

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: December 9-10, 2015

Reference No.: 2.4a.
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Jennifer S. Lowden, 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-21382 summarized on the following page. This Resolution is for a transportation project on State Route 98 in District 11, in Imperial 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 are 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 conclusion of nominal value for permanent easements. The owner's objections and the Department's responses are contained in Attachment B.

BACKGROUND:

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*

Discussions have taken place with the property owner, whose offer in compromise has been accepted 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 December 9-10, 2015 Commission meeting. A resolution will support the application to the California Public Utilities Commission for an order to construct, 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-21382 - Union Pacific Railroad

11-Imp-98-PM 32.0 - Parcels 35022-1 and 35023-1 - EA 080239.

Right of Way Certification Date: 12/15/15; Ready To List Date: 12/16/15. Conventional highway – widening on State Route 98. Located in the city of Calexico near Cesar Chavez Boulevard. Assessor Parcel Numbers 058-010-012 and 058-245-001.

Attachments:

Attachment A - Project Information

Exhibit A1 and A2 - Project Maps

Attachment B - Parcel Panel Report

Exhibit B1 and B2 - Parcel Maps

PROJECT INFORMATION

PROJECT DATA	11-IMP-98-PM 32.0 EA: 080239/11-0002-0357
<u>Location:</u>	State Route (SR) 98, at the intersection of Cesar Chavez Boulevard in the City of Calexico (City), Imperial County, CA
<u>Limits:</u>	Eady Avenue west to Ollie Avenue
<u>Cost:</u>	Construction Cost: \$6,899,000 Right of Way Cost: \$1,847,000
<u>Funding Sources:</u>	IIP – National Hwy System (NH) HSIP – Highway Safety Improvement Program Federal Demo (TEA21) CBIP – California Border Infrastructure Program Local Transportation Fund (City of Calexico) Developer Traffic Mitigation
<u>Number of Lanes:</u>	Existing: Two through lanes plus one turning lane Proposed: Four through lanes of Highway plus two turning lanes
<u>Proposed Major Features:</u>	Widening the existing SR 98 from two through lanes to four through lanes, signalize intersections and provide two additional turn lanes, improved shoulders and American Disability Act compliant sidewalks.
<u>Traffic:</u>	11,754 (2012, ADT)/20,140 (2030 ADT)

NEED FOR PROJECT

U.S. General Services (GSA) has started a construction project to relocate and expand the Calexico West Border crossing which is the third busiest port of entry in California. With its expansion and projected completion of Phase 1 in May 2018, the traffic will be increased crossing the border. As a result, the City has started Design on a project to expand Cesar Chavez Boulevard from two lanes to four lanes to be open to traffic in Fall 2017. Department had completed a Project Report in September 2008 for the expansion of SR 98 to accommodate additional traffic and port of Entry traffic. With the border project already started, it is essential to complete a portion of the original project to accommodate the new traffic volume due to port of entry expansion. This will allow the traffic to use Cesar Chavez Boulevard, SR 98 and SR 111 to move across the US/Mexico border.

PROJECT PLANNING AND LOCATION

The California Department of Transportation (Department) in cooperation with the City proposes to improve traffic operations, enhance bicycle and pedestrian safety, and improve drainage performance on SR 98 by widening the highway from two to four lanes, adding sidewalks, Class II bike-lane, and curb ramps on SR 98. A grade separation for the Railroad was evaluated early on in the planning stage and was dismissed because of geometric and cost constraints. The current (Phase 1-B) project is located in Imperial County in the city of Calexico on SR-98 from Eady Avenue to Ollie Avenue, PM 31.6 to PM 32.1.

