

# Memorandum

To: CHAIR AND COMMISSIONERS  
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: December 11-12, 2013

Reference No.: 2.4a.(5)  
Action Item

From: STEVEN KECK  
Acting 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-21102 summarized on the following page. This Resolution is related to construction of the State Route 11 project in District 11 in San Diego 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 owners of record.

In this case, the property owners are continuing to contest the adoption of a Resolution. They made a personal appearance at the October 8, 2013 Commission Meeting in which they challenged the adoption of a Resolution based on concerns/objections centering on project design issues, easement deed terms, and the owner's request for the Department to purchase soil in identified right of way and remainder areas on the subject property in coordination with the owners' pending development plans. In addition, the property owners cited their inability to review specified project plans, and their assertion that the Department had not yet made a valid offer in compliance with Government Code Section 7267.2, as a basis for contesting the adoption of a Resolution.

**BACKGROUND:**

The Commission deferred any action in adopting a Resolution at the October 8, 2013 Commission Meeting and instead directed the Department to continue discussions/negotiations with the property owners and to provide them with specifically requested project information and plans as a precursor to again requesting the adoption of a Resolution at the December 2013 Commission Meeting.

As per the Commission's request, the Department has continued ongoing discussions/negotiations in an attempt to address and resolve the property owners' additional concerns in regards to project impacts, and to provide them with all requested project information and plans. Attachment A is an Updated Summary of Issues identifying the current status of negotiations with the property owners. Exhibits A1-A8 are updated project and parcel maps identifying reduced right of way requirements, based on minimum design requirements for the project, which were again presented to the property owners on November 15, 2013. This reversion back to right of way requirements originally presented to the property owners on March 13, 2013 was required given the Department's inability to reach a reasonable compromise in identifying alternate right of way areas that would be acceptable to both the Department and property owners. Attachment B includes a Chronology of Contacts and copies of all correspondence between the Department and property owners since the October 8, 2013 Commission Meeting. Attachment C is a copy of a November 14, 2013 letter from the County of San Diego confirming the status of entitlement activities on the subject property as of that date. Attachment D is a copy of the Book Item Package presented to the Commission at the October 8, 2013 Commission Meeting.

At this point, even after continued dialogue, information sharing, and a reversion to an earlier and smaller design footprint, the Department and property owners remain unable to reach a negotiated settlement. As such, the Department has concluded that it is necessary to again seek adoption of a Resolution at the December 2013 Commission Meeting, so all remaining unresolved issues can be addressed through condemnation.

The property owners have been offered the full amount of the Department's fair market value appraisal (based on the reversion to previously identified right of way requirements) and where applicable, the property owners have been advised of any relocation assistance benefits to which they may be entitled. Adoption of the Resolution will not interrupt the Department's continuing efforts to secure an equitable, negotiated settlement with the property owners. In accordance with statutory requirements, the owners have been advised that the Department is again requesting the adoption of a Resolution at this time. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

In order to keep the project on schedule, and based on the above referenced circumstances, the Department is requesting that this appearance proceed to the December 2013 Commission Meeting. Legal possession, as obtained through the condemnation process after adoption of a Resolution, will allow construction activities on the subject property 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.

C-21102 - Makram A. Hanna and Maureen T. Hanna

11-SD-11-PM 1.52- Parcel 34808-1, 2, 3, 4, 5, 6, 7- EA 056329.

Right of Way Certification Date: 03/15/13; Ready to List Date: 03/25/13. Freeway – construct new freeway. Authorizes condemnation of land in fee for a State highway, underlying fee, extinguishment of abutter's rights of access, and revocable easements for slope, drainage, and access purposes. Located in the unincorporated area of San Diego County in Otay Mesa at the intersection of Airway Drive and Enrico Fermi Drive. Assessor's Parcel Number: 646-130-27-00.

Attachments:

Attachment A – Updated Summary of Issues

Exhibits A1 through A8 – Updated Project/Parcel Maps

Attachment B – Chronology of Contacts/Correspondence since October 8, 2013 CTC Meeting

Attachment C -November 14, 2013 Letter from County of San Diego

Attachment D – October 8, 2013 Commission Book Item Package

# ATTACHMENT A

## **UPDATED SUMMARY OF ISSUES**

On October 8, 2013, a Resolution of Necessity (Resolution) request was presented to the California Transportation Commission (Commission) for adoption. Property owners, Mr. Makram Hanna and Mrs. Maureen Hanna, were present and contested the design requirements for the project, asserted that they had not received a valid fair market offer under Government Code 7267.2, and represented to the Commission that they could not complete their proposed development plans until they received grading and drainage plans from the California Department of Transportation (Department). The Commission deferred action on the Resolution to allow for the Department to continue its collaborative efforts to resolve the owners' remaining issues.

On October 14, 2013, the Department mailed the owners a full set of project plans (layout plans, grading plans, drainage sheets) and the drainage report, while requesting written confirmation of all unresolved issues from the property owners' perspective. On October 17, 2013, the Department received a written summary of the owners' remaining contentions. The owners' written summary included a statement that they actually did not need project grading and drainage plans to assist with their proposed development plans, contradicting statements made by the property owners at the October 8, 2013 Commission meeting.

The Department met with property owner, Mr. Hanna (who was representing both owners) on October 25, 2013. This personal meeting focused on discussing in detail the owners' written summary of contentions and concerns as provided to the Department on October 17, 2013. The contentions that the proposed westerly right of way limits are excessive and that the proposed drainage easement is much larger than necessary, were addressed together since the Department's drainage plan controls the design footprint and corresponding right of way requirements in this area of the subject property. This contention is not new. It was first addressed back in May, June, and July of 2013, when the owners requested a straight line design and first submitted their "100 foot straight line design option" for the Department's review. The Department explained then that this owner-suggested 100 foot design option would not be feasible because it would impact key design features.

