TAB 3

State of California
DEPARTMENT OF TRANSPORTATION

California State Transportation Agency

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: October 8, 2014

Reference No.: 2.4a.(2)
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-21275 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 owners are contesting the Resolution and have requested an appearance before the Commission. The primary concerns and objections expressed by the property owners are: that the proposed project is not planned or located in the manner that will be most compatible with greatest public good and least private injury, that the property sought to be acquired is not necessary for the project, and that a valid offer has not been made pursuant to Government Code 7267.2. The owners' 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. Adoption of the Resolution will not interrupt the Department's 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.

Extensive discussions have been ongoing between the property owners and the Department to address and resolve the issues. Progress has been made but in order to keep the project schedule, the Department is requesting that this appearance proceed to the October 8, 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-21275 - VCJT, LLC, a California Limited Liability Company, et al.
07-LA-5-PM 0.70 - Parcel 77047-1, 2, 3; 79887-1, 2, 3 - EA 215929.
Right of Way Certification Date: 10/31/14; Ready To List Date: 11/26/14. Freeway - widen Interstate 5 to add High Occupancy Vehicle and mixed-flow lanes. Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, temporary easements for construction purposes, and temporary easements for demolition purposes to remove all those certain improvements which straddle the right of way line. Located in the city of La Mirada at 14334 and 14370 Firestone Boulevard. Assessor Parcel Numbers 7003-006-007, -010.

Attachments:
Attachment A - Project Information
Exhibit A1 and A2 - Project Maps
Attachment B - Parcel Panel Report
Exhibit B1 through B3 - Parcel Maps
Attachment C - Owners' Letters of Objection dated April 14, 2014 and April 15, 2014

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 Counties in the cities of Buena Park, La Mirada, Santa Fe Springs and Cerritos
Limits:	Between Artesia Boulevard 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, Interregional Improvement Program, Regional Improvement Program, Transportation Equity Act for the 21st Century, Local Proposition C, State Highway Operation Protection Program, Congestion Mitigation Air Quality
Number of Lanes:	Existing: three mixed-flow lanes in each direction Proposed: four mixed-flow lanes plus one High Occupancy Vehicle (HOV) lane in each direction
Proposed Major Features:	1) Re-align and widen I-5 mainline to add one mixed-flow lane, one HOV lane, a ten-foot outside shoulder, and a 14 foot inside shoulder in each direction 2) Reconfigure the interchange at Valley View Avenue to a modified tight diamond type 3) Re-align Firestone Boulevard frontage road 4) Replace Mainline/Coyote Creek Bridge and North Firestone Boulevard/Coyote Creek Bridge 5) Replace the Valley View Avenue Overcrossing 6) Grade Separate railroad crossing at Valley View Avenue 7) Construct Valley View Avenue/South Firestone Boulevard 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 corridor from the Orange County line to Interstate 605 to increase capacity for the I-5 freeway which would improve mobility for goods and people across California, and improve safety and access to the freeway. This project is one of six segments in the I-5 Ultimate Corridor Project, which 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 was approved on June 28, 2007 and the Environmental Document for the project was approved on December 31, 2007. The construction cost is currently estimated at $175 million for this project. This project is programmed under the State Transportation Improvement Program with funding from Federal, State and local funds. The Right of Way Certification date is currently targeted for October 31, 2014, Ready to List Date is November 26, 2014, and advertising is targeted for February 2015.

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.

Additionally the I-5 Corridor Major Investment Study (I-5 MIS) was used to develop a cost-effective, multimodal transportation improvement strategy to increase capacity and improve safety and efficiency, while protecting the best interests of the adjacent communities. This study was completed in July of 1998 and included the following stakeholders:

- Los Angeles County Metropolitan Transportation Authority
- I-5 Consortium Cities Joint Powers Authority

- California Department of Transportation
- Federal Highway Administration (FHWA)
- Federal Transit Administration

As previously stated, the Project Report was approved on June 28, 2007 (I-5 Corridor Project between Orange/Los Angeles County lines and Route 605) and the Environmental Document (Environmental Impact Report/Environmental Impact Statement) was approved on December 31, 2007 for the project.

Various studies had been conducted as far back as in the 1990's in planning for the I-5 Corridor project. Listed below are formal studies conducted.

- Value Engineering Report, June 1993
- I-5 MIS, December 1995 - July 1998
- Interim HOV Project Study Report on Route 5 Freeway between Route 91 and Route 605, March 1996
  Supplemental Project Study Report on Route 5 Freeway between Route 91 and Route 19, February 1998
- Feasibility Study Report, January 22, 1999
- Project Report, I-5 Interim HOV Facility, December 1999
- Project Report, Route 5/Carmenita Road Interchange, March 2002
- Value Analysis (VA) Study Report, I-5 Corridor Improvements, January 2006

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

a) No Build Alternative – This alternative would retain the existing roadway configuration. If no improvements are made there will be further deterioration. This alternative was not acceptable to all stakeholders, as it only prolongs the existing safety, traffic congestion, and operation problems for the region. As a result, the No Action alternative was rejected as it does not address the purpose and need for the proposed project.

b) Interim HOV Facility – This project features ultimate improvements because an interim project would have too many throwaway components, which are not supported by FHWA.

c) Alternatives with Continuous Nonstandard Mainline Features – Nonstandard features on the mainline facility will not be considered on a general and continuous basis. Rather, nonstandard mainline features in specific locations will be considered for inclusion in the currently proposed alternatives on a case-by-case and specific location basis. Such nonstandard feature considerations will be based on potential

community benefits versus potential adverse impacts to the corridor traffic and future planning.

d) Major Investment Study Locally Preferred Alternative (MIS LPA) – The MIS LPA was the initial conceptual design from which the Modified MIS alternative was derived. Similarly, the Modified MIS alternative was further revised to arrive at the VA Alternative. Because many comments and revisions have been incorporated since the MIS Document, the MIS LPA in its original form is no longer a viable alternative.

c) Alternatives to add two or three mixed-flow lanes, rather than HOV lanes – These alternatives were rejected because they are inconsistent with applicable air quality plans for the region.

e) Elevated structures for HOV lanes – These alternatives in the MIS were rejected because of high capital cost, lack of local access, and broad community opposition.

f) Light Rail or Commuter trains – The alternative to construct light-rail or commuter trains to the median of I-5 was rejected due to the high cost and lack of logical termini. The proposed cross section is inconsistent with the improved section of the I-5 freeway directly to the south.

g) Modified MIS Alignment Alternatives – These alternatives are a derivative of the MIS Locally Preferred Alternative, 1998, and the Feasibility Study Report, 1999, to avoid long-term closures of Valley View Avenue and Carmenita Boulevard. These alternatives were not pursued as the recommended preferred alternative was more favorable in terms of right of way impacts and costs.

