u>Property Owner:</u>	Allen L. Berry and Greta N. Berry Trustees of the Berry Trust
<u>Parcel Location:</u>	East of Tippecanoe Avenue, between Lee Street and Laurelwood Drive, in the city of San Bernardino. Assessor's Parcel Numbers 0281-151-19, -21, -50, -75
<u>Present Use:</u>	Vacant Lots
<u>Area of Property:</u>	61,058 Square Feet (SF)
<u>Area Required:</u>	Parcel 21765-1 - 6,311 SF - Fee Parcel 21765-2 - 3,792 SF - Fee Parcel 21765-3 - 520 SF - Fee Parcel 21765-4 - 1,068 SF - Temporary Construction Easement (TCE) Parcel 21765-5 - 2,387 SF - Public Utility Easement Parcel 21765-6 - 50 SF - TCE

COUNTY OF SAN BERNARDINO
CITY OF SAN BERNARDINO

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.



PARCEL
21765-4
(TCE)

HOSPITALITY LANE

PARCEL
21765-5
(PUE)

PARCEL
21765-1
(FEE)

COULSTON ST.

PARCEL
21765-3
(FEE)

HARRIMAN PLACE

AVE.

LAURELWOOD DR.

FERREE ST.

PARCEL
21765-2
(FEE)

TIPPECANOE

PARCEL
21765-6
(TCE)

ROUTE 10

ROSEWOOD DR.

TO RTE. 215

REDLANDS BLVD.

TO REDLANDS

CITY OF LOMA LINDA

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
08	SBd	10	26.36	1	4

Exhibit A

Exhibit A

COUNTY OF SAN BERNARDINO

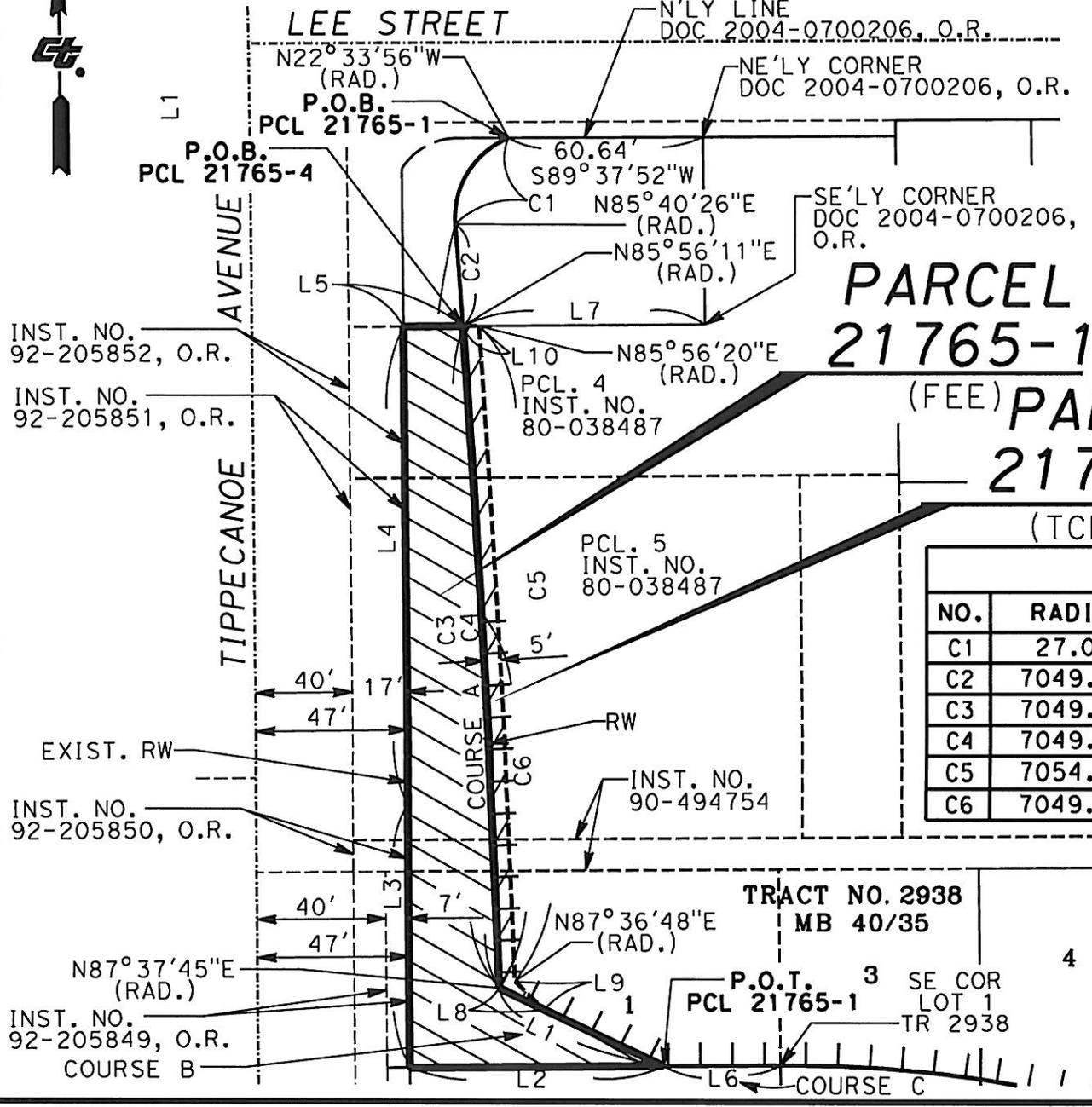
CITY OF SAN BERNARDINO

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NO.	DISTANCE	BEARING
L1	57.03'	S64°04'13"E
L2	79.09'	N89°34'15"E
L3	104.81'	N00°35'51"W
L4	128.53'	N00°35'45"W
L5	18.54'	N89°33'52"E
L6	36.44'	S89°34'15"W
L7	75.45'	S89°33'52"W
L8	15.69'	S64°04'13"E
L9	12.89'	N45°29'03"W
L10	5.01'	S89°33'52"W