As an information item, it should be noted that after collaborating with the property owners and their engineering consultants for several months earlier this year, the Department received verbal and written consent from the property owners agreeing to move forward with a straight line 129 foot design alternative, which was subsequently presented at the October 8, 2013 Commission meeting.

The Department reiterated to the owners at the October 25th meeting, as had been done on numerous previous occasions, why the 100 foot option would not be feasible. The Department again explained in detail that the owner-suggested 100-foot straight line design option would impact the Department's proposed cross culvert and bio-swale ditch, thus making this design option infeasible.

The Department further explained that as the cross culvert design was based on existing terrain, natural drainage courses, and maintenance requirements, the required drainage culvert was designed for a 100-year storm event. The Department explained the need for the proposed 36-inch drainage pipe and that it is required to facilitate maintenance activities. Furthermore, the Department explained that any attempt to move the inlet/drop-off for the planned drainage facility to a location further north, would result in a fixed object within the clear recovery zone, creating a potential safety concern for the new freeway facility, which is projected to be heavily travelled by large commercial vehicles.

After the Department explained the above issues, and that the owner-suggested design option would compromise project safety and maintenance activities, the owner continued to assert that his team of engineers could redesign the project's drainage requirements so that these facilities would be constructed within the proposed right of way limits as suggested by the property owners. However, to date, the Department has not been provided with said alternate design plans for review and consideration.

During the October 25<sup>th</sup> meeting, the owners again asserted that the proposed design on the east side of the property is excessive. The Department explained that the proposed right of way limits along Enrico Fermi Drive are based on County circulation requirements and related access control requirements, as called out in the Department's Highway Design Manual (HDM) in Section 504.8. In addition, the property owner was reminded that the Department had previously reduced right of way requirements in this area, based on his prior inquiries. A copy of Highway Design Manual Section 504.8 was provided to the owners at this meeting. The owners have also been advised that the project's design in this area of the subject property is consistent with requirements addressed in the Final Tier 2 Environmental Impact Report/Environmental Impact Statement for the SR 11 project.

The last contention discussed at the October 25th meeting related to soil issues. Mr. Hanna again claimed that the Department's acquisition will create a shortage of 147,000 cubic yards of soil "needed to balance the remainder parcel" in the after-condition for development purposes, and that this would result in the owners having to import soil if the Department's project is initiated first. In conjunction with above, the owners also expressed the opinion that they would lose net buildable area, as a result of lowered ground levels in the after-condition, and this would result in "severance damages" due to reductions in net developable areas and additional costs associated with having to export soil if the Department acquires soil now located in the required right of way areas. The above assertion were new contentions, never presented to the Department prior to being raised at the October 8, 2013 Commission meeting. It should be noted that the concerns as noted above have now changed from what was originally identified by the owners in their May 20, 2013 correspondence to the Commission requesting a personal appearance.

Although the property owners have opined that the above soil issues are not "compensation-related", the Department explained that the owners' contentions of "severance damages" are

clearly an appraisal issue, typically addressed in the condemnation process, by hiring expert witness appraisers to evaluate such contentions.

The October 25, 2013 meeting concluded with the Department asking Mr. Hanna if he required any other technical data to help in the preparation of his conceptual development plans. Mr. Hanna specifically responded that he did not require any further project information or plans to facilitate his development activities.

Based on negotiations continuing to be at an impasse, and given the owners' repeated written and verbal contentions challenging previously proposed right of way requirements as excessive and unnecessary, the Department is compelled to reduce its right of way requirements to match minimum design requirements for the project. This design alternative was previously presented to the owners at the initiation of negotiations on March 13, 2013, but was subsequently revised in an attempt to accommodate the owners' numerous requests for changes. However, this reversion to minimum project requirements still incorporates owner-requested revocable slope, drainage, and access easements, in lieu of fee acquisition areas.

On November 8, 2013, the Department again met with Mr. Hanna and his son, in the hopes of overcoming the continuing impasse on the above issues. Updated maps, an updated written offer, revised appraisal, and related documents were personally presented to Mr. Hanna, based on the above reversion to original right of way requirements (including revocable easements). Mr. Hanna asked for the SR 11 Contractor's contact information for the purpose of negotiating the use of possible excess soil from his remainder parcel for construction of the project. Mr. Hanna also requested information on water quality issues relating to runoff that will be directed through project drainage facilities. Mr. Hanna suggested that he would again consider right of way requirements presented at the October 8, 2013 Commission meeting, if he was satisfied with the Department's responses to his water quality inquiries.

On November 14, 2013, the Department responded in writing to the property owners, providing contact information for the SR 11 Contractor and responding to the owners' water quality inquiries.

On November 15, 2013, the Department spoke to Mr. Hanna by phone as a follow-up to the above-referenced November 14, 2013 letter, and to make sure that Mr. Hanna was aware that Department representatives would continue to make themselves available for further discussions. The property owner strongly stated that he and the Department were now at an impasse.