Most recently, the Department conducted an informal analysis of an alternate alignment requested by the property owners in which the proposed freeway alignment is shifted north within the vicinity of Coyote Creek and Valley View Avenue. This alternative was rejected as it would drastically increase right of way impacts.

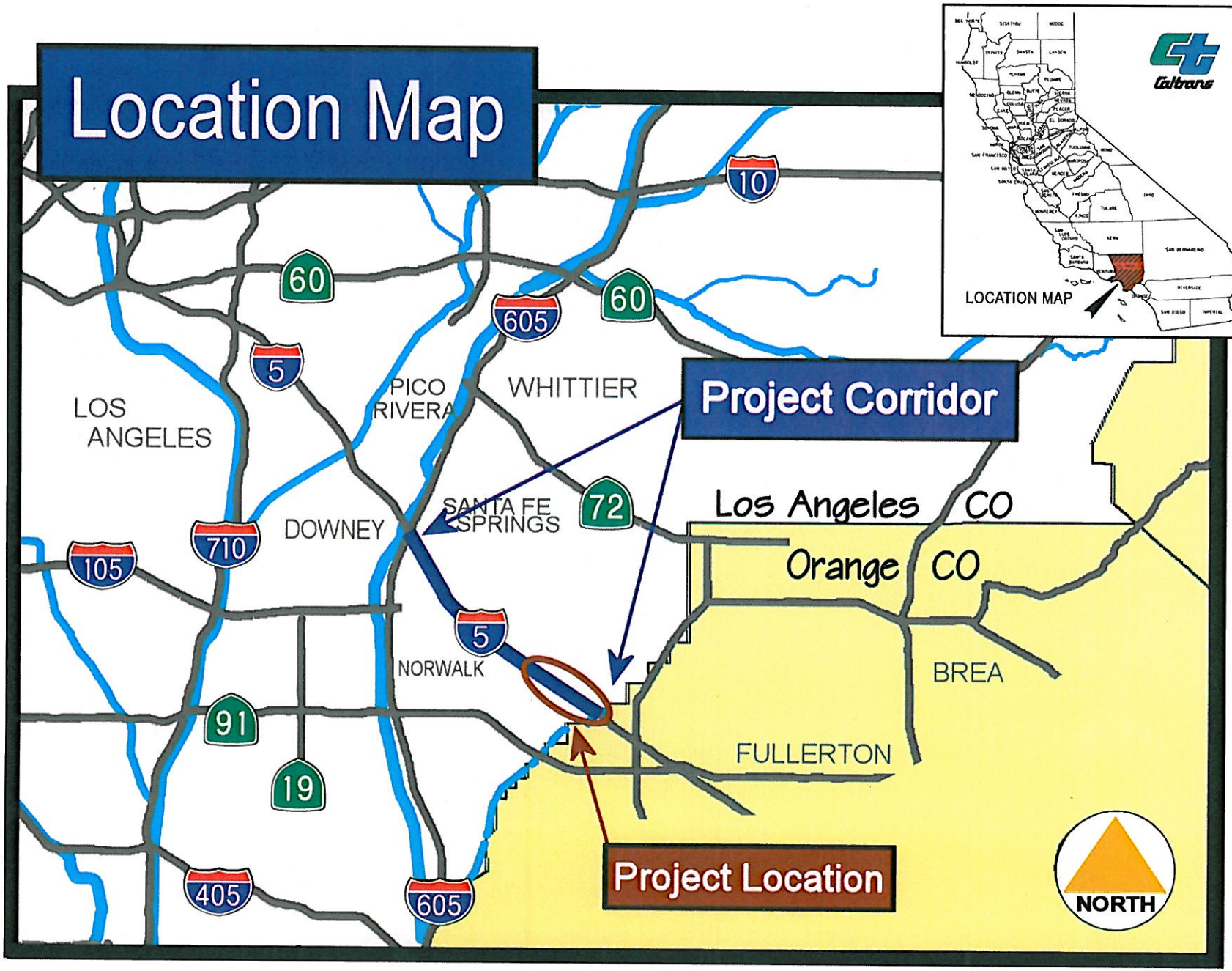


Exhibit A1

Exhibit A1

Parcel Location

Caltrans

segmtlesheet_parcel17614JCZepeda Sept2013

Exhibit A2

PARCEL PANEL REPORT

PARCEL DATA

Property Owners:	VCJT, LLC, a California limited liability company- represented by attorney Rick Rayl Firestone, LLC; Rose B. Stein, as Trustee of the Desiree Bridgette Stein Trust – 1991; Rose B. Stein, as Trustee of the David Michael Stein Trust – 1991; Rose B. Stein, as Trustee of the Zack Theo Stein Trust –1991; Rose B. Stein, as Trustee of the Estee Stanley Stein Trust –1991- formerly represented by attorney John Peterson, currently represented by attorney Eric V. Rowen
Parcel Location:	14372 Firestone Boulevard in the city of La Mirada (14334 & 14370 Firestone Boulevard per County Assessor data). Assessor's Parcel Numbers 7003-006-007, -010
Present Use:	Scrap metal recycling center and a metal and supplies warehouse. Four tenants reported: Star Scrap Metal Company Inc., Metal Depot Inc., Stein Scrap Metal and Starow Metal Company Inc.
Zoning:	C-F (Freeway Commercial) - New Zoning (2008)
Area of Property:	133,830 Square Feet (SF) (3.07 acres)
Area Required:	Parcel 77047-1: 42,708 SF - Fee Parcel 79887-1: 35,145 SF - Fee Parcel 77047-2: 3,364 SF - Temporary Construction Easement (TCE) Parcel 79887-2: 2,995 SF - TCE Parcel 77047-3: 11,030 SF - Temporary Demolition Easement (TDE) Parcel 79887-3: 424 SF - TDE

PARCEL DESCRIPTION

The larger parcel is located south of I-5 and easterly of Valley View Avenue in the city of La Mirada. The larger parcel is commonly identified as 14334 and 14370 or 14372 Firestone Boulevard or by the Los Angeles County Assessor's Parcel Numbers 7003-006-007, -010. The larger parcel is zoned C-F (Freeway Commercial) and is currently occupied by Star Scrap Metal Company Inc., Metal Depot Inc., Stein Scrap Metal and Starow Metal Company Inc.

The larger parcel encompasses a total of 3.07 acres (133,830 SF) and is improved as an industrial property with a warehouse and office with an associated asphalt concrete pavement area used for scrap metal storage and recycling. The project requires the demolition of all improvements. The remainder parcel is sufficient in size with adequate frontage and access to accommodate independent redevelopment once the construction is completed.

