

State of California  
Business, Transportation and Housing Agency  
Department of Transportation

HIGHWAY RIGHT OF WAY MATTERS  
Resolutions of Necessity  
Action Item

Prepared By:  
Brice Paris  
Chief  
Division of Right of Way  
(916) 654-5075

CTC Meeting: February 28, 2002

Reference No: 2.4a.(1)

\_\_\_\_Original Signed By\_\_\_\_  
ROBERT L. GARCIA  
Chief Financial Officer  
February 1, 2002

### RESOLUTION OF NECESSITY

The Department of Transportation recommends the California Transportation Commission adopt Resolution of Necessary C-18437. The summary below identifies the location of and designates the nature of the property rights covered by the Resolution of Necessity. In accordance with statutory requirements, the owners have been advised that the Department of Transportation is requesting a resolution at this time. Adoption of Resolution of Necessary C-18437 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules. See concurrent item 2.4a.(2).

#### C-18437 – The Levio P. Donina and Margaret Donina Trust

07-LA-405-PM 24.5 – Parcel 75014-1,3,4,5 – EA 1198U9 (Expressway) Authorizes condemnation of land in fee for a State highway extinguishment of abutter's rights of access, the right and easement to enter the remaining ownership to sever and shore certain improvements at the right of way line, a temporary easement for construction purposes, a permanent easements for tie back purposes, an aerial easement for utility purposes, located in the city of Los Angeles at 5835 West 74<sup>th</sup> Street.

07-LA-405  
Donina Trust  
**SUMMARY OF ISSUES**

PROPERTY OWNER'S CONCERNS

The property owners feel the project is not planned so as to cause the least private injury in that the Environmental Study failed to properly consider the noise and pollution impact of the project and failed to adopt adequate and feasible mitigation measures. They do not feel they were properly notified of the adoption of the environmental studies. Also, they contend that before the CTC commits to a project, according to guidelines of CEQA, it must review and consider the adequacy of the environmental documents pursuant to Public Resources Code Section 21100. They contend the Department's environmental documents and studies of 1989 and 2001 fail to analyze the effects of traffic induced pollution, diesel fumes in particular. It is their understanding that since 1997, the State Air Quality Board has noted that diesel fumes cause cancer and respiratory harm.

The property owner feels due to the proposed acquisition, the functional utility of subject property in the after-condition is damaged. Mainly due to the development restrictions imposed by the sub-surface tie-back easement. They also feel that although the project calls for a 3.0-meter (10-foot) high sound wall, there will be permanent increases in noise and pollution associated with our project. They have requested compensation to double-pane all the windows in their house and replace the doors (insulated/solid core).

In addition, the owners have concerns regarding the noise levels during construction, vibrations during construction, working hours of the State's contractor, and the actual time spent on their property to construct the proposed project.

The grantor has requested a design modification of the sound wall. A request was made for the State to construct a 2.7-meter (9-foot) high sound wall, as opposed to a 3.0-meter (10-foot) high wall in their backyard. This design modification was agreed to by the State. In agreeing, the property owner was informed that this modification may have an affect on noise levels.

Finally, based on review of the Initial Study / Environmental Assessment, subsequent Environmental Reevaluation Report, and Noise Study Reports for this project, the property owner feels that traffic, noise, and pollution levels will all increase in the after-condition; and the State did not properly address these concerns nor follow the environmental process as required by the California Environmental Quality Act (CEQA).

## DISTRICT'S RESPONSE

It is the District's opinion that the State's offer to the property owner constitutes the Fair Market Value of those property rights needed to construct our proposed project. In addition, the State's appraiser found that the functional utility of the subject in the after-condition remains the same. As such, there were no incurable damages that accrue to the subject property as a result of the construction in the manner proposed for this project.

In response to development/building restrictions over the surface area of the sub surface tie-back easement, the State has informed the property owner that we have no objection to the construction of any improvements that can be built (subject to local zoning and building codes) so long as the improvements do not interfere with the structural integrity of our soil nails and 1) they do not require a foundation excavation below a depth of 6 feet, and 2) won't include a commercial building with more than 10 occupants. Subject to these criteria, we have no weight limitation for improvements built on, over, or above the tie-back easement area.