On November 18, 2013, Mr. Hanna contacted the Department by phone and requested to meet in person or speak with District 11 Director, Laurie Berman, to further his discussions regarding his coordination efforts with the SR 11 Contractor relating to soil on his remainder parcel and to secure additional assurance that runoff draining into a project culvert on the subject property will be cleaned. It should be noted that the identified drainage facility will convey storm water flows from one side of the freeway to the other, thus perpetuating existing flows. No flows from the

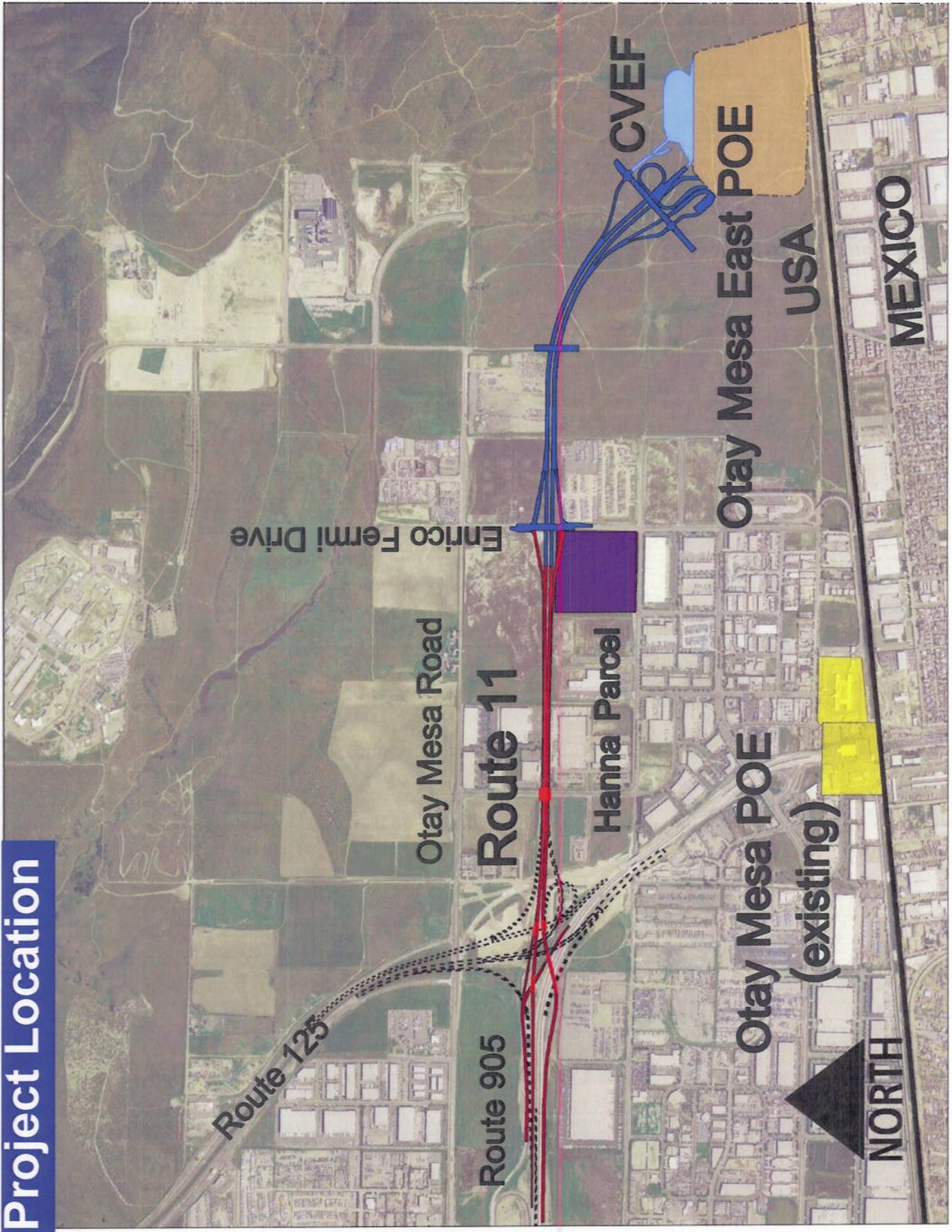
freeway will enter this drainage facility. A follow-up call to Mr. Hanna is pending to discuss the above issues further.

The Department has now made every reasonable effort to address and resolve all remaining design-related contentions made by the property owners. In addition, on November 14, 2013, the Department received a letter from David Sibbet, Planning Manager for the County of San Diego Planning and Development Services Department, certifying that property owner, Mr. Hanna *“does not have an active permit application open with the County of San Diego Department of Planning & Development Services (PDS). PDS held an Initial Consultation meeting with Mr. Hanna on February 1, 2013. Mr. Hanna submitted a plot plan for discussion during that meeting, but did not receive formal review or any type of approval for his plans since an Initial Consultation meeting is only intended to outline the permitting process and does not constitute a permit application. There have been no further submittals from Mr. Hanna since February 1.”* A copy of the above-referenced letter is attached.

