State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

M e m o r a n d u m

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: April 25-26, 2012

Reference No.: 2.4a.(4)
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Brent Green
Chief
Division of Right of Way and
Land Surveys

Subject: **RESOLUTION OF NECESSITY - APPEARANCE**

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-20781 summarized on the following page. This Resolution is for widening the Interstate 5 Freeway in District 7 in the city of Norwalk, county of Los Angeles.

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 lessee is contesting the Resolution and has requested a written appearance before the Commission. At the request of the lessee, objections to the Resolution have been submitted in writing to be made part of the official record of the Commission meeting, in lieu of a personal appearance before the Commission. The lessee's objections are included as Attachment A. The Department's responses to the lessee's objections are contained in Attachment B.

BACKGROUND:

Discussions have taken place with the lessee, who has been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which the lessee 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 lessee has been advised that the Department is requesting the Resolution at the Commission's

April 25-26, 2012 meeting. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-20781 - Capricorn Realty, Inc., a California Corporation, et al.; El Pollo Loco, Inc. (Lessee)
07-LA-5-PM 3.6 - Parcel 79048-1, 2, 01-01 - EA 215939.
Right of Way Certification Date: 03/09/12; Ready to List Date: 03/23/12. Freeway - widen Interstate 5 to add high occupancy vehicle and mixed-flow lanes. Authorizes condemnation of land in fee for a State highway, a temporary easement for construction purposes, and land in fee which is a remnant and would be of little market value. Located in the city of Norwalk at 12551 Rosecrans Avenue. Assessor's Parcel Numbers 8056-011-016, -017.

Attachments:
Attachment A - Lessees Written Objections dated March 13, 2012
Attachment B - Department Response dated March 15, 2012
Attachment C - Fact Sheet
Exhibits A and B - Maps

One copy to Stephen Maller, to Right of Way 03-14-12

RECD BY CTC
MAR 14 2012

PETERSON LAW GROUP
PROFESSIONAL CORPORATION
SUITE 290
19800 MACARTHUR BOULEVARD
IRVINE, CALIFORNIA 92612

TELEPHONE (949) 955-0127
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Via U.S. Express Mail
Express Mail Label No. EO 910 257 558 US

March 13, 2012

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

Re: **California Transportation Commission Meeting March 28-29, 2012, San Francisco; Project #0700001833; Parcel 79048-1, 2, 01-01; Proposed acquisition of 12551 Rosecrans Avenue, Norwalk, California**

Honorable Commissioners:

We represent El Pollo Loco, Inc. ("El Pollo Loco"), owner of the El Pollo Loco restaurant located on the property the State of California Department of Transportation ("State") proposes to acquire at 12551 Rosecrans Avenue in Norwalk, California (the "Premises"). We request this letter be made a part of the record and noted as an objection to the proposed acquisition and right to take. We do not intend to appear at the hearing.

El Pollo Loco is a lessee at the Premises pursuant to a written lease. El Pollo Loco is entitled to an apportionment interest in the value of the Premises pursuant to its lease. El Pollo Loco is also the owner of certain furniture, fixtures and equipment located on and in the Premises.

El Pollo Loco objects to the proposed acquisition on the basis that a proper offer was not made. Specifically: the offer dated January 19, 2012 ("Offer") does not reflect any offer for furniture, fixtures or equipment, whether moveable or immoveable; the Offer is vague and ambiguous as to its amount; and the Offer is deficient for including a substantial environmental offset without attribution to onsite sources and without regard to impact of same upon fair market value given the highest and best use of the property.

(1) The Offer is deficient for not reflecting any offer for furniture, fixtures or equipment, whether moveable or immoveable.

Attachment A

(2) The State of California offers to pay "the sum of **One Million Three Hundred Seventy Five Dollars ($1,375,000.00)** . . ." minus the $915,238.00 environmental offset discussed below. The Offer thus appears to be $459,762.00, based on the $1,375,000.00 minus $915,238.00. However, the Offer is vague and ambiguous as to whether the base amount, before environmental offset, is $1,000,375 or $1,375,000. As such, this is an offer that has no possibility of being accepted.