The property owner has been advised that contractor working hours on their property would be from 9 am to 6 pm and construction is estimated to take about 4-6 months on their property to construct the proposed sound wall. This type of work is normally performed during the daytime to minimize inconvenience to the property owner. Once the sound wall is completed, the State's contractor has the ability to work 24 hours a day, based on the type of work to be performed, i.e. retaining wall and HOV expansion. As such, no restrictions are set to the contractor regarding working hours. However, in cases of work that requires lane closures, the contractor must follow the allowable lane closure set by Traffic. In addition, the contractor must follow the sound control requirements set forth in the Special Provisions and Standard Specifications during nighttime work.

Regarding Environmental Issues, representatives from Caltrans Environmental Planning Department are confident that we have correctly followed the Environmental Process as required by law with regards to this project. In addition, it has been determined that the project meets Federal and State criteria for noise attenuation and the appropriate mitigation measures have been implemented, i.e. the construction of a 10-foot high sound wall.

## RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The resolution of Necessity Review Panel met on December 10, 2001 at the Right of Way offices in Los Angeles. The Panel was chaired by Carol Hanson and included Panel Members Linda Fong and William Evans. The property owner Levio P. Donina and his nephew, Ray Bender were present. The meeting was continued to January. The Panel reconvened on January 23, 2002 at the Right of Way Office in Los Angeles. The second meeting of the Panel was chaired by Carol Hanson and included Linda Fong, Ray Barrera substituted for William Evans.

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 Chief Engineer.

### NEED FOR PROJECT

This proposed project is a major link on the Los Angeles County HOV System. Los Angeles County Metropolitan Transportation Authority put this segment as top priority on Caltrans District 7-project delivery list. Currently, existing HOV lanes are in operation just south of this proposed project from Orange County Line to Route 105.

This project will result in an additional through lane on this critically congested segment, thereby bringing needed relief not only to industry and residents in the corridor but also to Los Angeles International Airport and the Ports of Los Angeles and Long Beach.

Route 405 is one of the most important traffic arterials serving the Los Angeles and Orange County areas. This route is a North/South Interstate Route. Within the proposed project limit, this freeway generally consists of four 3.6-meter lanes, a 3.0-meter right shoulder, in both directions. A concrete median barrier separates the roadway. The 1997 Annual Average Daily Traffic (AADT) within the project limit ranges from 284,000 vehicles per day at Route 105 Junction to 310,000 vehicles per day at Culver Blvd., Culver City. The project AADT (year 2022) ranges from 412,100 to 454,100 vehicles per day.

The majority of the accidents along the entire project length are rear end and sideswipe collisions.

Of the total accidents, over 75% were rear and sideswipe accidents. These can be attributed to congestion during peak period flow conditions. It is anticipated that by increasing the capacity of Route 405, the accident rates will decrease accordingly.

### PROJECT DESIGN

The proposed project is to add High Occupancy Vehicle (HOV) lanes in both the northbound and southbound directions of Route 405 in Los Angeles County between just north of I-105 and State Route 90 Interchange. The HOV lanes will be added by reconstructing the existing 6.7 meter wide median and re-striping the existing mainline traveled way in both directions. The project

includes limited widening to accommodate the additional HOV lanes and CHP enforcement areas on the south and north portion of the project corridor.

The project draft PSE was completed by a Consultant in May 1995. The project was suspended due to MTA priorities. In 1998, the consultant was terminated and the District decided to complete the delivery of the final PSE. It was determined that the project would be metricated and updated to the latest standards. This project was the subject of an Initial Study/Environmental Assessment prepared on April 1989, which led to a Negative Declaration/Finding of No Significant Impact (ND/FONSI) signed and was approved by FHWA on November 1989 and January 1990 respectively. An Environmental Reevaluation was also prepared on December 1993 but was not signed by FHWA due to project suspension. The Environmental Reevaluation was prepared and approved by FHWA on January 30, 2001. This document addressed the environmental effects resulting from the outside widening required by the new retaining wall at the southbound side of Route 405 north of La Tijera Blvd. and the installation of new soundwalls on both northbound and southbound sides of the freeway as recommended by the Noise Study Report dated January 16, 2001. The Environmental Reevaluation was updated to reflect the extension of the proposed project 600 meters north of Route 90, and was signed by FHWA on June 21, 2001. To further expand the findings relating to the environmental effects for these specific project limits, an Addendum to Negative Declaration/Environmental Reevaluation to Finding of No Significant Impact was prepared and signed by the District Deputy Director, Division of Environmental Planning on January 15, 2002.