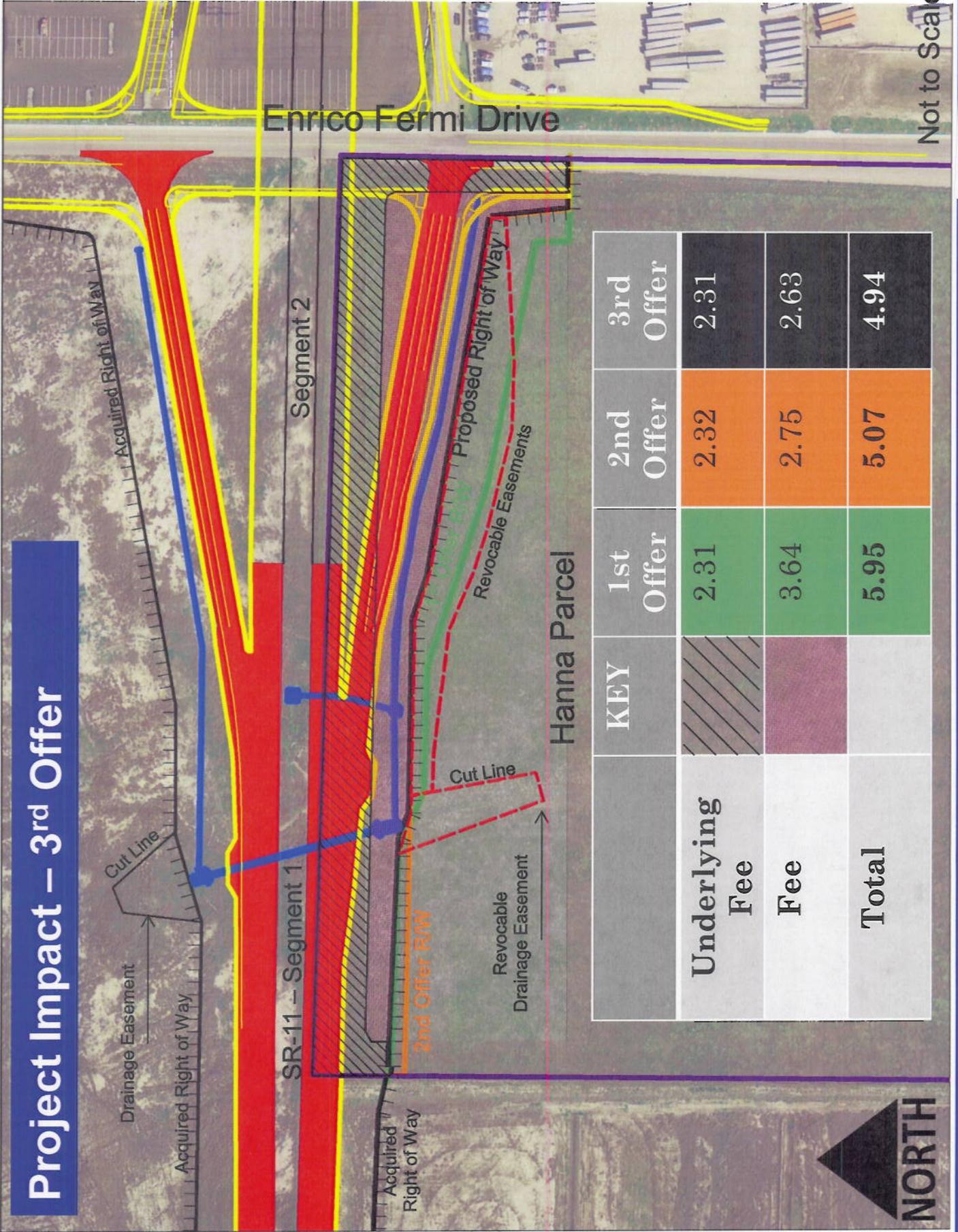
The above information is not consistent with statements made by Mr. Hanna at the October 8, 2013 Commission meeting. Given this fact, and that no development plans or entitlements have been approved by the County of San Diego for the property owners' speculative and conceptual development plans, the Department believes it is reasonable and appropriate to proceed with seeking authority to condemn only those minimum right of way requirements deemed absolutely necessary for construction of the SR 11 project, and has now submitted a Resolution request commensurate with those requirements.