LOCATION MAP

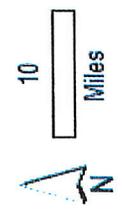
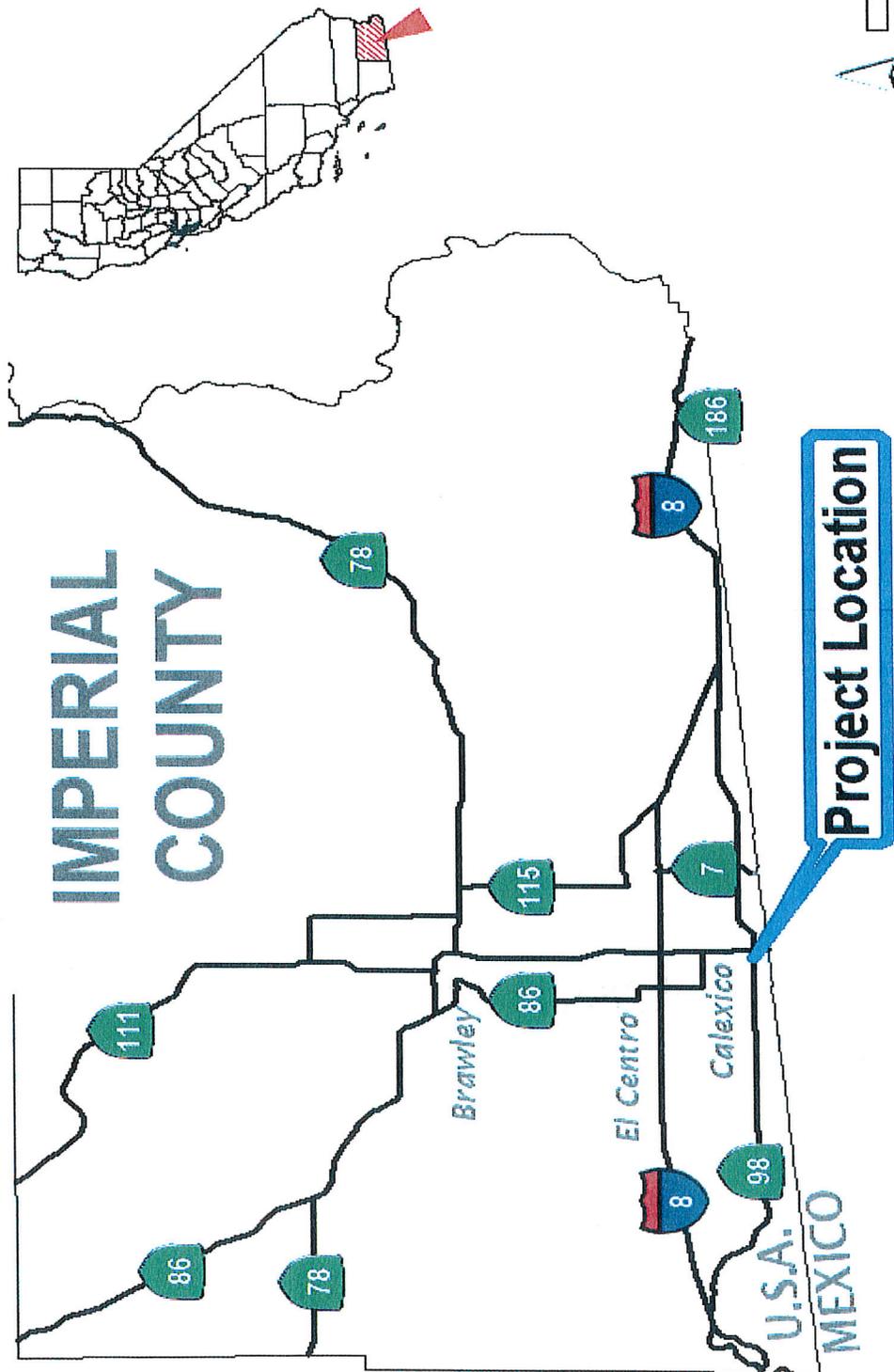


