

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: April 7-8, 2010

Reference No.: 2.4a.  
Action Item

From: NORMA ORTEGA  
Chief Financial Officer

Prepared by: Tony Tavares  
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-20310 summarized on the following page.

## **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 to challenge the outstanding issues. At the request of the property owner, objections to the Resolution have been submitted in writing 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

April 7-8, 2010 meeting. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-20310 - Newport Diversified, Inc., a California Corporation

07-LA-5-PM 1.65 - Parcel 79519-1, 2, 3 - EA 2159C9.

Right of Way Certification Date: 06/14/10; Ready to List Date: 06/17/10. Freeway - Carmenita interchange improvement. Authorizes condemnation of a permanent easement for pipeline purposes to be conveyed to Chevron and temporary easements for construction and grading purposes.

Located in the city of Santa Fe Springs at 13963 Alondra Boulevard.

Assessor's Parcel Number 8069-014-004.

Attachments:

Attachment A - Owners Written Objections dated December 7, 2009

Attachment B – Department Response dated February 23, 2010

Attachment C – Fact Sheet

Exhibits A and B - Maps

Copy to Stephen Maller  
to Right of Way 12-16-09

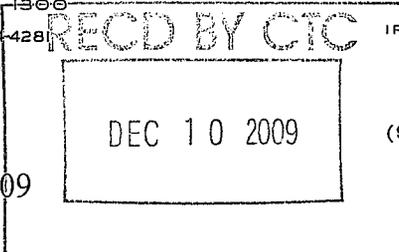
LAW OFFICES

PALMIERI, TYLER, WIENER, WILHELM & WALDRON LLP  
A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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December 7, 2009

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REFER TO FILE NO.  
15733-001

- |                                |                       |
|--------------------------------|-----------------------|
| ANGELO J. PALMIERI (1926-1996) |                       |
| ROBERT F. WALDRON (1927-1998)  |                       |
| ALAN H. WIENER*                | STEPHEN A. SCHECK     |
| ROBERT C. IHRKE*               | DONNA L. SNOW         |
| JAMES E. WILHELM*              | RYAN M. EASTER        |
| DENNIS G. TYLER*               | ELISE L. ENOMOTO      |
| MICHAEL J. GREENE*             | ELIZABETH VALADEZ     |
| DENNIS W. GHAN*                | MELISA R. PEREZ       |
| DAVID D. PARR*                 | ANISH J. BANKER       |
| CHARLES H. KANTER*             | MICHAEL I. KEHOE      |
| PATRICK A. HENNESSEY           | ROBERT H. GARRETSON   |
| DON FISHER                     | RYAN M. PRAGER        |
| GREGORY N. WEILER              | JOSEPH W. HANEY III   |
| WARREN A. WILLIAMS             | CHADWICK C. BUNCH     |
| JOHN R. LISTER                 | ANNIE C. CHU          |
| CYNTHIA M. WOLCOTT             | JERAD BELTZ           |
| GARY C. WEISBERG               | HEATHER H. WHITEHEAD  |
| MICHAEL H. LEIFER              | ERIN BALSARA NADERI   |
| SCOTT R. CARPENTER             | DEREK M. DEHANKE      |
| RICHARD A. SALUS               | F. JULIAN FREEMAN III |
| NORMAN J. RODICH               | ERICA M. SOROSKY      |
| RONALD M. COLE                 | CASEY W. BOURKE       |
| MICHAEL L. D'ANGELO            |                       |

\*A PROFESSIONAL CORPORATION

**VIA FACSIMILE & U.S. MAIL**

Bimla Rhinehart  
Executive Director  
California Transportation Commission  
1120 "N" Street, MS-52  
Sacramento, CA 95814

**Re: Objection to Proposed Adoption of Resolution of Necessity for Acquisition of a Portion of Certain Real Property Identified As 13963 Alondra Blvd., Santa Fe Springs, California (Santa Fe Springs Swap Meet), For Interstate 5 (I-5) Freeway Expansion Project**

Dear Mr. Rhinehart:

We have received notice of the California Transportation Commission's ("CTC") intent to adopt a resolution of necessity authorizing the taking of certain portions of the subject property by condemnation for the Interstate 5 (I-5) freeway expansion project. Based upon this notice, the CTC's hearing is scheduled for January 13-14, 2010, in Sacramento, California. No time was specified in the notice.

The purpose of this letter is to provide written objection on behalf of Newport Diversified, Inc. to the adoption of the resolution of necessity in lieu of personally appearing at the hearing. Accordingly, we request that this letter be included as part of the formal record on that agenda item.