NO.	RADIUS	DELTA	LENGTH
C1	27.00'	71°45'38"	33.82'
C2	7049.00'	00°15'45"	32.29'
C3	7049.00'	01°57'19"	240.56'
C4	7049.00'	01°41'34"	208.26'
C5	7054.00'	01°40'27"	206.13'
C6	7049.00'	00°57'35"	118.06'



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

**RIGHT OF WAY
 RESOLUTION OF NECESSITY**

EXHIBIT "B"

NOT TO SCALE

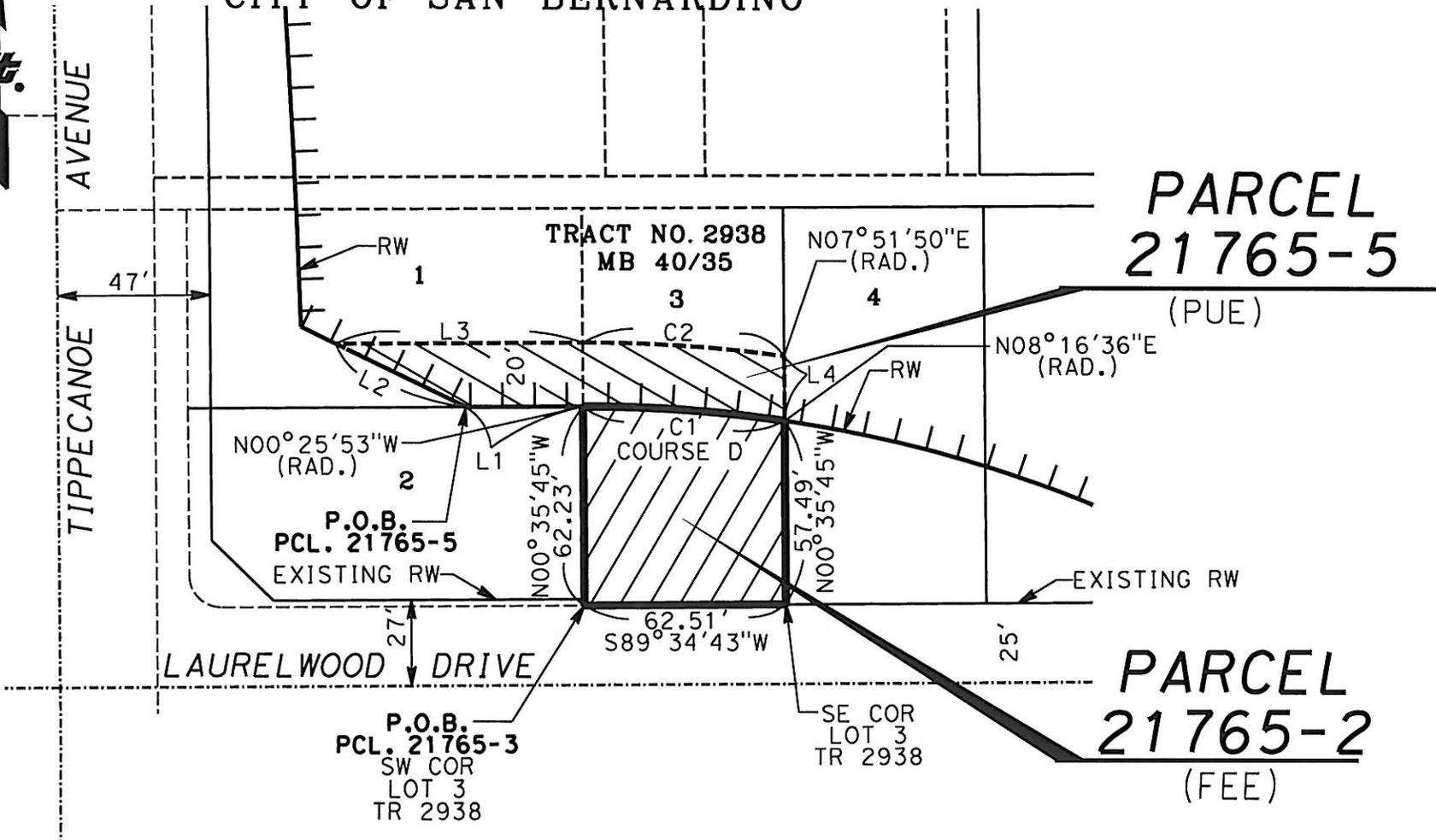
DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
08	58g	10	28.36	2	4

Exhibit B

Exhibit B

COUNTY OF SAN BERNARDINO
CITY OF SAN BERNARDINO

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LINE DATA TABLE

NO.	DISTANCE	BEARING
L1	36.44'	N89°34'15"E
L2	41.34'	N64°04'13"W
L3	76.80'	N89°34'15"E
L4	20.23'	N00°35'45"W

CURVE DATA TABLE

NO.	RADIUS	DELTA	LENGTH
C1	413.00'	08°42'29"	62.77'
C2	433.00'	08°17'43"	62.69'

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION
**RIGHT OF WAY
RESOLUTION OF NECESSITY**
EXHIBIT "C"
NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
08	SBd	10	26.36	3	4

Exhibit C

Exhibit C