Exhibit A1

Exhibit A1

REGIONAL IMPROVEMENTS

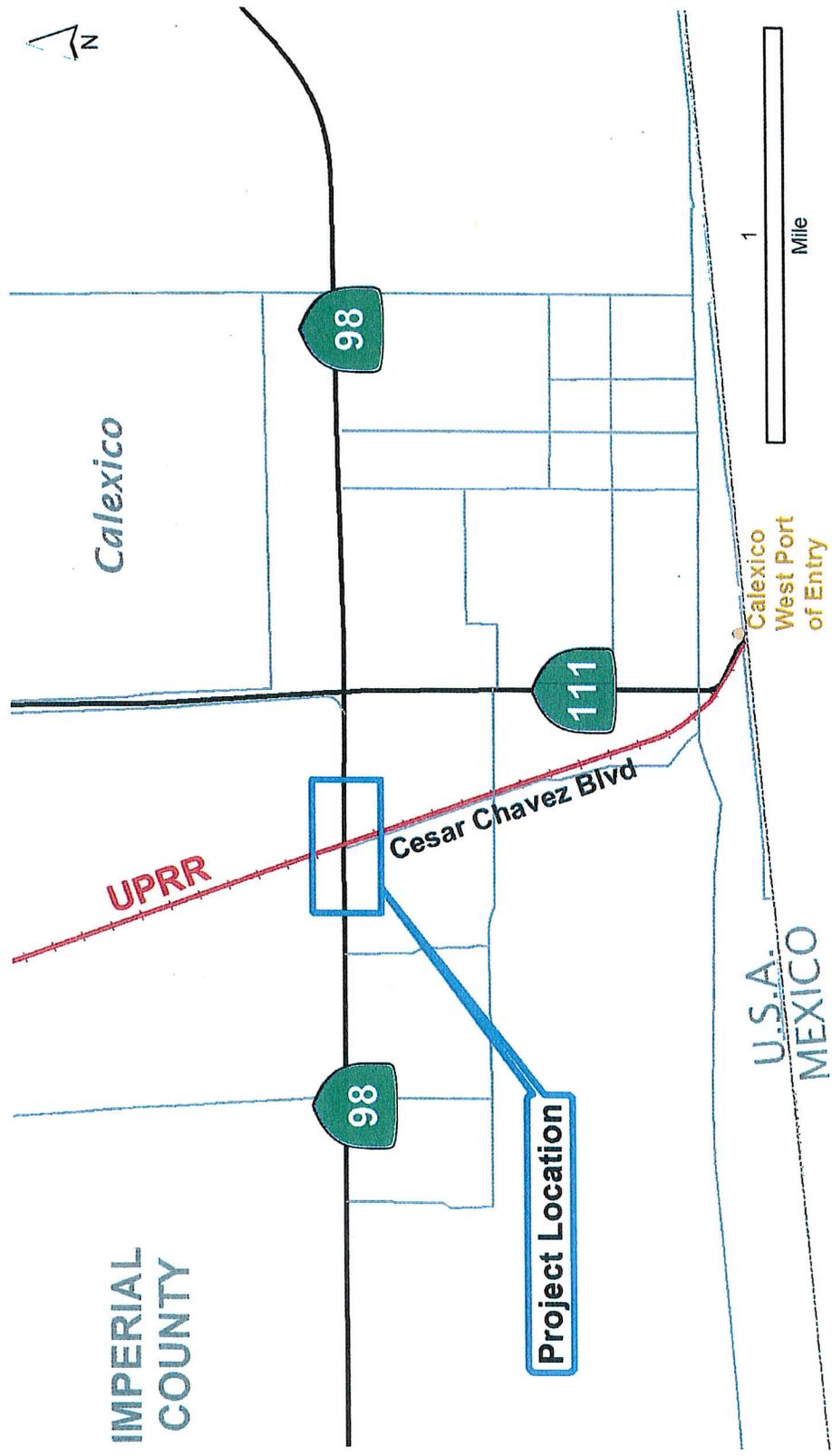


Exhibit A2

Exhibit A2

PARCEL PANEL REPORT

Property Owner: Union Pacific Railroad (UPRR) Company
Parcel Location: State Route (SR) 98, at the intersection of Cesar Chavez Boulevard
in the city of Calexico, Imperial County CA

Present Use: Multimodal transportation corridor

Area of Property: 35.94 acres and 1.61 acres

Area Required: Parcel 35022-1 – 5,000 s.f. for a permanent highway easement
Parcel 35023-1 – 1,949 s.f. for a permanent highway easement

PARCEL DESCRIPTION

The subject parcels are within a railroad transportation corridor owned and operated by UPRR and are within the railroad operating right of way known as the Calexico Branch, Yuma Subdivision. Both parcels are adjacent to the at-grade street known as the Birch St. Crossing and identified as #760900M in the U.S. DOT railroad crossing inventory. Parcel 35022-1 is part of a larger parcel, APN #058-010-012, consisting of 35.94 acres located along the north side of SR 98 (Birch Street). Parcel 35023-1 is part of a larger parcel, APN #058-245-001, consisting of 1.61 acres located on the south side of SR 98 (Birch Street). Neither parcel is developed beyond use as a railroad corridor.