## EXHIBITS A1-A8

# Project Location



# Project Impact – 3<sup>rd</sup> Offer

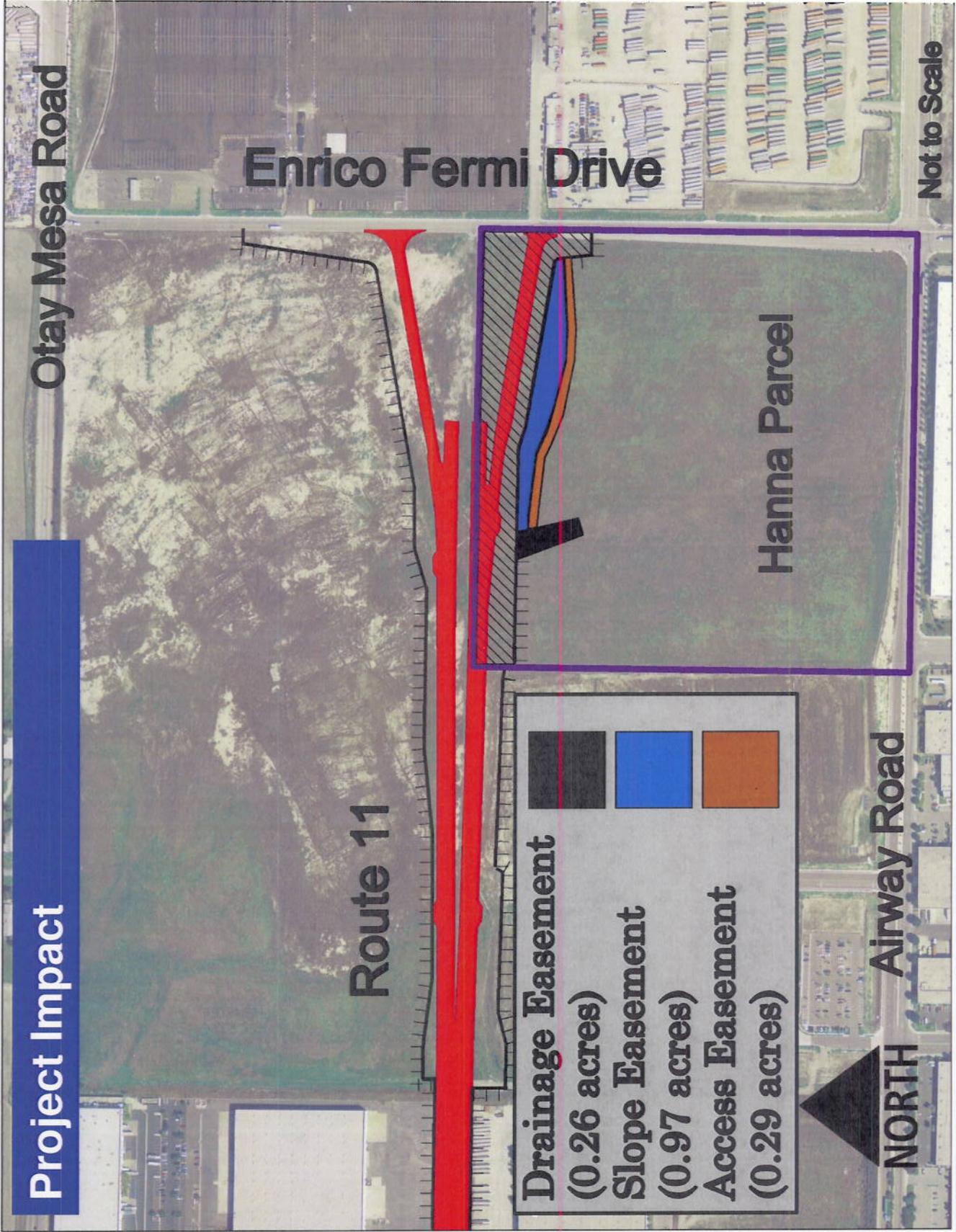


Not to Scale

	KEY	1st Offer	2nd Offer	3rd Offer
Underlying Fee		2.31	2.32	2.31
Fee		3.64	2.75	2.63
Total		5.95	5.07	4.94

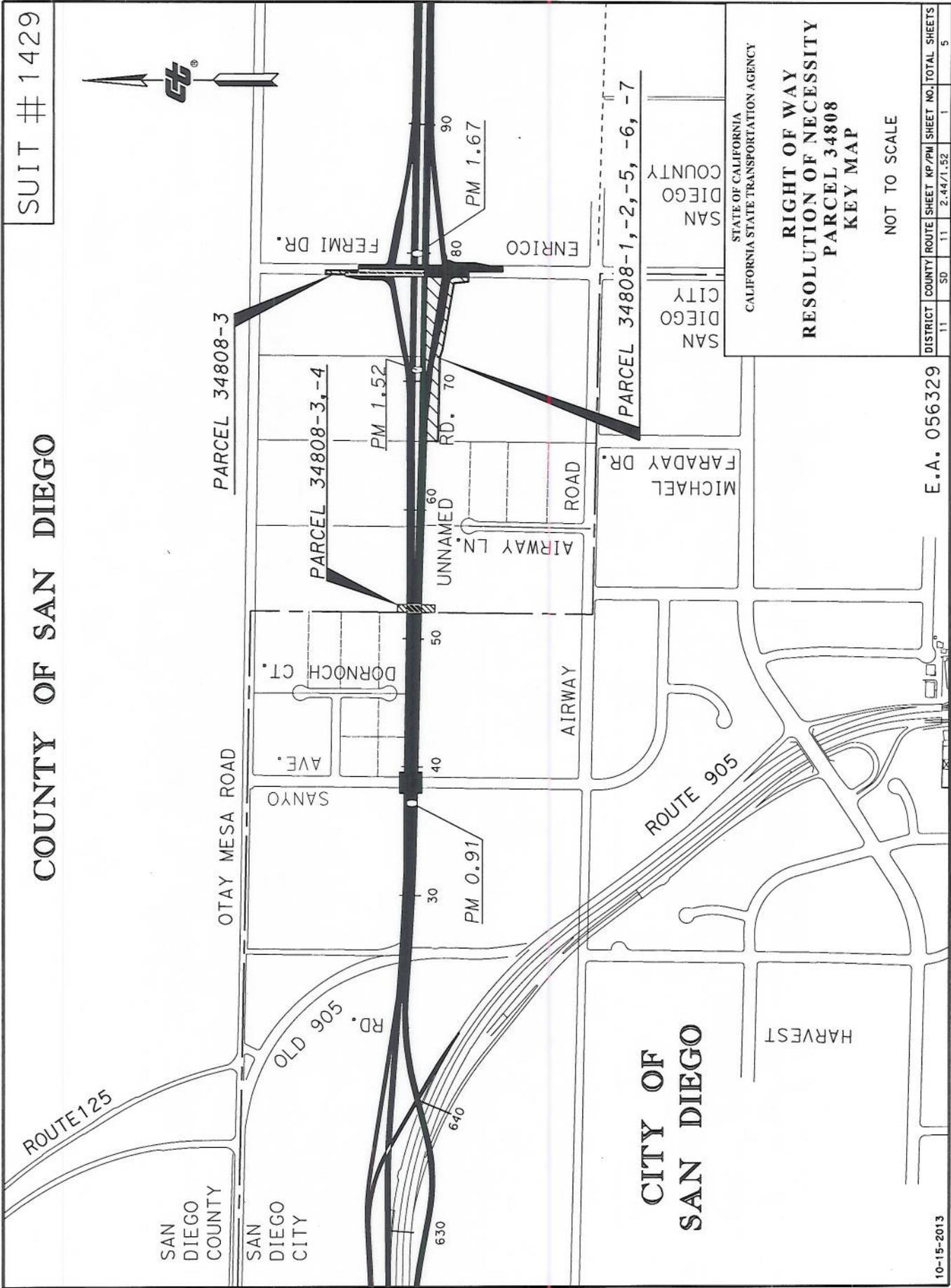


# Project Impact



SUIT # 1429

# COUNTY OF SAN DIEGO



STATE OF CALIFORNIA  
CALIFORNIA STATE TRANSPORTATION AGENCY

## RIGHT OF WAY RESOLUTION OF NECESSITY PARCEL 34808 KEY MAP

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET	KP/PM	SHEET NO.	TOTAL SHEETS
11	SD	11	2.44	1.52	1	5