This project is listed as project number 0824B in the 2000 STIP and will be funded from the HB5 program in 99/00 Fiscal Year. It was listed on the 1987 'grandfather' STIP as part of the Freeway Congestion Relief Projects Program. This project will be combined with a soundwall project under the May 1989 Retrofit fund. This soundwall project under EA 05364 was also part of the Noise Study Report that will be installed in this proposed project. This soundwall project, with a project category of HB311 will be funded by 100% State Funds. The current estimate for this project is \$34,700,000.

#### NEED FOR PARCEL

Right-of-way acquisition is required along the southbound side of Route 405 north of La Tijera Boulevard to remove and reconstruct a 229-meter long retaining wall and soundwall to its ultimate location 30 meters from centerline due to design elements consideration to improve the sight distance at this location. This will also maintain the prior mitigation of freeway noise impacts to these nearby residents. The Howard Hughes Parkway Interchange is comprised of a single 1.7-meter wide column that encroaches on the median shoulder resulting in an unacceptable offset clearance if the existing freeway is not widened. Considering these factors, removing and reconstructing of the existing retaining wall and soundwall could not be avoided to achieve the minimum roadway section and design standards. To reduce the impact on the owner's property, it would be required to construct the retaining wall on an interim location approximately 1.2 meters away from the proposed location and then remove it and reconstruct the proposed retaining wall to the ultimate location in the future. This exercise will be costly and will result to repeated inconvenience to the community because of traffic impact during construction.

The subject parcel has a total area of 745.08m<sup>2</sup> (8,020 s.f.), and is fully improved with a single-family residence located at 5835 West 74<sup>th</sup> street, in the City of Westchester. The right of way

requirements consist of a 74.6m<sup>2</sup> (803 s.f.) fee acquisition, 55.6m<sup>2</sup> (598 s.f.) temporary construction easement, 66.6m<sup>2</sup> (717 s.f.) tie-back easement, and a 33.4m<sup>2</sup> (360 s.f.) overhead electrical easement. The fee and easement acquisitions impact the rear yard of the subject property and are needed for the Route 405 HOV widening project.

The proposed project includes the addition of an HOV lane, construction of a retaining wall, a 3.0-meter (10-foot) high sound wall, and the replacement of an existing public utility. In addition, due to the fact that the subject property is approximately 10 to 12 meters (30 to 40 feet) above grade from the adjacent freeway, a subsurface tie-back easement is needed for the installation of soil nails in order to minimize the right-of-way take during the construction of the retaining wall and stabilize the existing slope adjacent to the subject property. The sub-surface soil nails will extend approximately 3.6 meters (12 feet) into the rear yard of the subject property in the after-condition. No major improvements (SFR and Garage) are affected by the proposed acquisition other than miscellaneous landscaping and site improvements.

A total of 34 parcels are required for this project. Currently, 25 parcels are secured by Right of Way Contract. There are Resolutions of Necessity on eight parcels. This is the only parcel on the project that has requested an appearance before the CTC.

#### STATUTORY OFFER TO PURCHASE

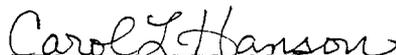
The State has appraised the subject property and has offered the full amount of the appraisal. The full amount of the approved appraisal has been offered to Levio (Lee) and Margaret Donina. The owners are not satisfied with the offer and negotiations are continuing.

#### PANEL RECOMMENDATION

The Panel believes that the District's design complies with 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 sought to be condemned is necessary for 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 California Transportation Commission.

  
CAROL L. HANSON  
Panel Chairperson

I concur with the Panel's recommendation.