(3) The Offer includes the withholding of $915,238.00 from the amount to be paid, to be used for costs of cleaning up allegedly contaminated soil and/or groundwater, and requires the condemnee(s) to pay for cleanup costs beyond that amount, without attributing the alleged contamination to any source located on the Premises, or to any release by the condemnee(s). Cleanup of such contamination would not be considered absent the State's project. Furthermore, the sale price of the Premises would not be reduced by the full amount of cleanup costs, if at all, in any market transaction meeting the definition of Fair Market Value found at Code of Civil Procedure §1263.320.

Based on the foregoing, El Pollo Loco objects to the adoption of a Resolution of Necessity for the Premises and objects to the acquisition of the Premises.

Very truly yours,

Joseph A. Schwar
For Peterson Law Group, P.C.

JAS:

Attachment A

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY EDMUND G. BROWN, JR., Governor

DEPARTMENT OF TRANSPORTATION
DIVISION OF RIGHT OF WAY
100 SOUTH MAIN STREET
P. O. BOX 942873
LOS ANGELES, CA 90012-3606
PHONE (213) 897-1901
FAX (213) 897-8902

Flex your power!
Be energy efficient!

VIA U.S. MAIL AND ELECTRONIC MAIL

March 15, 2012

Mr. Joseph A. Schwar
PETERSON LAW GROUP, PC
19800 MacArthur Boulevard, Ste 290
Irvine, CA 92612

WRITTEN APPEARANCE RESPONSE
File: 07 – LA-5 – PM 3.6
E.A.: 215939 / Project ID: 0700001833
Parcel: 79048 -1, -2 , -01-01
Grantor: Capricorn Realty, Inc., et al.
Lessee: El Pollo Loco, Inc.

Dear Mr. Schwar:

This letter is in response to your letter dated March 13, 2012 addressed to the Executive Director of the California Transportation Commission (the "Commission") for property located at 12551 Rosecrans Avenue, in the city of Norwalk (the "Property").

Your letter, addressed specific concerns and objections to the Commission's proposed action on several grounds regarding the above referenced parcel and as requested your letter will be submitted to the Commission in lieu of a personal appearance and will be part of the official record presented to the Commission at its March 28-29, 2012 meeting to be held in Orinda, California.

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

1. **The offer is deficient for not reflecting any offer for furniture, fixtures or equipment, whether moveable or immoveable.**

The appraised value estimate includes items pertaining to the realty. The purchase price for this type of property is for land and improvements, including the fast food restaurant, miscellaneous site improvements, and items pertaining to the realty. As stipulated by the California Code of Civil Procedures, Section 1263.205:

> (a) As used in this article, "Improvements pertaining to the realty" include any machinery or equipment installed for use on property taken by eminent domain, or on the remainder if such property is part of the larger parcel, that cannot be removed without a substantial economic loss or without substantial damage to the property in which it is installed, regardless of the method of installation.
> (b) In determining whether particular properly can be removed "without a substantial economic loss" within the meaning of this section, the value of the property in place considered as a part of the realty should be compared with its value if it were removed and sold.

Attachment B

However, it should be noted that the lease between the grantor and the lessee states, "It is mutually agreed that the trade fixtures and equipment, including without limitation, interior and exterior signs, which may be installed in the leased premises prior to or during the term hereof, at the cost of Lessee or any sublessee, shall remain personal property and shall not be deemed to become part of the leased premises, no matter how affixed. Lessee shall have the right to remove said trade fixtures and equipment on the leased premised on or before the expiration of this Lease or any extensions or renewals thereof."

This was confirmed by the Real Estate Asset Manager of El Pollo Loco who stated that, "typically we take everything and everything allowed. Some items might not be worth taking if they are really old and we have newer, more efficient equipment". Therefore, based on this extraordinarily assumption, all trademark logo signage, furniture, fixtures, and equipment was not be included when valuing this property.

2. **The State of California offers to pay "the sum of One Million Three Hundred Seventy Five Dollars ($1,375,000.00)…" minus the $915,238.00 environmental offset discussed below. The Offer thus appears to be $459,762.00 based on the $1,375,000.00 minus $915,238.00. However the offer is vague and ambiguous as to whether the base amount, before environmental offset is $1,000,375.00 or $1,375,000.00. As such, this is an offer that has no possibility of being accepted.**

The objection is noted. The written sum of **One Million Three Hundred Seventy Five Dollars ($1,000,375.00)** was a typographical error and **One Million Three Hundred Seventy Five Thousand Dollars ($1,375,000.00)** is the correct amount. As presented at the meeting between the right of way agent and the lessee's attorney, the sum of $1,375,000.00 was provided verbally as well as in written appraisal form.