Newport Diversified objects to the adoption of the resolution of necessity on each of the following specific grounds:

Attachment A

Bimla Rhinehart  
December 7, 2009  
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1. **The State Failed To Extend A Legitimate Precondemnation Offer Pursuant To Government Code Section 7267.2.**

Government Code section 7267.2 requires that the State make a legitimate offer of just compensation based upon an approved appraisal prior to initiating condemnation proceedings. A written statement and summary basis for the offer must include sufficient details to indicate clearly the basis for the offer. (Gov. Code, § 7267.2, subd. (b).)

The State's precondemnation offer is invalid insofar as it was predicated upon an appraisal that failed to address the considerable damages that have resulted and will result from the acquisition, construction and use of the project in the manner proposed. Though the taking, as proposed, is part and parcel of a much larger project to expand the I-5 freeway, the State's precondemnation offer ignores this fact. The precondemnation offer only provides compensation for the State's taking of two construction easements and a permanent pipeline easement to relocate a high-pressure Chevron gas pipeline in connection with the I-5 freeway expansion project. The offer ignores any of the damages or impacts to the property owner from the I-5 project as a whole which include, but are not limited to, damages caused by elevating the I-5 freeway approximately five feet, elevating Alondra Blvd. and Freeway Drive approximately 13 feet, construction of a 13 foot retaining wall along the property's main entrance, the temporary and/or permanent elimination of access points to the swap meet, and business loss caused by the construction period which has yet to be determined, but is either 18 months or 3 years based on recent discussions with Caltrans staff.

The precondemnation offer is based on only a portion of the overall project and, as such, is invalid and cannot support the adoption of a resolution of necessity authorizing the acquisition of the interests in the subject property by eminent domain.

2. **The State Failed To Negotiate In Good Faith Pursuant To Government Code Section 7267.1.**

Government Code section 7267.1 imposes an affirmative obligation on a public entity seeking to condemn property to seek to acquire that property first by negotiation. (*Johnston v. Sonoma County Agricultural Preservation & Open Space Dist.* (2002) 100 Cal.App.4th 973.) "The public entity shall make every reasonable effort to acquire expeditiously real property by negotiation." (Gov. Code, § 7267.1, subd. (a).) The duty to negotiate is designed to avoid litigation. "In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the public programs,

Bimla Rhinehart  
December 7, 2009  
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and to promote public confidence in public land acquisition practices, public entities shall, to the greatest extent practicable, make every reasonable effort to acquire property by negotiation." (8 Witkin, Summary of Cal. Law (9th ed. 2004) Const. Law, § 972.)

The State's recent "take it or leave it" offer for only three easements is an example of the State's refusal to engage in negotiations with the property owner for (a) recognition of the true impacts to the subject property and the swap meet business from the project as currently proposed and extension of a legitimate offer of compensation based thereon; and (b) revisions to the project plans to mitigate potentially devastating impacts to the subject property and Newport Diversified's business operations. Not only has the State refused to address the property owner's concerns regarding the project, but its recent precondemnation offer of compensation was based upon an appraisal that failed to consider any of the aforementioned project impacts and, therefore, did not include any compensation for the resulting damages.

The State's project as currently proposed will result in substantial damages to the subject property and the business operated thereon, which damages the State has neither appraised nor made an offer of compensation to redress. The State's statutory obligation to "make every reasonable effort to acquire expeditiously real property by negotiation" means *nothing* if it does not include either making reasonable efforts to modify project plans to eliminate or mitigate potentially damaging project impacts or making an offer of compensation to pay for the damages that cannot otherwise be mitigated. Here, the State has done neither.

To the extent that the State's offer was predicated upon an appraisal that failed to account for significant project impacts, as partially described above, that offer was inadequate as a matter of law and would not constitute an effort to acquire the property interests "expeditiously and by negotiation" as required by California Government Code section 7267.1. (Gov. Code, § 7267.1.)

3. **The State's Proposed Project Is Not Planned Or Located In The Manner That Will Be Most Compatible With The Greatest Public Good And The Least Private Injury.**

One of the necessity components that must be analyzed when considering the adoption of a resolution to authorize the taking of private property is whether the proposed project for which the property is sought to be taken is planned or located in a manner that is most compatible with the greatest public good and causes the least private injury. (Code Civ. Proc., § 1240.030, subd. (b).) In the absence of substantial evidence

Bimla Rhinehart  
December 7, 2009  
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supporting the CTC's determination as to the planning and location of the proposed project, the Resolution of Necessity is invalid.