The project requires the acquisition of two fee parcels totaling 77,853 SF (parcels 77047-1 and 79887-1), two temporary easements for construction and staging purposes totaling 6,359 SF (parcels 77047-2 and 79887-2) and two temporary easements for demolition purposes totaling 11,454 SF (parcels 77047-3 and 79887-3) which are needed to remove all those certain improvements which straddle the right of way line.

NEED FOR THE SUBJECT PROPERTY

The subject property is needed to construct the widening of southbound I-5 to add mixed flow and HOV lanes to the main line freeway, necessitating the realignment of the southbound onramp from Valley View Avenue as well as the realignment of Firestone Boulevard, both of which directly impact the subject property. It is not possible to avoid impacts to this property.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met in Los Angeles on July 7, 2014. The Panel members included Rene Fletcher, Panel Chair, Department Headquarters (HQ's) Division of Right of Way and Land Surveys; Erick Solares, Department 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 owners at the meeting were David Stein, Andrew Hillas, and attorneys Eric Rowen, Lisa McCurdy and Katherine Contreras.

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 owners are: that the proposed project is not planned or located in the manner that will be most compatible with greatest public good

and least private injury, that the property sought to be acquired is not necessary for the project, and that a valid offer has not been made pursuant to Government Code Section 7267.2.

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

Owners Contend:
The project is not planned or located in a manner that is most compatible with the greatest public good and least private injury. The proposed acquisition creates an undue hardship on and substantial damage to the business on the subject property. The project could have been and can be economically designed to avoid the subject property by realigning and shifting I-5 to the north. This alternative should have been considered in depth to show the disparity in economic impacts on the businesses north of I-5 versus the preferred alternative which impacts the subject property.

Department Response:
The project is planned and located in a manner that will be most compatible with the greatest public good and least private injury. The Department conducted an analysis of the alternate alignment requested by the property owners. The results of the Department's analysis concluded that shifting the alignment to avoid the subject property would impact a minimum of 16 additional properties, and the removal of a railroad spur track. Some of these properties are improved with multi-story business complexes with many tenants. The concept of "greatest public good least private injury" in part considers the total number of displacements and the total land area that must be acquired for the project. This segment of the I-5 Corridor Project as planned will acquire 23 acres as opposed to approximately 46 acres that would be necessary if the alignment were shifted to avoid the subject property. Additionally, although not analyzed, shifting the alignment to the north would undoubtedly impact other segments of the I-5 Corridor which have been constructed, or are currently under construction.

Overall the project is planned to reduce traffic impacts on the surrounding communities as well as improving safety and air quality, while considering greatest public good and least private injury.

Owners Contend:
The property sought to be acquired is not necessary for the project. The Department chose to acquire the subject property due to pressure from the City of La Mirada who facilitated the "partnership" by planning the alignment.

Department Response:
The property sought to be acquired is necessary for the project. As previously stated the proposed project will add a mixed-flow lane and a HOV lane in each direction of travel on I-5. As a result, the subject property is directly impacted by the realignment of the southbound onramp from Valley View Avenue, and the realignment of Firestone Boulevard. The

Department's design facilitates the overall increase in capacity for the I-5 freeway in order to improve mobility for motorists and improve safety and access. The proposed alignment was a result of a partnership effort between Los Angeles County Metropolitan Transportation Authority, the I-5 Consortium Cites Joint Powers Authority, and the Orange County Transportation Authority.

Owners Contend:
The Department failed to provide timely relocation assistance and failed to find a suitable location for its business.

Department Response:
The Department's relocation assistance efforts began in July of 2013 and are ongoing. In addition, the Department has also contracted with a relocation assistance consultant at the behest of the owners' former attorney in November of 2013 to locate a suitable replacement site, and efforts are being made to extend or renew this contract. The owners were also supplied with a list of sites the Department holds as possible replacement sites for the owners businesses. The Department is still actively pursuing a suitable replacement site for the owners.

Owners Contend:
The offer made contemplates a partial acquisition. The owners believe the loss of the structure and substantial diminished size of the remainder parcel eviscerates any practical or economic use of the subject property and would render the remainder as an uneconomic remnant. Therefore, a full acquisition of the property would be more appropriate than a partial acquisition.

Department Response:
The Department presented the owners with a primary partial acquisition offer and an option for an alternate full acquisition offer. One owner formally requested the Department to acquire the entire property, however the other owner did not. The Department is precluded from acquiring the entire property until formally requested by all owners. Therefore, the Department's pursuit of the partial acquisition is reasonable.

The Department at the behest of counsel for the owners has made an offer for the full acquisition to all the owners and their respective attorneys, in writing by certified mail on July 8, 2014 with a formal request for their consent to allow the Department to condemn the entire property. To date, the Department has not received the owners acceptance of the offer for a full acquisition nor have we received their express written unqualified consent to condemn the entire property.

Owners Contend:
The owners have not received an offer for improvements pertaining to the realty, an essential component of the offer required by Government Code Section 7267.2 and thus not in compliance with requirements of Code of Civil Procedure Section 1245.230.

Department Response:
On June 27-28, 2013 the owners were presented an offer for improvements pertaining to the realty, thus satisfying the requirements of Government Code Section 7267.2 and Code of Civil Procedure Section 1245.230.

Owners Contend:
No offer of just compensation has been made for furniture, fixtures, and equipment. The Department has failed to fulfill its obligations, and it cannot adopt a Resolution of Necessity. (See Government Code Section 7267.2)

Department Response:
On April 21, 2014 via certified mail, the owners were presented with an offer of compensation for furniture, fixtures, and equipment thus satisfying Government Code Section 7267.2. Receipt of this offer was confirmed by the Department however, the owners' attorney stated that they still have reservations regarding the thoroughness of the Department's offer. It was stated that the Department's relocation process would re-verify items pertaining to reality versus those items that would be moved. Negotiations will continue to facilitate relocation of furniture, fixtures, equipment, and inventory including arranging for storage of moveable items.

Owners Contend:
No offer of just compensation has been made for the entire property. The remainder will exist as an uneconomic remnant, meaning the Department is required to make an offer for the entire property.

Department Response:
The Department has made an offer for a full acquisition to the all owners and their respective attorneys, in writing by certified mail on July 8, 2014 with a formal request for their consent to allow the Department to condemn the entire property. To date, the Department has not received the owners' acceptance of the offer for a full acquisition nor have we received their express written unqualified consent to condemn the entire property.

Owners Contend:
The Department has failed to negotiate in good faith. As a result of its failure to make a proper initial offer of just compensation as set forth above, the Department has likewise failed to fulfill its obligation to negotiate in good faith. (See Government Code Section 7267.1)

Department Response:
The Department has negotiated in good faith and the initial offer of just compensation was properly made. The Department began meeting with owners in September 2011. The Department has been in active contact with the owners, including personal meetings, telephonic meetings, electronic and postal mailings. The Department remains ready and willing to engage in continued negotiations. The purported failure to make a proper initial offer does not preclude

the good faith dealings which have occurred to date. Thus, there is no failing to negotiate in good faith per Government Code section 7267.1.