BRENT FELKER

Chief Engineer

PERSONS ATTENDING SECOND LEVEL REVIEW PANEL HEARING  
ON DECEMBER 10, 2001

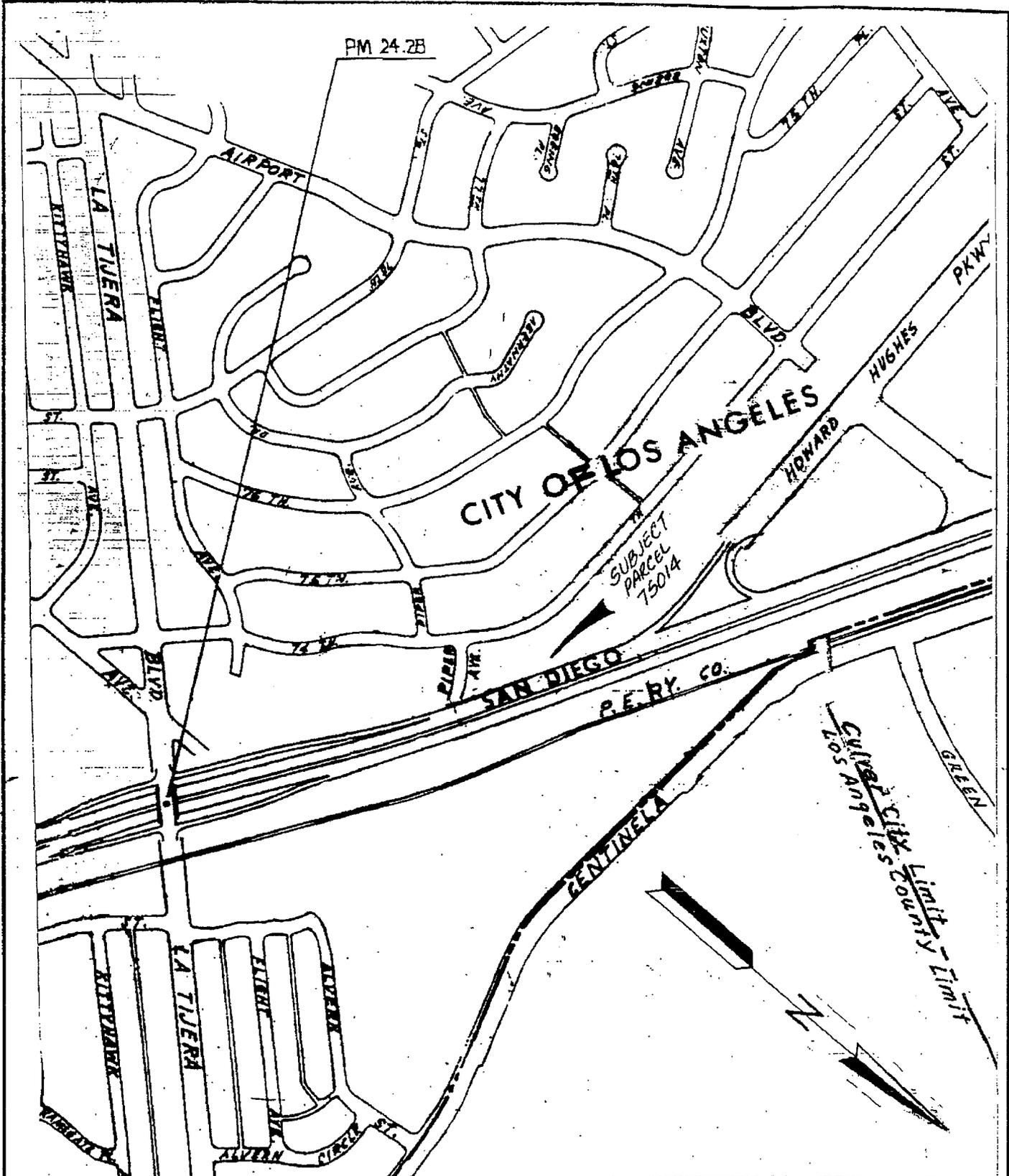
Carol Hanson, Chairperson  
Linda Fong, Panel Member  
William Evans, Panel Member  
Mark Zgombic, Caltrans Right of Way  
Lee (Levio) Donina, Grantor  
Ray Bender, Grantor's nephew  
Jim Deluca, Caltrans Design  
Bill Kemp, Caltrans Structures and Design  
Mabel Tran, Caltrans  
Teresa Arias, Caltrans Right of Way  
Doug Failing, Caltrans  
James Staudinger, Caltrans Right of Way  
Florizel Bautista, Caltrans  
Peter Hsu, Caltrans  
Dan Tran, Caltrans  
Aziz Elattar, Caltrans Environmental Planning  
Jin Lee, Caltrans