3. **The offer includes the withholding of $915,238.00 from the amount to be paid, to be used for costs of cleaning up allegedly contaminated soil and/or groundwater and requires the condemnee(s) to pay for cleanup costs beyond that amount, without attributing the alleged contamination to any source located on the Premises, or to any release by the condemnee(s). Cleanup of such contamination would not be considered absent the State's project. Furthermore, the sale price of the Premises would not be reduced by the full amount of cleanup costs, if at all, in any market transaction meeting the definition of Fair Market Value found at Code of Civil Procedure §1263.320.**

The Fair Market Value of contaminated property may be impacted by the presence of contamination even when the contamination was generated off site, and even where it was not caused by the property owner. An appraisal which takes the cost of clean up into consideration and deducts it, dollar for dollar, from the 'clean' Fair Market Value is the only approach accepted in the published cases thus far. (See Redevelopment Agency vs. Thrifty Oil Co. at 4 Cal.App. 4th 469, 1992). The Department applied this appraisal methodology and arrived at the offer. As you know eminent domain law provides that under these circumstances the parties may employ any 'reasonable appraisal methodology' (Code Civil Procedure section 1263.320) and that the reasonableness of the applied methodology is not an issue at the application for a Resolution of Necessity. (CCP section 1245.230) The amount of compensation to be paid is solely for the jury to determine based on opinion testimony at time of trial. (Ev. Code section 813).

Attachment B

Furthermore, it is Caltrans policy to have potentially responsible parties accept responsibility for remediation, and seek reimbursement from potentially responsible parties when remediation and/or monitoring must be conducted. All properties, including those acquired by an implementing agency, shall be investigated for contamination before being considered for incorporation into the State right of way. Property containing or potentially containing contamination shall only be acquired or accepted if the benefits and risks are documented, available risk reduction mechanisms are employed, and a policy exception is approved by Department management using criteria established by the Department's Chief Engineer.

As stated previously, your written response objecting to the Resolution of Necessity will be submitted to the Commission at its March 28-29, 2012 meeting to be held in Orinda, California.

Sincerely,

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

cc: via email:
Mark A. Zgombic, HQ Right of Way

Attachment B

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA 07-LA-5-PM 2.4/4.0
Expenditure Authorization 215939

Location: Interstate 5 (I-5) in Los Angeles County in the cities of Santa Fe Springs and Norwalk

Limits: Between the Orange County Line limit to 0.7 miles north of the 605 Freeway

Contract Limits: Between 0.1 miles north of Carmenita Road Overcrossing to 0.1 miles north of Silverbow Avenue Pedestrian Overcrossing

Cost: Programmed construction cost: $120,000,000.00
Current right of way cost estimate: $98,000,000.00

Funding Source: Corridor Mobility Improvement Account, Traffic Congestion Relief Program, State Transportation Improvement Program, State-Local Transportation Partnership Program, Transportation Equity Act for the 21st Century, and Local Proposition C

Number of Lanes: Existing: three mixed-flow lanes in each direction
Proposed: four mixed-flow lanes plus one high occupancy vehicle lane in each direction

Proposed Major Features: Reconfigure interchange at Rosecrans Avenue to Tight Diamond type; replace Shoemaker Avenue Overcrossing and Silverbow Avenue Pedestrian Overcrossing; replace Rosecrans Avenue Undercrossing; construct new Undercrossing at Bloomfield Avenue; re-align Bloomfield Avenue and Firestone Boulevard; and reconstruct local streets and frontage roads

Traffic: Existing I-5 (year 2005): 171,000 Annual Daily Traffic (ADT)
Proposed I-5 (year 2030): 281,000 ADT

PARCEL DATA

Property Owner: Capricorn Realty, Inc., a California Corporation, et al.

Lessee: El Pollo Loco, Inc.