NEED FOR THE PROJECT

The California Department of Transportation's (Department's) proposed acquisition of permanent easements from UPRR is in conjunction with the proposed SR 98 widening project and will provide enhanced safety for pedestrian, vehicular and rail traffic at this corridor intersection. The project will increase the number of through lanes from two to four, add two turning lanes, and install updated signalization and preemption equipment.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met in San Diego on October 14, 2015. The Panel members included Rene Fletcher, Panel Chair, Department Headquarters (HQ's) Division of RW and Land Surveys; John Frederick Smith, Department San Diego Legal Division; Linda Fong, Department HQ's Division of Design; Mike Whiteside, Department Assistant Chief Engineer, and Teresa McNamara, Department HQ's Division of RW and Land Surveys, Secretary to the Panel. Representing UPRR at the meeting was David LaPlante, Senior Manager/Real Estate for UPRR, attorney Michael Wallenstein of Pillsbury Winthrop Shaw Pittman, LLP, and Nick Vineyard for UPRR Industry and Public Projects participating by phone. This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity (Resolution) and makes a recommendation to Department's Chief Engineer. The primary concerns and objections expressed by the property owner are 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 Section 7267.2, specifically the conclusion of nominal value for permanent easements. The Department has accommodated UPRR's requirements for the preemption and signalization design and has reached a settlement addressing the offer of just compensation.

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

UPRR:

The Railroad has not approved or received the final plans for the proposed project.

Department's Response:

The Department submitted its final project design to UPRR for comments in July 2014. The Department continues to respond to UPRR's comments and concerns on the signalization and synchronization design, and has incorporated UPRR's comments to date into the design with the most recent response submitted in October 2015. These efforts are unrelated to the acquisition of the real property rights needed for the project.

UPRR:

The stated preemption and safety standards cannot be fully evaluated without final and approved project plans.

Department's Response:

The Department continues to work with UPRR in an effort to address to UPRR's satisfaction the preemption and safety requirements for the crossing. This concern is unrelated to the acquisition of the real property rights needed for the project.

UPRR:

The proposed taking violates Code of Civil Procedure (CCP) section 1240.510 et seq. in 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 continued use of the public use as it exists or may be reasonably expected to exist in the future.

Department's Response:

The proposed easements do not interfere with or impair the rail corridor's public use or UPRR's operation of the rail corridor as currently used or may reasonably be expected to be used in the future. The project's improvements at this at-grade crossing will provide enhanced safety features that will reduce conflicts between trains, vehicles, and pedestrians.

UPRR:

The proposed easements would impede the operation of a signboard adjacent to the proposed taking without compensating UPRR for the damage.

Department's Response:

There is no impediment or damage to the signboard operation since it lies outside of the proposed right of way acquisition.

UPRR:

The Department's offer does not comply with Government Code Section 7267.2, in that it is not an opinion of the property's fair market value.

Department's Response:

The Department's determination of the value of the easements based on legal precedence that requires the Department to consider the impact of the proposed acquisition on UPRR's continued operation of its corridor and any damage to the future operation of the corridor. Because the project does not impede UPRR from operating in the same manner in the future as it does now, legal precedence states that the value of the easements be deemed nominal; therefore, the Department set the just compensation at \$5,000.00 for both easements.

UPRR:

The Department's project will adversely affect a leased portion of the UPRR's property that is part of State Parcel 35022.

Department's Response:

The Department provided UPRR with mapping that permitted UPRR to evaluate how the loss of 770.8 s.f., including the relocation of fencing and the removal of landscaping, would impact its lease with its tenant, a swap meet, and amend the lease accordingly. UPRR was able to renegotiate the terms of the lease at no loss of income and will accommodate the Department's need to remove landscaping and fencing in conflict with proposed construction of a sidewalk.

UPRR:

Why won't the Department proceed with a Construction and Maintenance Agreement for this crossing?

Department's Response:

The Department is working closely with UPRR to negotiate an agreement that meets the needs and requirements of both parties; however, the type of agreement requested by UPRR is an administrative matter and not related to the four criteria required for a Resolution.

DEPARTMENT CONTACTS

The following is a summary of contacts made with the Railroad:

Type of Contact	Number of Contacts
Mailing of information	4
Email of information	50
Telephone contacts	10
Personal/meeting contacts	3

STATUTORY OFFER TO PURCHASE

The Department appraised the subject property and offered the full amount of the appraisal to the Railroad as required by the Government Code Section 7267.2. Railroad 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 CCP 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 owner(s) of record.