DEPARTMENT CONTACTS

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

Type of Contact	Number of Contacts
Mailing of information	10+
E-Mail of information	50+
Telephone contacts	40+
Personal / meeting contacts	11

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 owners have 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 this 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 7, 2014

Rene Fletcher, HQ's Division of Right of Way and Land Surveys, Panel Chair
Erick Solares, 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

David Stein, Property Owner Representative
Andrew Hillas, Property Owner Representative
Eric Rowen, Attorney for the Property Owner
Lisa McCurdy, Attorney for the Property Owner
Katherine Contreras, Attorney for the Property Owner
Daryl Baucum, Veritext Legal Solutions, Court Reporter/Stenographer for Owner

Carrie Bowen, District 7, District Director
Karl Dreher, District 7, Acting, Deputy District Director, 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

Existing Conditions

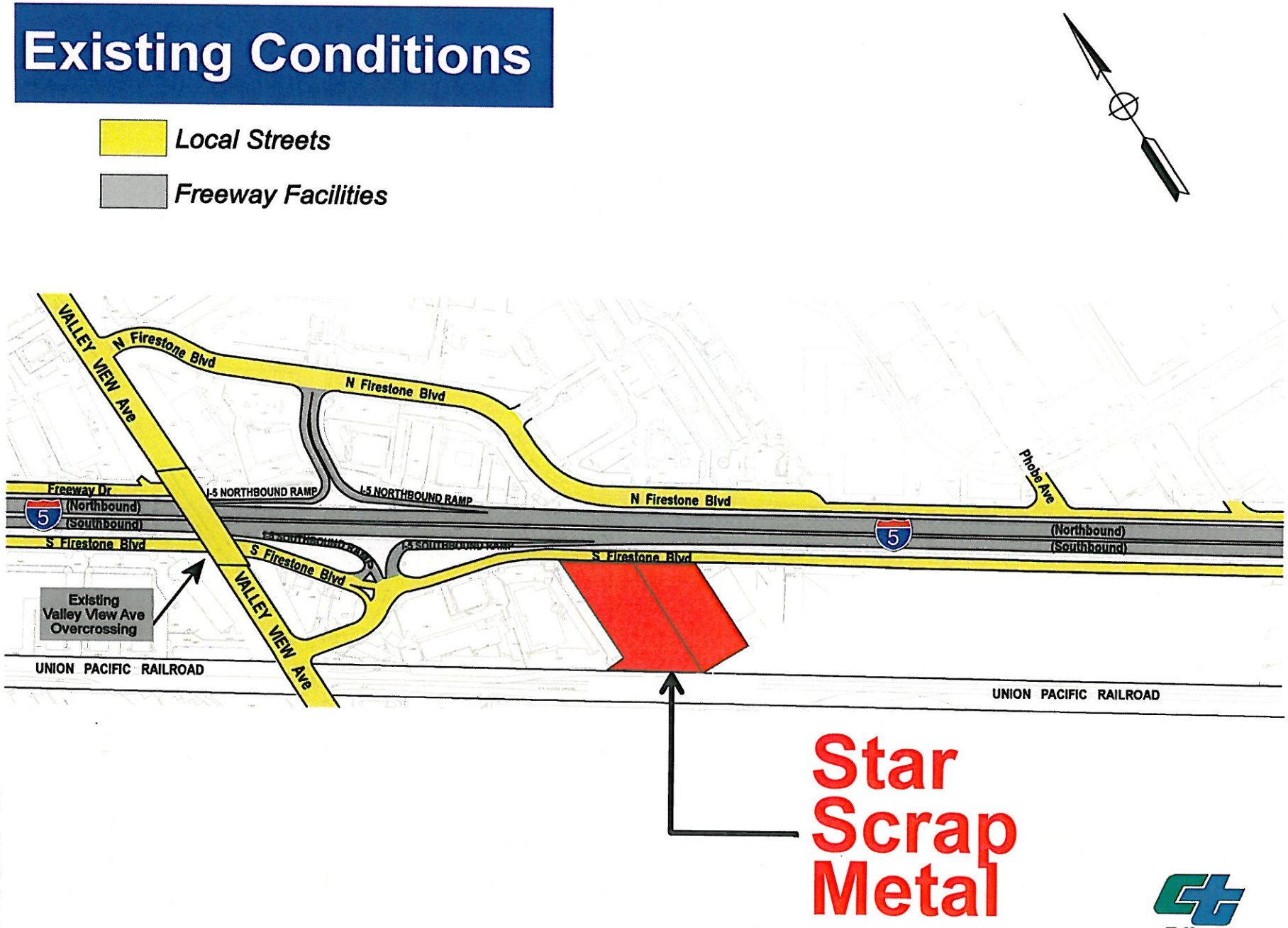


Exhibit B1

Caltrans

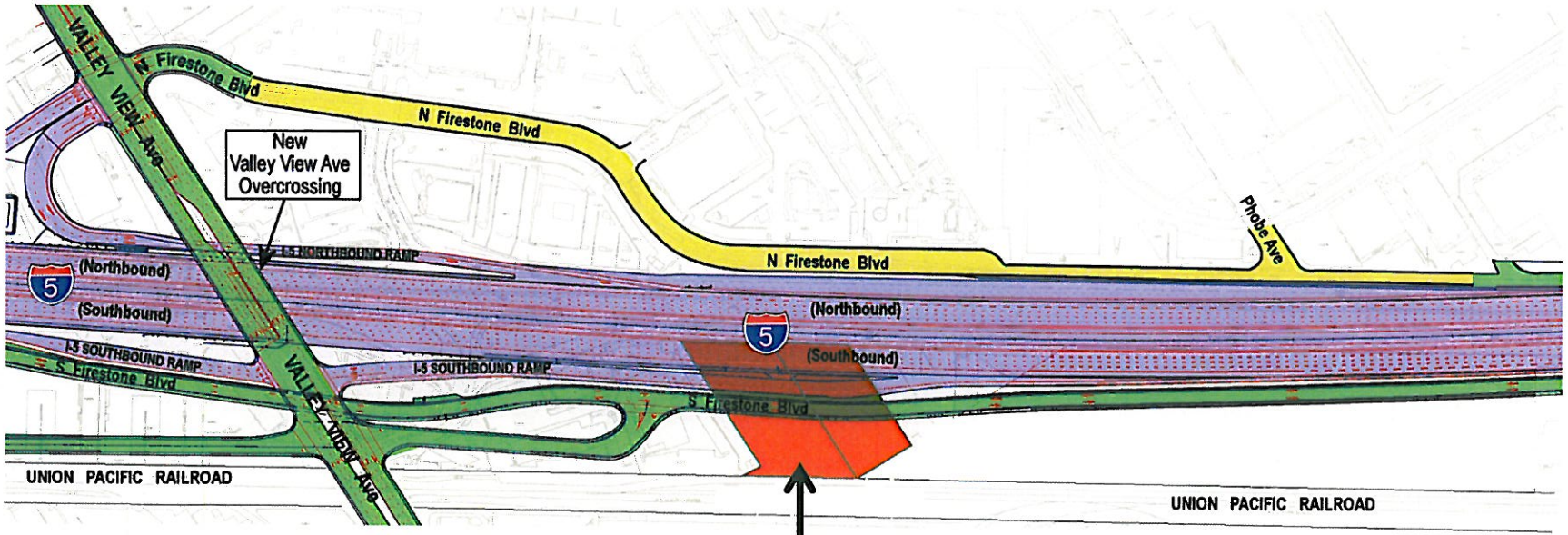
Exhibit B1

Project Proposed Conditions

Freeway Improvements

Local Street Improvements

Existing Local Streets



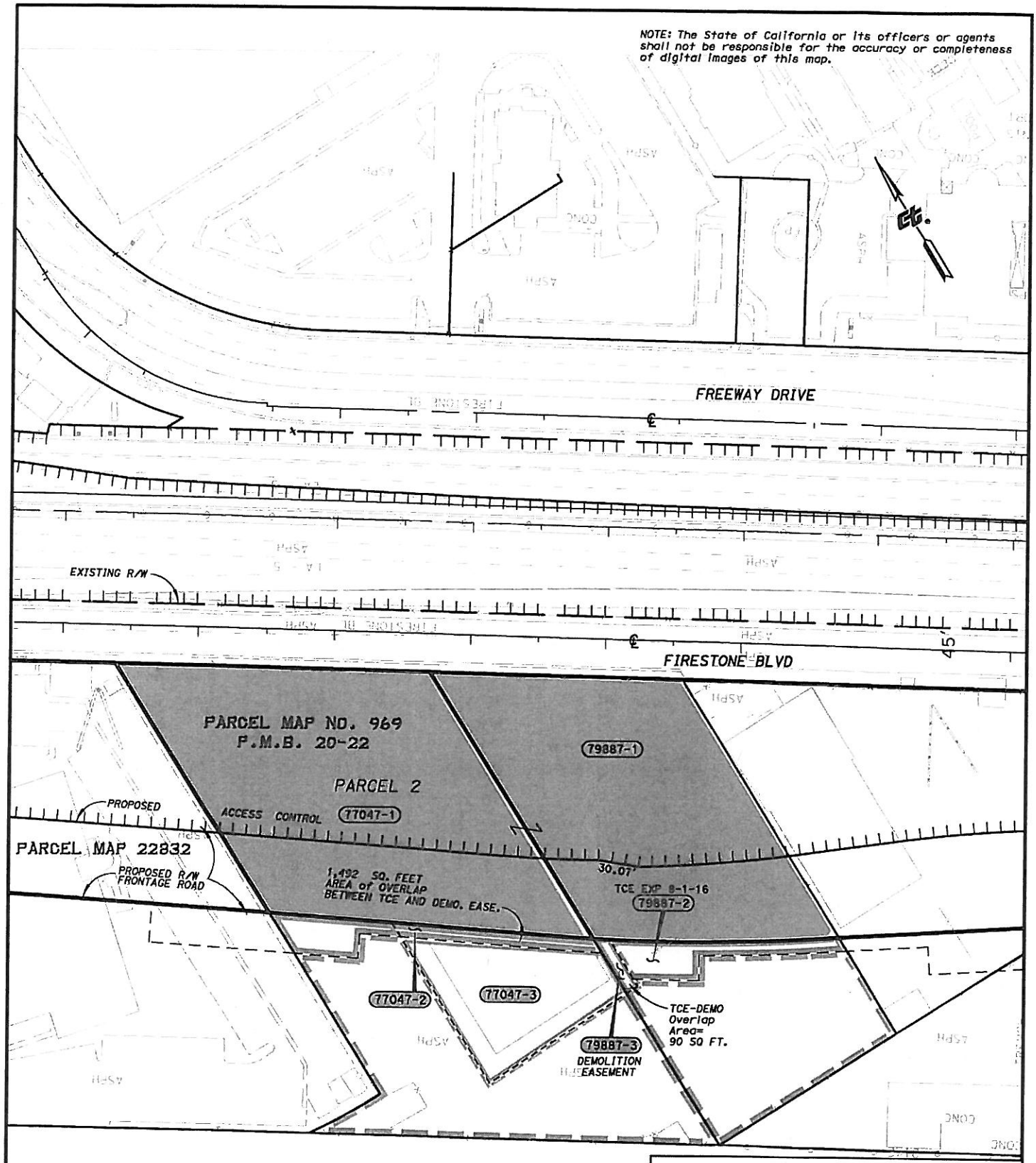
Star Scrap Metal

Caltrans

seg 2 77605 proposed parcel/CZepeda

Exhibit B2

Exhibit B2



CITY OF LA MIRADA