Parcel Location: 12551 Rosecrans Avenue, Norwalk
Assessor's Parcel Numbers 8056-011-016, -017

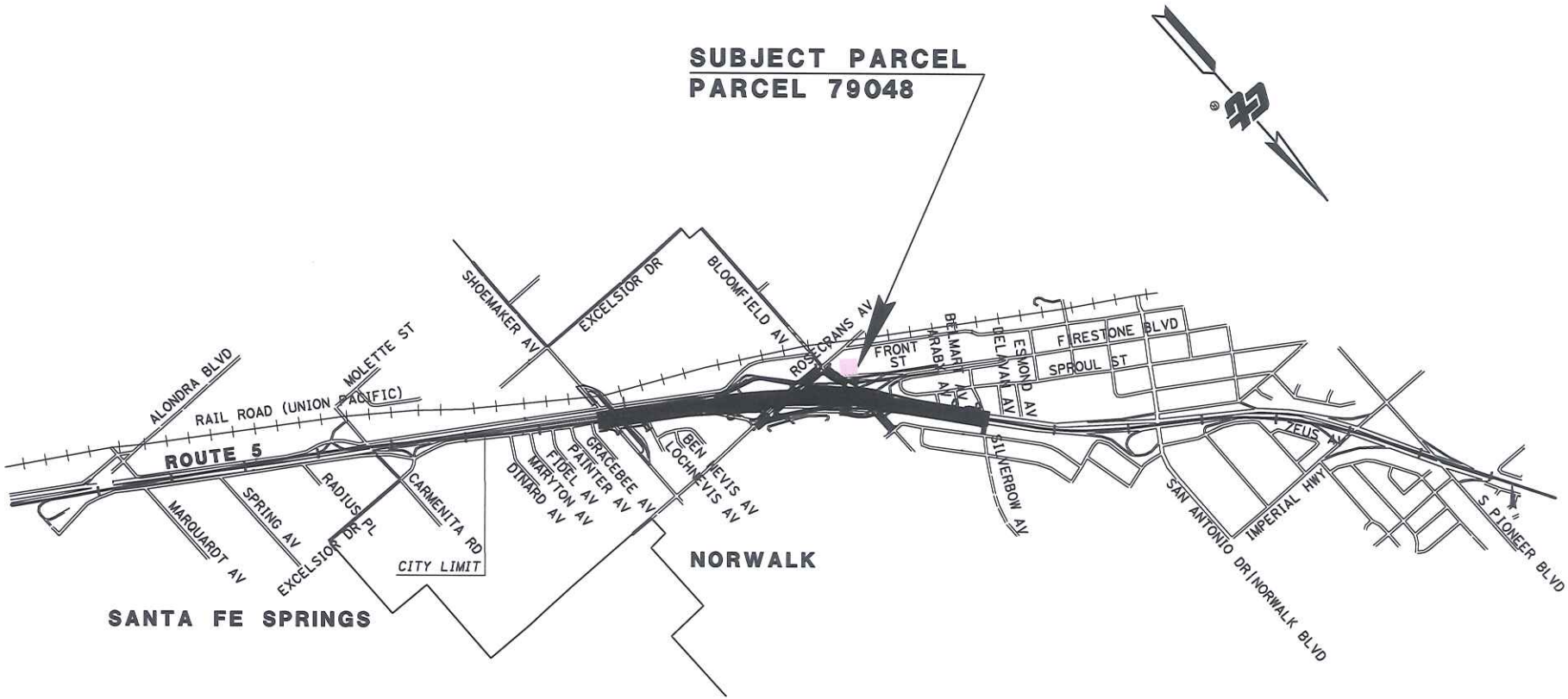
Present Use: Fast Food Restaurant – Zoned NOC3 (General Commercial Zone)

Area of Property: 18,304 Square Feet (SF)

Area Required: Parcel 79048-1 - 7,200 SF - Fee
Parcel 79048-2 - 11,104 SF - Temporary Construction Easement
Parcel 79048-01-01 - 11,104 SF - Excess Land

CITY OF NORWALK
COUNTY OF LOS ANGELES

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
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY
RESOLUTION OF NECESSITY