The Panel recommends submitting this Resolution to the Commission.



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

I concur with the Panel's recommendation:




KARLA SUTLIFF
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING ON
OCTOBER 14, 2015**

Rene Fletcher, HQ's Division of RW and Land Surveys, Panel Chair

Linda Fong, HQ's Division of Design, Panel Member

John F. Smith, Legal Division – San Diego Office, Panel Member

Michael Whiteside, Department Assistant Chief Engineer, Panel Member

Teresa McNamara, HQ's RW, Panel Secretary

David C. LaPlante, Senior Manager, Real Estate, Union Pacific Railroad Company

Michael Wallenstein, Counsel for Union Pacific, Pillsbury, Winthrop, Shaw, Pittman LLP

Nick Vineyard, Manager, Industry and Public Projects, Union Pacific Railroad Company

Sam Amen, Project Manager, District 11

Laurie Berman, Director, District 11

Thomas Bouquin, Division Chief, Design, District 11

Gwendolyn Denny, Railroad Coordinator, District 11

Amy Lamott-Vargas, Deputy District Director, RW/District 11

Kazim Mamdani, Project Design Manager, District 11

SUIT # 1474

COUNTY OF IMPERIAL
CITY OF CALEXICO

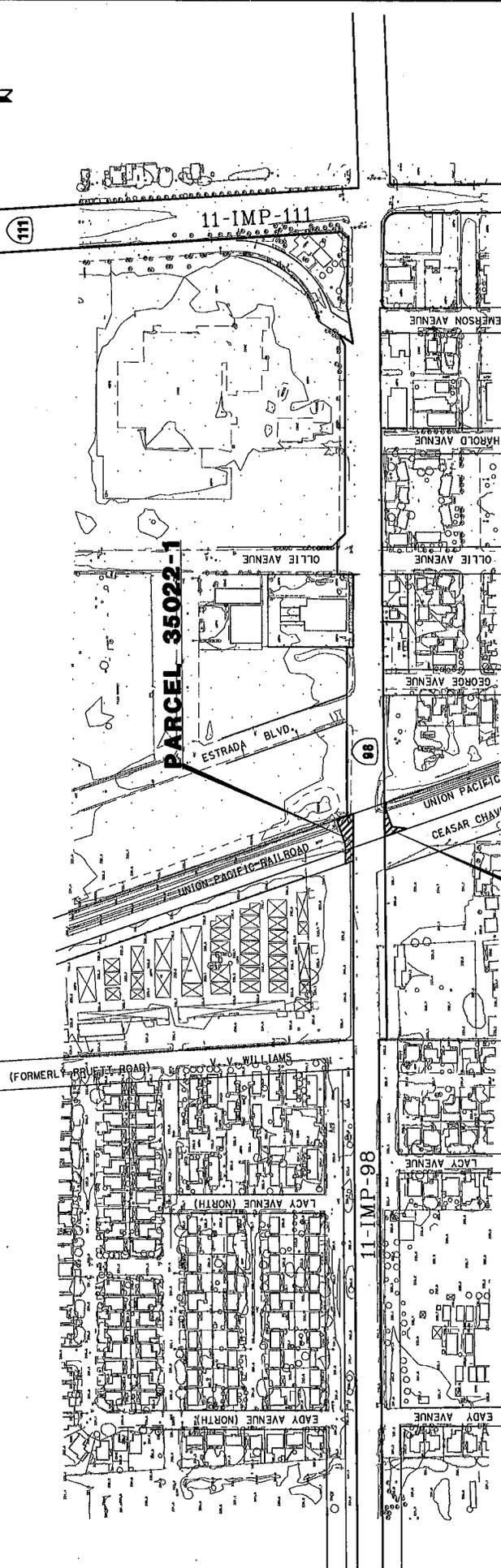
T. 17 S., R. 14 E., S.B.M.



SECTION 11

SW 1/4

SE 1/4



PARCEL 35023-1

SECTION 14

NW 1/4

NE 1/4

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
CALIFORNIA STATE TRANSPORTATION AGENCY
DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY
KEY MAP
RESOLUTION OF NECESSITY
PARCEL 35022-1
PARCEL 35023-1

NOT TO SCALE

DISTRICT	COUNTY ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
11	IMP 98	32.0	1	2

E.A. 080239

Exhibit B1

Exhibit B1