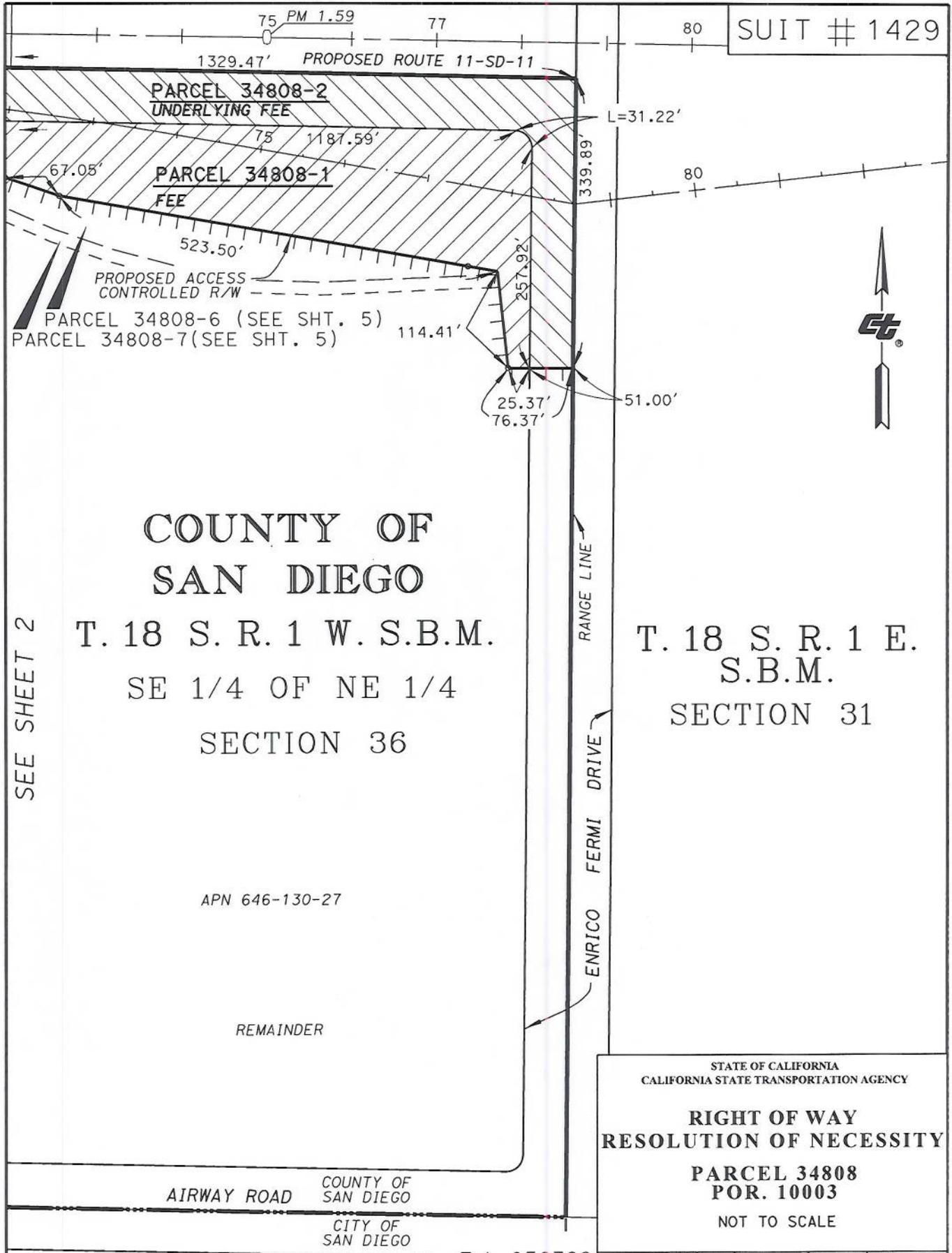
E.A. 056329

10-15-2013

### EXHIBIT A4



SUIT # 1429



SEE SHEET 2

COUNTY OF  
SAN DIEGO  
T. 18 S. R. 1 W. S.B.M.  
SE 1/4 OF NE 1/4  
SECTION 36

T. 18 S. R. 1 E.  
S.B.M.  
SECTION 31

APN 646-130-27

REMAINDER

RANGE LINE  
ENRICO FERMI DRIVE

AIRWAY ROAD  
COUNTY OF  
SAN DIEGO  
CITY OF  
SAN DIEGO

STATE OF CALIFORNIA  
CALIFORNIA STATE TRANSPORTATION AGENCY  
**RIGHT OF WAY  
RESOLUTION OF NECESSITY**  
**PARCEL 34808  
POR. 10003**  
NOT TO SCALE