EXHIBIT A

NOT TO SCALE

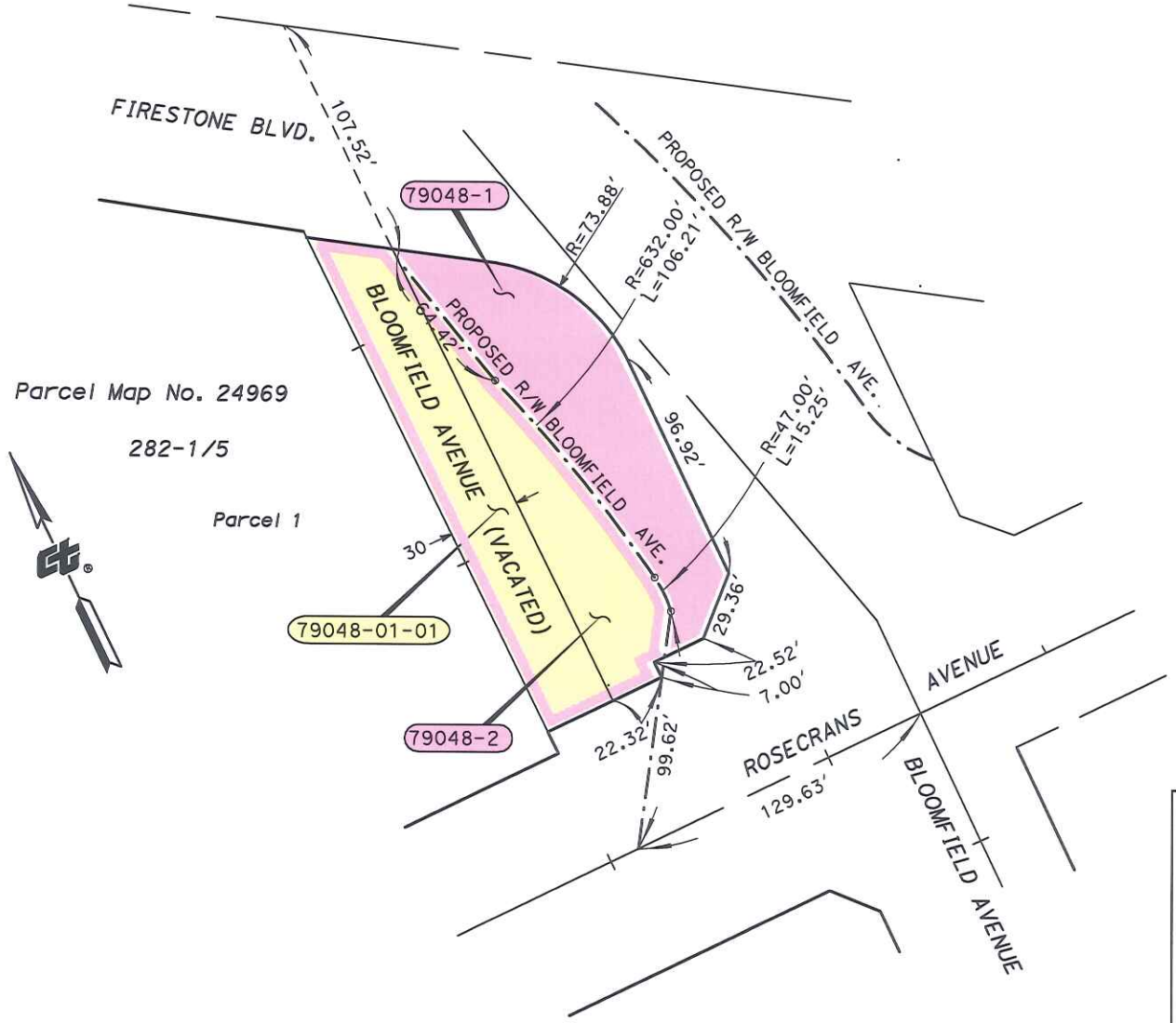
DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
7	LA	5	3.6	1	1

Exhibit A

CITY OF NORWALK
COUNTY OF LOS ANGELES

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.

SEC., TWP. & RGE
AS PER PAT. BOOK 1-493-494
AND O.R.M 7425-20-21



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

RIGHT OF WAY
RESOLUTION OF NECESSITY

EXHIBIT B

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
7	LA	5	3.6	1	1

Exhibit B