COUNTY OF LOS ANGELES

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-6 DATE:07-16-14

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
7	LA	5	0.70	1	1

Exhibit B3

Forwarded to:
Right of way
4/17/14
Copied to:
Stephen Maller

PETERSON LAW GROUP

PROFESSIONAL CORPORATION
SUITE 290
19800 MACARTHUR BOULEVARD
IRVINE, CALIFORNIA 92612

TELEPHONE (949) 955-0127
FACSIMILE (949) 955-9007
WWW.PETERSONLAWGROUP.COM

Via Email and
U.S Express Mail

April 14, 2014

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

Re: State of California Department of Transportation
Proposed acquisition of Parcel No. 77047-1, 2, 3; 79887-1, 2, 3
Project #0700001832
APNs 7003-006-010 and 7003-007-007

Honorable Commissioners:

We represent Firestone, LLC and Rose Starow, Trustee aka Rose B. Stein, Trustee ("Co-Owners") with respect to the referenced property at 14334 and 14370 Firestone Blvd., La Mirada, California ("Subject Property") which the State of California Department of Transportation ("State") proposes to acquire. We write this letter solely on behalf of the Co-Owners referenced and not on behalf of any other co-tenant in interest. Please make this letter part of the record and noted as an objection to the adoption of a Resolution of Necessity referenced in your Notice of Intent dated April 1, 2014. We request the right to appear and be heard at the CTC meeting to be held on May 21-22, 2014.