E.A. 056329

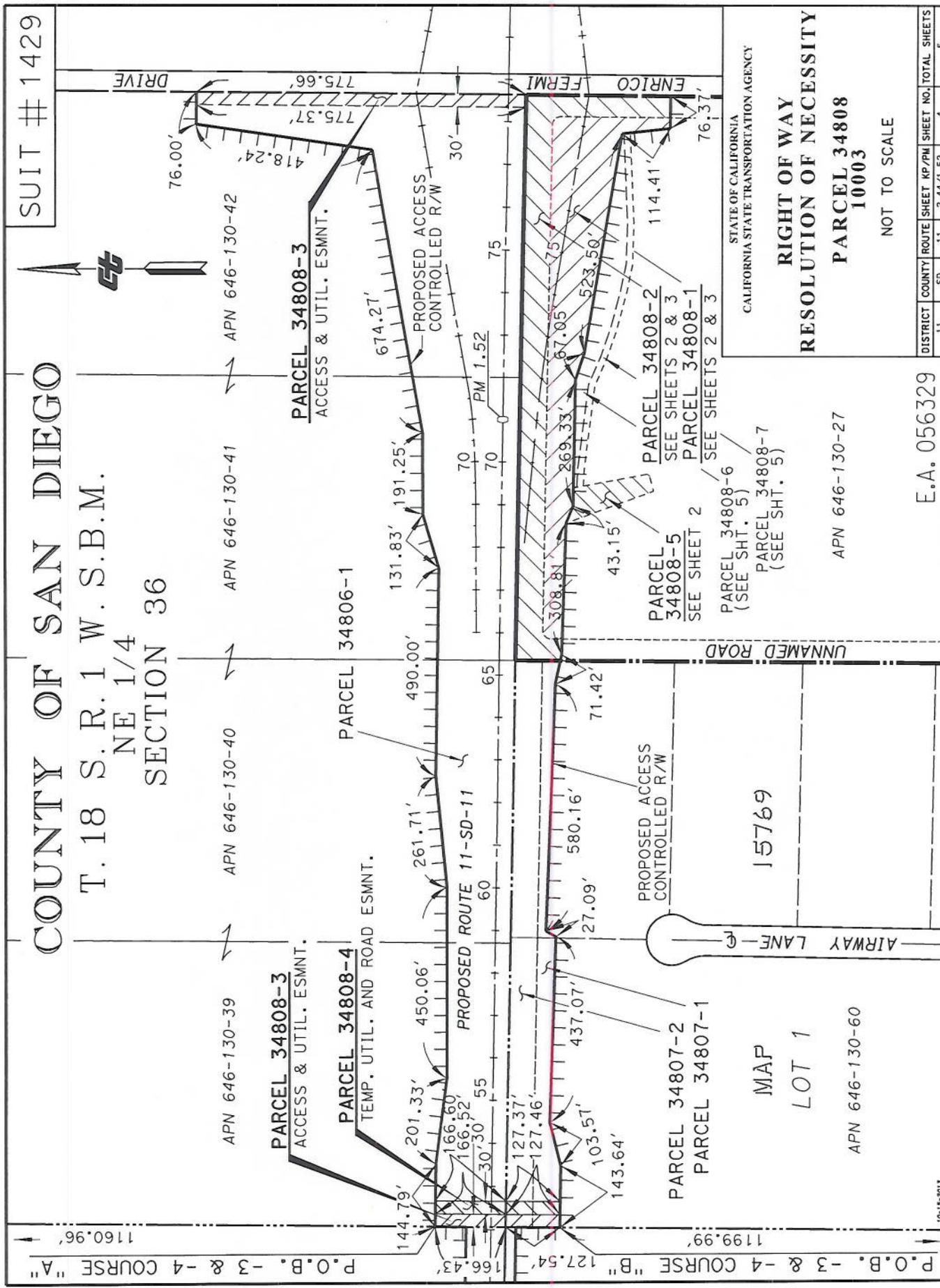
DISTRICT	COUNTY	ROUTE	SHEET KP/PM	SHEET NO.	TOTAL SHEETS
11	SD	11	2.56/1.59	3	5

SUIT # 1429

# COUNTY OF SAN DIEGO

## T. 18 S. R. 1 W. S.B.M. NE 1/4

### SECTION 36



STATE OF CALIFORNIA  
CALIFORNIA STATE TRANSPORTATION AGENCY

**RIGHT OF WAY  
RESOLUTION OF NECESSITY**

**PARCEL 34808  
10003**

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET	KP/PM	SHEET NO.	TOTAL SHEETS
11	SD	11	2,44	1.52	4	5