In this case, the I-5 freeway widening project as proposed in "piece-meal" segments exacerbates the damage to the property owner, and therefore violates the "least private injury" prong of the necessity calculus

In addition, the property owner has diligently attempted to work with the City of Santa Fe Springs and Caltrans' staff to minimize the proposed project's anticipated impacts on the subject property and Newport Diversified, Inc.'s business. The State, however, has failed and refused to consider viable project alternatives that would reduce the damaging impacts to the subject property while maintaining (or improving) any claimed beneficial aspects of the project. Because each alternative would enable the CTC to achieve its project objectives at a greatly reduced private injury, the CTC must consider those alternatives before an informed determination can be made as to whether the project as proposed is "most compatible with the greatest public good and the least private injury."

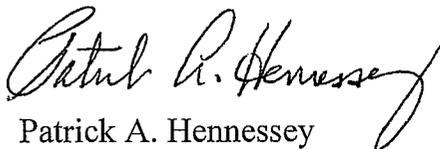
**4. The State's Attempt to "Piece Meal" the Project Violates the California Environmental Quality Act.**

There should be no debate that the State's taking of the subject property for the I-5 freeway expansion constitutes a "project" within the meaning of CEQA. (Pub. Res. Code, § 21065.) Yet, it appears that the State is attempting to circumvent its duties and obligations under CEQA by "piece meal" this massive freeway expansion project into small segments. The State's conduct violates the precepts under CEQA and ignores the multitude of potentially significant environmental impacts that might result from the project, including, but not limited to, traffic impacts, air quality, land use planning, ground stability, and noise. As of today's date, the State cannot have completed a proper CEQA analysis since it has not considered the environmental impacts stemming from the entire I-5 freeway expansion project, as a whole.

Bimla Rhinehart  
December 7, 2009  
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Based upon the foregoing objections, Newport Diversified respectfully requests that the CTC not adopt the resolution or, at a minimum, continue the hearing on this agenda item until such time as the objections are addressed. If the CTC has any questions or comments concerning the content of this letter, it should contact the undersigned at the number listed above.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Patrick A. Hennessey".

Patrick A. Hennessey

PAH:ab

cc: Andrew P. Nierenberg (via email)  
Maan Faelnar-Belisario

**DEPARTMENT OF TRANSPORTATION**

Right of Way Division  
100 S. Main Street, MS 6  
Los Angeles, CA 90012-3606  
PHONE (213) 897-1901  
FAX (213) 897-5603  
TTY (213) 897-4937



## CERTIFIED MAIL

February 23, 2010

07-LA-5-K.P. 1.65  
EA 2159C1  
Parcel No. 79519  
AIN 8069-014-004  
Grantor: Newport Diversified, Inc., a  
California Corporation

Mr. Patrick A. Hennessey  
Law Offices of Palmieri, Tyler, Wiener, Wilhelm & Waldron, LLP.  
2603 Main Street  
East Tower – Suite 1300  
Irvine, CA 92614-4281

Dear Mr. Hennessey:

Re: **Newport Diversified, Inc., a California corporation**  
**13963 Alondra Blvd., Santa Fe Springs, CA 90670**

This letter is in response to your letter dated December 7, 2009, addressed to the Executive Director of the California Transportation Commission (Commission). In your letter, you addressed specific concerns and objections to the Commission's proposed action on several grounds regarding the above reference parcel.

Per your written request, 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.

The following is the Department's response to the concerns and objections that appeared in your letter to the Commission:

1. **The State Failed to Extend A Legitimate Pre-condemnation Offer Pursuant to Government Code Section 7267.2**

The State's offer was based on the State's full-value appraisal for your client's property. The portion of the property's offer at this time was only for the Carmenita project. The valuations required for the next phase of the project, which is the Alondra project will also affect your client's property and will be addressed in a future appraisal and the offer will be shortly thereafter.

Attachment B

**2. The State Failed to Negotiate In Good Faith Pursuant to Government Code Section 7267.1**

The Acquisition agent, Maan Faelnar-Belisario has been in contact with your client's representative on several occasions as in meeting in person, telephone calls, and via email with grantor's consultant, Pirzadeh & Associates, Inc., and the State remains ready and willing to engage in continued negotiations. The acquisition agent will continue to provide up-to-date information while working closely with you and your client.

**3. The State's Proposed Project Is Not Planned Or Located In The Manner That Will Be Most Compatible With The Greatest Public Good And The Least Private Injury.**

The I-5 freeway widening project as proposed is 6 ½ mile long. The overall purpose of the project is to increase the capacity for the freeway in order to improve mobility for motorists and improve safety and access which will consequently decrease the train and car conflicts at the Carmenita Road.