The Co-Owners are dissatisfied with the amount offered and reserve the right to seek greater compensation, but that is not the basis for this objection. This objection is principally based on the (B) and (C) required findings set forth in the Notice of Intent. Specifically (i) the project is not planned or located in a manner that will be compatible with the least private injury, and (ii) the property sought to be acquired is not necessary for the project.

First, the project could have been and can be economically designed to avoid a substantial taking of the Subject Property, much as was done for properties to the north including LeFiell and the Thompson RV Center both in Santa Fe Springs. The proposed taking creates

Attachment C

undue hardship on and substantial damage to the Co-Owners and the businesses their principal operates on the Subject Property. The Subject Property and the businesses operated thereon by the principal of the Co-Owners are uniquely situated to benefit from the "grandfathered" status of the permitted land uses on the Subject Property. This land use status allows the Star Scrap Metal Co. business to operate and thrive thereon as a family metal business that continues the operations that began there by the family over six decades ago. The businesses cannot be easily relocated, if at all, and the land use restrictions in place in nearby areas may make any relocated operations impossible, or, even if physically possible, not economically viable. The balancing of costs that would be incurred by the State by adjusting the take area had the project been properly planned initially are outweighed by the losses to be suffered by the Co-Owners and the businesses their principal operate at the Subject Property as a result of the proposed taking.

Second, the offer made contemplates a part take. The part take offer contemplates a demolition of the entire structure on the property, including the portion of the structure on the remainder. The Co-Owners believe the loss of the structure and substantially diminished size of the remainder parcel eviscerates any practical or economic use of the Subject Property for their business purposes. If so, this would render the remainder as an uneconomic remnant. The Co-Owners' evaluation is ongoing, but it is not complete as of the deadline to submit this objection. This is critical because if continued use of the remainder for the Star Scrap Metal business is not viable, a full taking of the property would be more appropriate than a partial taking. We expect this evaluation to be complete by May.

Third, the Co-Owners have not yet received an offer for improvements pertaining to the realty, an essential component of the offer required by Government Code section 7267.2. Accordingly the State has not yet complied with the requirements of CCP section 1245.230. This matter should be postponed, and no notice of hearing should be given, until such an offer has been made.

For the reasons stated, we request that this matter be put over to at least your next hearing to afford the Co-Owners the opportunity to complete the required analysis regarding full vs. part take and for a proper and complete offer to be made. If the matter is not continued as requested, the Co-Owners ask that the Resolution of Necessity not be adopted.

Thank you for your consideration of this. Please let us know at the earliest time if this matter will be postponed. If not, we reiterate our request to appear and be heard.

Very truly yours,

John S. Peterson

JSP:m

cc: Heriberto Salazar
Andrew P. Nierenberg

NOSSAMAN LLP

ATTORNEYS AT LAW

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Suite 1800
Irvine, CA 92612
T 949.833.7800
F 949.833.7878

Rick E. Rayl
rrayl@nossaman.com

RECD BY CTC
APR 21 2014

VIA E-MAIL, FACSIMILE, U.S. MAIL & HAND DELIVERY

April 15, 2014

Andre Boutros
Executive Director
California Transportation Commission
1120 N Street, Room 2233
Sacramento, CA 95814
(VIA HAND DELIVERY)

Andre Boutros
Executive Director
California Transportation Commission
P.O. Box 942873, mail Station 52
Sacramento, CA 94273-0001
(VIA U.S. MAIL)

Forwarded To: Right of way 4/21/14

Copied to: Stephen Maller

Re: Project #0700001832 / VCJT, LLC / Parcel 77047-1, 2, 3; 79887-1, 2, 3

Dear Executive Director:

We represent Starow Metal Company, Inc. and VCJT, LLC, part owners of the property located at 14372 E. Firestone Boulevard, La Mirada, California, which is the subject of a Notice of Intent to Adopt Resolution of Necessity, dated April 1, 2014. The Notice references Project #0700001832, and Parcels 77047-1, 77047-2, 77047-3, 79887-1, 79887-2, and 79887-3. We hereby object to the adoption of a Resolution of Necessity on the following grounds:

1. **No offer of just compensation has been made for furniture, fixtures, and equipment**. California law requires that an offer of just compensation be made before the government adopts a Resolution of Necessity. Here, the State has made an "offer," but that offer is deficient in that the offer fails completely to include compensation for the furniture, fixtures, and equipment ("FF&E") that the State intends to take. The owners have been promised an appraisal/offer for the FF&E for some time, but as of the date of this letter, no such offer has been made. As such, the State has failed to fulfill its obligations, and it cannot adopt a Resolution of Necessity. (See Gov. Code § 7267.2.)

2. **No offer of just compensation has been made for the entire property.** The offer made includes compensation for only part of the property. However, the parts the State plans to take will render the remaining property an uneconomic remnant. In particular, the taking will result in the demolition of the entirety of the building located on the property, despite the fact that much of the building is not located within the take area. Moreover, the taking and the construction of the project in the manner proposed will leave the entire property unusable for several years. Finally, even once construction is finally complete, the taking will leave a small, irregularly-shaped parcel subject to massive setback requirements that leave it with little, if any, development possibilities. In short, the remainder will exist as an uneconomic remnant, meaning

Attachment C

the State is required to make an offer for the entire property. (See Gov. Code § 7267.7 ["If the acquisition of only a portion of a property would leave the remaining portion in such a shape or condition as to constitute an uneconomic remnant, the public entity shall offer to acquire the entire property if the owner so desires."].) By failing to make an offer for the entire property, the State has again failed to make a proper offer of just compensation.

3. **The State has failed to negotiate in good faith.** As a result of its failure to make a proper initial offer of just compensation as set forth above, the State has likewise failed to fulfill its obligation to negotiate in good faith. With respect to FF&E, the State has not allowed for any negotiation, since it still has not made any offer for FF&E. With respect to the entire property, negotiations have not been possible because the State has not admitted that it is required to make an offer for the entire property. As a result, no meaningful negotiations to acquire the property without the need to resort to condemnation have occurred. (See Gov. Code § 7267.1.)

As a result of these deficiencies, we hereby object to the adoption of a Resolution of Necessity, and we request that this letter be read into the record at the public hearing concerning the State's plan to adopt a Resolution of Necessity. Moreover, we reserve the right to appear at the hearing to provide further evidence and documentation concerning these and other applicable objections.

Very truly yours,

Rick Rayl

Rick E. Rayl
of Nossaman LLP

TRANSPORTATION COMMISSION
RESOLUTION NO.

C-21275

CALIFORNIA TRANSPORTATION COMMISSION
RESOLUTION OF NECESSITY
TO ACQUIRE CERTAIN REAL PROPERTY
OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN
HIGHWAY 07-LA-5-PM 0.70 PARCEL 77047-1, 2, 3; 79887-1, 2, 3
OWNER: VCJT, LLC, a California Limited Liability Company, et al.