PERSONS ATTENDING SECOND LEVEL REVIEW PANEL HEARING  
ON JANUARY 23, 2002

Carol Hanson, Chairperson  
Linda Fong, Panel Member  
Ray Barrera, Panel Member  
Mark Zgombic, Caltrans Right of Way  
Ray Bender, Grantor's nephew  
Aziz Elattar, Caltrans Environmental Planning  
Ayubur Rahman, Caltrans  
Deborah Gebers, Caltrans  
Dan Tran, Caltrans  
Teresa Arias, Caltrans Right of Way  
James Staudinger, Caltrans Right of Way  
Pati Smith, Caltrans Right of Way  
Jim DeLuca, Caltrans  
Peter Hsu, Caltrans  
Mabel Tran, Caltrans  
Bill Reagan, Caltrans  
Vincent M. Valido, Caltrans  
Florizel Bautista, Caltrans

# Resolution of Necessity Appearance Fact Sheet

<b>PROJECT DATA</b>	07-LA-405-KP 34.6/42.3
<u>Location:</u>	In Los Angeles County in and near Inglewood, Los Angeles, Culver City
<u>Limits:</u>	From 0.1 km south of Lennox Blvd. UC to 0.2 km North of Route 405/Route 90 Separation
<u>Contract Limits:</u>	N/A
<u>Cost:</u>	Construction, preliminary engineering Construction and R/W Total \$34,000,000
<u>Funding Source:</u>	Federal, State and Local
<u>Number of Lanes:</u>	Existing: 4 mixed flow in one direction Proposed: 4 mixed flow plus 1 HOV in one direction
<u>Proposed Major Features:</u>	Interchanges: None Other: None
<u>Traffic:</u>	Existing (1997): 310,000 vehicles per day Proposed (2022): 454,100 vehicles per day
<b>PARCEL DATA</b>	
<u>Property Owner:</u>	Levio P. Donina and Margaret Donina, as trustees of the Donina Trust dated September 30, 1991
<u>Parcel Location:</u>	Three lots northeasterly of the intersection of Piper Avenue and West 74 <sup>th</sup> Street, South of Route 405, in the City of Westchester
<u>Present Use:</u>	Single Family Residence – Owner occupied.
<u>Area of Property:</u>	745.08 square meters (8,020 Square Feet)
<u>Area Required:</u>	Parcel 75014-1 -FEE ACQUISITION 74.6m <sup>2</sup> (803 Square Feet) Parcel 75014-3 -TEMPORARY CONSTRUCTION EASEMENT 55.6m <sup>2</sup> (598 Square Feet) Parcel 75014-4 -TIE BACK EASEMENT 66.6m <sup>2</sup> (717 Square Feet) Parcel 75014-5 -OVERHEAD ELECTRICAL EASMENT 33.4m <sup>2</sup> (360 Square Feet)



Ref. Map No. F1927-6

**EXHIBIT " A "**  
**07 - LA - 405 - PM 24.5**  
 600 0 600 FEET



## CHRONOLOGY OF CONTACTS

08-01-01 Parcel assigned

08-15-01 Met with Grantor and presented State's First Written Offer.

08-17-01 Met with Grantor to discuss acquisition

08-28-01 Several Contacts with Grantor  
to 09-18-01

09-18-01 Notice of Intent letter (certified mail) mailed to the Grantor

09-26-01  
to 10-16-01 Several contacts with Grantor and Ray Bender(nephew)

10-18-01 First Level Review Hearing held.

10-26-01 Several contacts with Grantor and Ray Bender(nephew)  
to 11-16-01

12-10-01 Second Level Review

01-23-02 Additional Meeting with Review Panel