Segmenting a project is done with the greatest public good and least private injury in mind. It is not possible to build a project of this magnitude as one whole project since there is no contractor available in the industry to build it.

The State always plans a large project such as this in phases or segments in order to manage the construction and the funding efficiently. Closing all ramps at once for the 6 ½ mile stretch would create great damage to the communities and the businesses in the area. The traffic circulation problems would be prolonged as well. Also, the start of the I-5 project would be delayed because of the additional time that would be needed to obtain possession of all the required right of way which is necessary prior to the award of the construction contract.

The manner in which the "Carmenita Project" is planned is basically reducing the impact on the communities as well as reducing the impact on the right of way activities on this parcel.

As of this writing, the State has not received any viable project alternatives from your client.

**4. The State's Attempt to "Piece Meal" the Project Violates the California Environmental Quality Act.**

The acquisition of various easements of the subject property is not considered a "project" pursuant to the California Environmental Quality Act (CEQA). Proposed easements of the subject property are however considered right-of-way impacts of two related projects.

The first project that will impact the subject property is the Interstate 5 at Carmenita Road Interchange Improvement Project (Carmenita Project). Pursuant to CEQA, impacts to the natural and human environment that may result from construction and operation of the Carmenita Project were documented in an Initial Study, which led to a Negative Declaration, signed April 19, 2002. A Notice of Determination was filed for the Carmenita Project on April 24, 2002. The need for various forms of easements on the subject property was identified during the project's final design. Updated right-of-way impacts were evaluated and determined not to change the findings of the approved Negative Declaration.

Mr. Patrick A. Hennessey

January 28, 2010

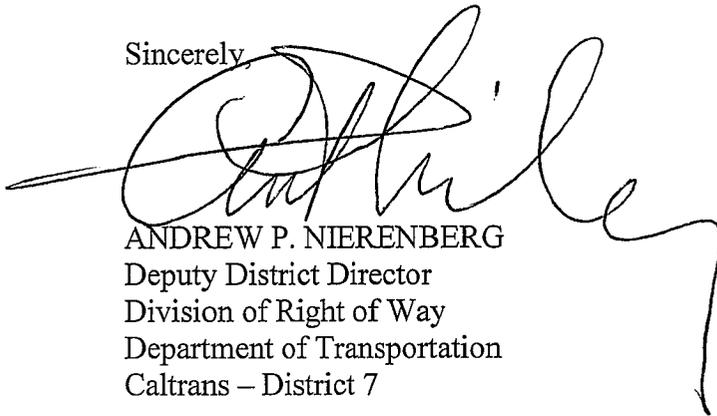
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The second project that will impact the subject property is the Interstate 5 Corridor Improvement Project (Corridor Project), which includes the entire stretch of Interstate 5 from State Route 91 to Interstate 605. Pursuant to CEQA, impacts to the natural and human environment that may result from construction and operation of the Corridor Project were documented, pursuant to CEQA, in an Environmental Impact Report (EIR), which was certified on June 11, 2008. A Notice of Determination was filed for the Corridor Project on June 16, 2008.

Both the Carmenita and the Corridor Projects have demonstrable logical termini and independent utility. Both environmental documents identified and referred to the other as related projects. In addition, the Corridor Project EIR identifies and considers the impacts of the Carmenita Project as cumulative impacts. Given the exhaustive environmental reviews that have been completed for both projects, the State is in compliance with CEQA.

If you have questions, please feel free to call Acquisition agent, Maan Faelnar-Belisario at (213) 897-0640.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Andrew P. Nierenberg', is written over the typed name and title.

ANDREW P. NIERENBERG  
Deputy District Director  
Division of Right of Way  
Department of Transportation  
Caltrans – District 7