Resolved by the California Transportation Commission after notice (and hearing) pursuant to Code of Civil Procedure Section 1245.235 that it finds and determines and hereby declares that:

The hereinafter described real property is necessary for State Highway purposes and is to be acquired by eminent domain pursuant to Streets and Highways Code Section 102;

The public interest and necessity require the proposed public project, namely a State highway;

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

The property sought to be acquired and described by this resolution is necessary for the public project;

The offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record; and be it further

RESOLVED by this Commission that the Department of Transportation be and said Department is hereby authorized and empowered;

APPROVED AS TO FORM AND PROCEDURE

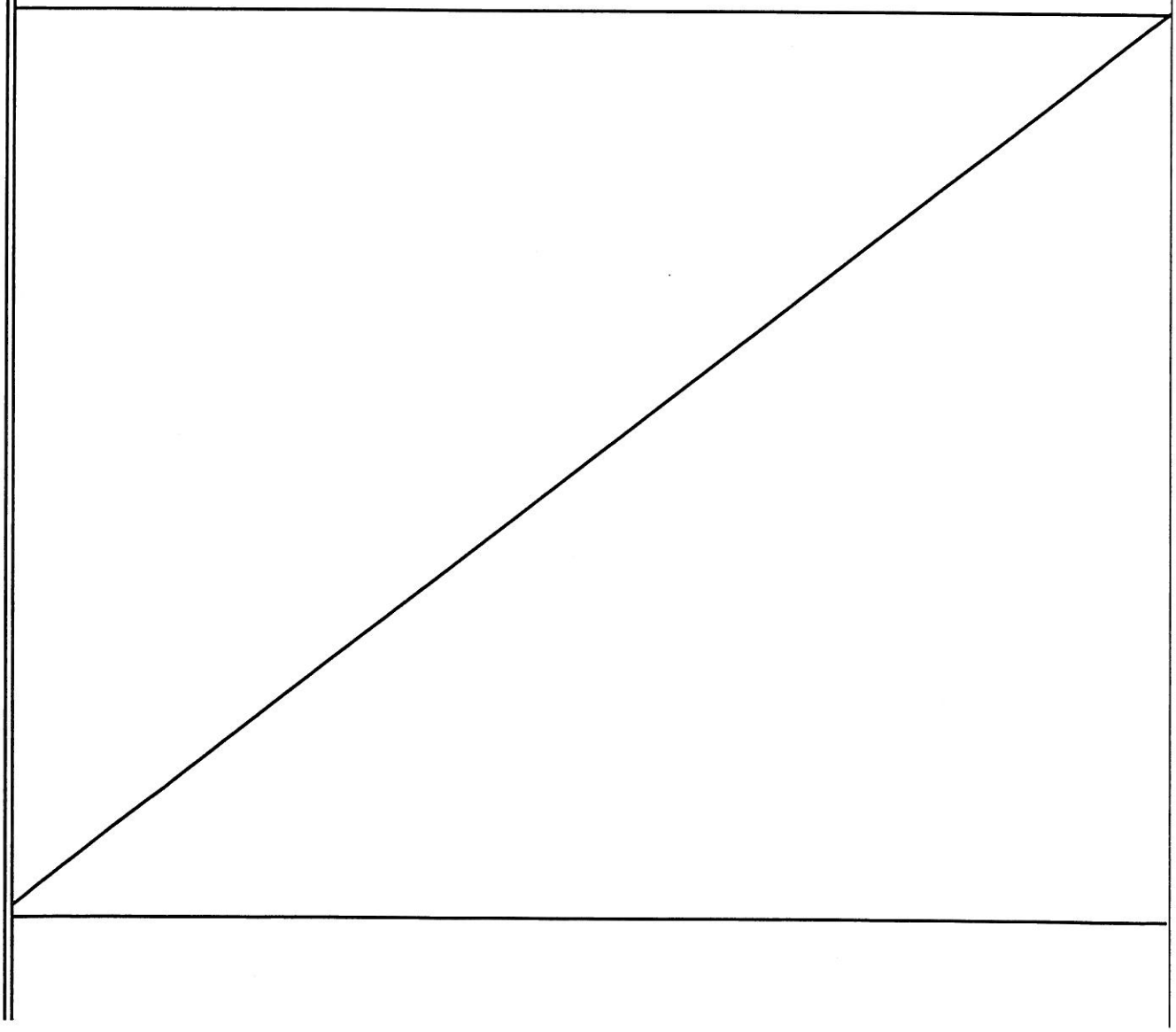
Attorney, Department of Transportation

APPROVAL RECOMMENDED

DIVISION OF RIGHT OF WAY

To acquire, in the name of the People of the State of California, in fee simple absolute, unless a lesser estate is hereinafter expressly described, the said hereinafter described real property, or interests in real property, by condemnation proceeding or proceedings in accordance with the provisions of the Streets and Highways Code, Code of Civil Procedure and of the Constitution of California relating to eminent domain;

The real property or interests in real property, which the Department of Transportation is by this resolution authorized to acquire, is situated in the County of Los Angeles, State of California, Highway 07-LA-5 and described as follows:



TITLE SHEET
(Resolution of Necessity Description)

District	County	Route	Postmile
07	LA	5	0.70

Project ID 0700001832

Legal descriptions for the parcels listed below are attached.

This document consists of a total of 5 pages. (including this title sheet)

Parcels in Legal Description: (insert parcel numbers)				
77047-1				
79887-1				
77047-2				
79887-2				
77047-3				
79887-3				

The attached real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

Signature _____
Professional Land Surveyor

Date July 22, 2014

PROFESSIONAL LAND SURVEYOR
George L. Prida
Exp: 9/30/2014
PLS 9131
STATE OF CALIFORNIA

RESOLUTION OF NECESSITY DESCRIPTION

PARCEL 77047-1 and 79887-1

For freeway purposes, that portion of land in the City of La Mirada, County of Los Angeles, State of California, described in two deeds recorded on May 25, 2007 as Instrument Numbers 20071278708 and 20071278709 of Official Records, in the Office of the Registrar–Recorder/County Clerk of said county, lying Northerly of the following described line to be herein referred to as "Line A":

COMMENCING at the centerline intersection of Firestone Boulevard, being 70.00 feet wide and Valley View Avenue being 100.00 feet wide, as shown on Parcel Map No. 22832, recorded in Book 250, Pages 44 through 48 inclusive of Parcel Maps, in said office;

THENCE along the centerline of Valley View Avenue, for the purposes of this description, having a bearing of N.00°35'36"W., 122.50 feet to the BEGINNING OF SAID DESCRIBED "LINE A";

THENCE S.50°19'11"E., 74.49 feet to a tangent curve concave Northeasterly and having a radius of 710.00 feet;