APN:mb

## **Resolution of Necessity Appearance Fact Sheet**

<b>PROJECT DATA</b>	07-LA-5-PM 1.6/3.1 Expenditure Authorization 2159C9
<u>Location:</u>	Interstate 5 (I-5) in Los Angeles County in the cities of Santa Fe Springs and Norwalk
<u>Limits:</u>	Between Alondra Boulevard Overcrossing and Shoemaker Avenue Overcrossing
<u>Cost:</u>	Programmed construction cost: \$160,600,000 Current right of way cost estimate: \$168,330,000
<u>Funding Source:</u>	Traffic Congestion Relief Program, Congestion Mitigation and Air Quality, State Transportation Improvement Program, State-Local Partnership Program, Federal Demonstration Fund, Transportation Equity Act for the 21st Century, and Local Proposition C.
<u>Number of Lanes:</u>	Existing: three mixed-flow lanes in each direction Proposed: four mixed-flow lanes in each direction plus one high occupancy vehicle lane in each direction
<u>Proposed Major Features:</u>	Diamond interchange at Carmenita Road; replace two-lane Carmenita Road Overcrossing with ten-lane overcrossing structure that also provides for railroad grade separation; re-align Firestone Boulevard and Freeway Drive frontage roads; re-align and reconstruct local streets
<u>Traffic:</u>	Existing I-5 (year 2005): 96,130 Annual Daily Traffic (ADT) Proposed I-5 (year 2030): 156,655 ADT
<b>PARCEL DATA</b>	
<u>Property Owner:</u>	Newport Diversified, Inc., a California Corporation
<u>Parcel Location:</u>	13963 Alondra Boulevard, Santa Fe Springs Assessor Parcel Number 8069-014-004
<u>Present Use:</u>	Old Drive Inn Theater / Swap Meet Zoned M2- FOZ: Heavy Manufacturing with Freeway Overlay Zone
<u>Area of Property:</u>	717,298 Square Feet (SF)
<u>Area Required:</u>	Parcel 79519-1 - 621 SF - Permanent Easement for pipeline purposes Parcel 79519-2 - 18,033 SF - Temporary Construction and Grading Easement Parcel 79519-3 - 1,057 SF - Temporary Construction and Grading Easement

COUNTY OF LOS ANGELES  
CITY OF SANTA FE SPRINGS

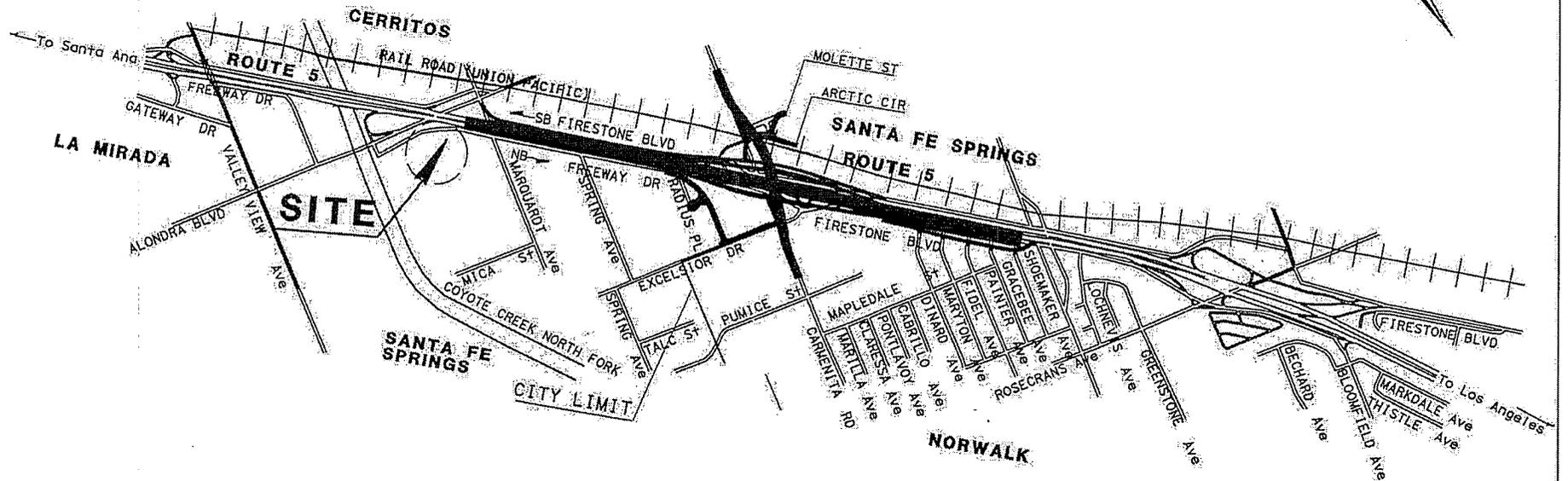
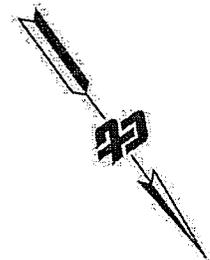


EXHIBIT "A"  
VICINITY MAP  
PARCEL 79519  
07-LA-5-PM. 1.65  
NO. SCALE      DATE 9-29-2009