THENCE Southeasterly along said curve through a central angle of 19°06'24", an arc distance of 236.77 feet;

THENCE S.69°25'35"E., 175.64 feet to a non-tangent curve concave Southwesterly and having a radius of 825.00 feet;

THENCE Southeasterly along said curve from a tangent which bears S.67°10'25"E., through a central angle of 12°59'41", an arc distance 187.11 feet;

THENCE S.54°10'44"E., 551.71 feet to a tangent curve, concave Northeasterly and having a radius of 1,375.00 feet;

THENCE Southeasterly along said curve through a central angle of 07°38'22", an arc distance of 183.33 feet;

THENCE S.61°49'06"E., 261.98 feet to a tangent curve, concave Southwesterly and having a radius of 4,475.00 feet;

THENCE Southeasterly along said curve through a central angle of 02°23'26", an arc distance of 186.70 feet;

THENCE S.59°25'40"E., 504.93 feet to a tangent curve concave Northeasterly and having a radius of 28,025.00 feet;

THENCE Southeasterly along said curve through a central angle of 03°25'27", an arc distance of 1,674.84 feet;

THENCE S.62°51'07"E., 182.83 feet to a tangent curve concave Southwesterly and having a radius of 825.00 feet;

THENCE Southeasterly along said curve through a central angle of 05°27'36", an arc distance of 78.62 feet;

THENCE S.57°23'30"E., 98.58 feet to a point that is 3.03 feet measured along the prolongation of the most Westerly boundary line from the Northerly corner of Parcel 2, as shown on Parcel Map No. 19710, recorded in Book 244, Pages 56 through 58 inclusive of Parcel Maps, in said office, said point being the END OF DESCRIBED "LINE A".

TOGETHER WITH all of the existing improvements which are located partially within and partially outside the boundaries of the above-described parcels.

Lands abutting said freeway shall have no right or easement of access thereto; provided, however, that part of the remaining lands of said parcel shall abut upon and have access to an adjoining frontage road which will be connected to the main thoroughfare of the freeway only at such points as may be established by public authority.

PARCEL 77047-2 AND 79887-2

For freeway purposes, a temporary construction easement, in, to, over and across that portion of land in the City of La Mirada, County of Los Angeles, State of California, described in two deeds recorded on May 25, 2007 as Instrument Numbers 20071278708 and 20071278709 of Official Records, in the Office of the Registrar–Recorder/County Clerk of said county described as follows:

COMMENCING at the Northeast corner of Parcel 2 as shown on Parcel Map No. 969 as shown on map recorded in Book 20, Page 22 of Parcel Maps, in said office;

THENCE along the Easterly line of said parcel 2, for the purposes of this description S.00°23'01"E., 220.47 feet to line "A" as described in hereinabove Parcel 77047-1 and 79887-1 having a course of "S.61°49'06"E, 261.98 feet," also being the POINT OF BEGINNING;

THENCE along said line "A," N.61°49'06"W., 23.82 feet to a tangent curve concave Northeasterly and having a radius of 1375.00 feet;

THENCE Westerly along said curve through a central angle of 07°38'22", an arc distance of 183.33 feet;

THENCE N.54°10'44"W., 213.83 feet to the Westerly line of Parcel 1 of said parcel map;

THENCE along said westerly line S.00°35'31"E., 34.79 feet;

THENCE S.54°10'44"E., 47.27 feet;

THENCE N.35°49'16"E., 18.00 feet;

THENCE S.54°10'44"E., 145.90 feet to a tangent curve concave Northeasterly having a radius of 1385.00 feet;

THENCE Easterly along said curve through a central angle of 01°21''37", an arc distance of 32.88 feet to the Westerly line of said parcel 2;

THENCE along said Westerly line S.00°36'11"E., 21.92 feet to a non-tangent curve concave Northeasterly and having a radius of 1,403.00 feet;

THENCE Easterly along said curve from a tangent which bears S.56°03'12"E., through a central angle of 02°26'46", an arc distance of 59.90 feet;

THENCE N.31°30'02"E., 18.00 feet to a non-tangent curve concave Northerly and having a radius of 1,385.00 feet;

THENCE Easterly along said curve from a tangent which bears S.58°59'58"E., through a central angle of 03°19'08", an arc distance of 80.23 feet;

THENCE S. 61°49'06"E., 29.26 feet to said Easterly line of said parcel 2;

THENCE along said Easterly line, N.00°23'01"W, 11.39 feet to the POINT OF BEGINNING.

TOGETHER WITH all of the existing improvements which are located partially within and partially outside the boundaries of the above-described parcels.

The above described parcel of land is to be used for temporary construction purposes and incidents thereto in connection with the construction of Route 5 freeway project designated 07-LA-5-PM 0.70 on maps in the Office of the Department of Transportation, State of California, at Los Angeles, California, and the rights to the above described temporary easement shall cease and terminate on August 1, 2016. Said rights may also be terminated prior to the above date by STATE upon notice to OWNER.

PARCEL 77047-3 AND 79887-3

For freeway purposes, a temporary easement for the purposes of removing existing improvements, in, to, over and across that portion of land in the City of La Mirada, County of Los Angeles, State of California, described in two deeds recorded on May 25, 2007 as Instrument Numbers 20071278708 and 20071278709, Official Records in the Office of the Registrar–Recorder/County Clerk of said county described as follows:

COMMENCING at the Northwest corner of Parcel 1 as shown on Parcel Map No. 969 as shown on map recorded in Book 20, Page 22 of Parcel Maps, in said office;
THENCE along the Westerly line of said parcel 1 for the purposes of this description, S.00°35'31"E., 214.37 feet to that line described as line "A" in Parcel 77047-1 and 79887-1 as having a course of S.54°10'44"E., 551.71 feet;
THENCE along said line "A," S.54°10'44"E., 213.83 feet to a tangent curve concave Northeasterly and having a radius of 1,375.00 feet, also being the POINT OF BEGINNING;
THENCE Easterly along said curve through a central angle of 01°34'11", an arc distance of 37.67 feet;
THENCE S.00°23'11"E., 39.74 feet;
THENCE S.88°37'23"W, 130.13 feet;
THENCE N.00°29'57"W., 136.79 feet to the POINT OF BEGINNING.

The above described parcel of land is to be used for the purpose of removing existing improvements and incidents thereto in connection with the construction of Route 5 freeway project designated 07-LA-5-PM 0.70 on maps in the Office of the Department of Transportation, State of California, at Los Angeles, California, and the rights to the above described demolition easement shall cease and terminate on August 1, 2016. Said rights may also be terminated prior to the above date by STATE upon notice to OWNER.

The bearing and distances in the herein above described lines are based on the California Coordinate System North American Datum (NAD) 1983, Zone 5. Divide grid distance by a combination factor of 1.00003355 to obtain ground distance.