E.A. 056329

APN 646-130-27

MAP  
LOT 1  
15769

APN 646-130-60

10-15-2013

# EXHIBIT A7

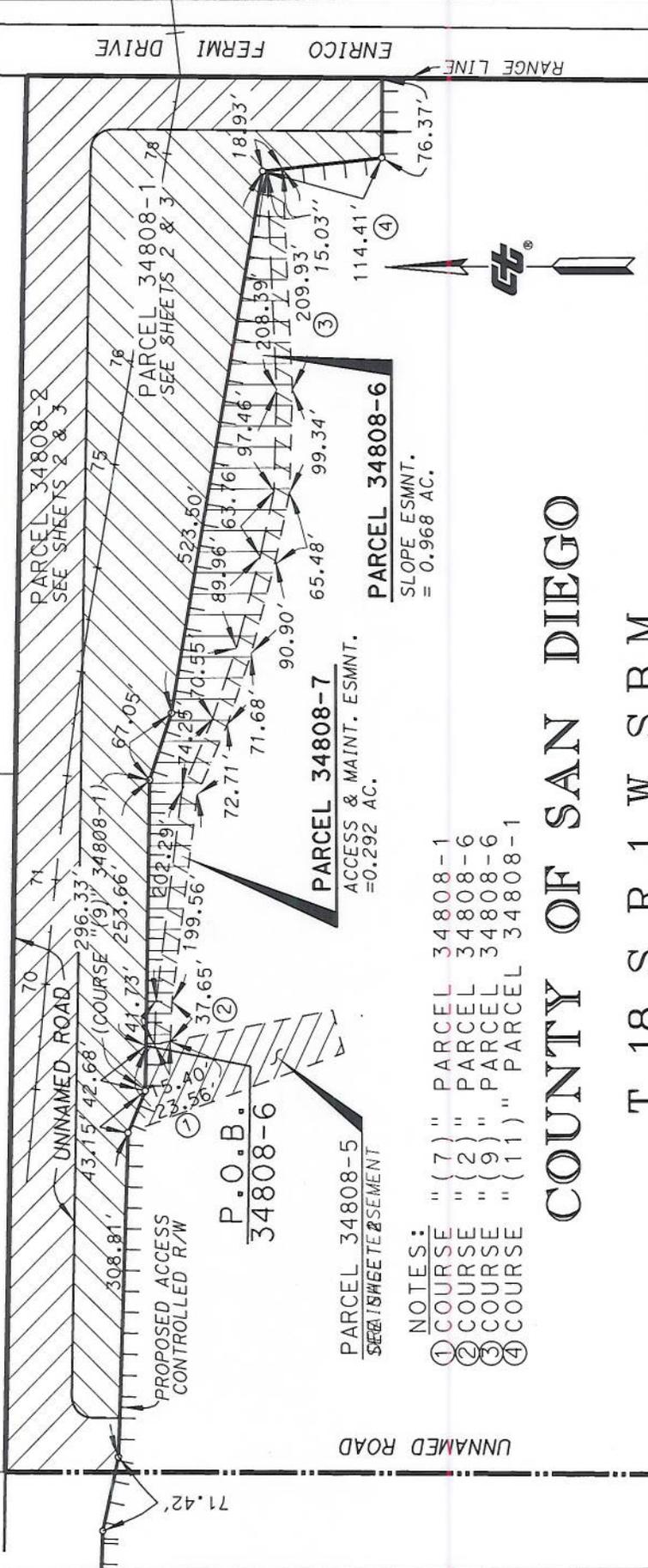
SUIT # 1429

PROPOSED ROUTE 11-SD-11

PM 1.52  
70

65

71 72 73 74 75 76 77 78 79



- NOTES:
- ① COURSE " ( 7 ) " PARCEL 34808-1
  - ② COURSE " ( 2 ) " PARCEL 34808-6
  - ③ COURSE " ( 9 ) " PARCEL 34808-6
  - ④ COURSE " ( 11 ) " PARCEL 34808-1

# COUNTY OF SAN DIEGO

T. 18 S. R. 1 W. S.B.M.  
SE 1/4 OF NE 1/4  
SECTION 36

APN 646-130-27

REMAINDER  
(INCLUDES UNDERLYING FEE OF PUBLIC ROADS)  
= 35.793 AC.

STATE OF CALIFORNIA  
CALIFORNIA STATE TRANSPORTATION AGENCY

**RIGHT OF WAY  
RESOLUTION OF NECESSITY**

**PARCEL 34808  
POR. 10003**

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET	KP/PM	SHEET NO.	TOTAL SHEETS
11	SD	11	1.52	5	5	5

# ATTACHMENT B

DATE	CONTEXT
10/14/2013	Letter sent to Mr. Hanna and signed by Steve Aragon. ** Attached **
10/17/2013	Steve Aragon received a voice mail from Mr. Hanna that he had me listen to. Mr. Hanna formally acknowledged receipt of the email sent to him. He reiterated his issues of the 129' vs. 100' on the westerly side, the portion on Enrico Fermi, the drainage location and the soil. He advised that he is available anytime from 10/18/2013 – 10/31/2013 – with the exception of 10/22/2013-10/24/2013. He also stated that he leaves for Boston on 11/1/2013. He advised that he will follow up this call with an email.
10/18/2013	Received an email from Mr. Hanna in response to the letter of 10/14/2013. The email is dated 10/17/2013; 10:13 PM.  Mr. Hanna is anticipating a response no later than 10/31. He is unavailable from 10/22/13 to 10/24/13.  ** Attached **
10/21/2013	Email to Mr. Hanna. ** Attached **  Email from Mr. Hanna ** Attached **
10/25/2013	Senior Right of Way Agent Steve Aragon, SR-11 Project Director Mario Orso, Design Manager Michael Webster, Project Manager Jacqueline Appleton-Deane, Right of Way Agent Christine Senteno, Grantor Makram Hanna.
11/05/2013	Received the updated approved appraisal.  Letter sent to Mr. and Mrs. Hanna as a follow up to the meeting. Sent 1 <sup>st</sup> class mail, certified return receipt, as well as email. The updated offer was included in the mailing. This included a slight design change: the west line reverted back to the original FWO to the drainage easement, it then continued to the revocable easement area in the east.  ** Attached **
11/06/2013	Received a voice mail from Mr. Hanna. He stated that he received the email of 11/5/13.  Mr. Hanna called back and asked if we could meet on Friday November 8 at 10 am..
11/08/2013	Senior Right of Way Agent Steve Aragon, Right of Way Agent Christine Senteno, Grantor Makram Hanna and his son. He requested Contractor information and assurance regarding the water quality from the bioswale.
11/14/2013	Letter sent to Mr. and Mrs. Hanna via email, 1 <sup>st</sup> class mail and certified/return receipt. ** Attached **  Letter received from the County of San Diego. ** Attached **
11/15/2013	Called Mr. Hanna and left a message trying to confirm that he received the email, and to ask if he had any additional questions or needed additional information.  Mr. Hanna called back and stated that he received my email and letter and had a missed call. I asked him if he had reviewed the letter and if additional info was needed, and where he and the Department stood on these issues. He said that it is over.
11/18/2013	Mr. Hanna called today. He asked to speak with District Director Laurie Berman..
11/18/2013	Email to Mr. Hanna. ** Attached **
11/18/2013	Email from Mr. Hanna. ** Attached **

Letter Dated 10/14/2013

## DEPARTMENT OF TRANSPORTATION

DISTRICT 11

4050 TAYLOR STREET, M.S. 310

SAN DIEGO, CA 92110

PHONE (619) 688-6928

FAX (619) 688-2570

Email: christine.senteno@dot.ca.gov



*Flex your power!  
Be energy efficient!*

## FIRST CLASS MAIL &amp; CERTIFIED MAIL

October 14, 2013

11-SD-11

P.M. 1.52

EA 056329/11-0002-0519

RW 34808-1, 2, 3, 4, 5, 6, 7

Grantor: Makram &amp; Maureen Hanna

Makram and Maureen Hanna  
PO Box 9225  
Rancho Santa Fe, CA 92067

Subject: APN 646-130-27 (portion)

Dear Mr. and Mrs. Hanna,

As you are aware, the California Transportation Commission (CTC) deemed at the October 8, 2013 CTC meeting that it was prudent that the Department continues coordinating its efforts with you regarding the proposed partial acquisition of the above subject parcel before considering adopting a Resolution of Necessity at the upcoming December 10, 2013 CTC meeting. As you had represented at the meeting and as recommended by the CTC, the remaining issues can be resolved within a two (2) week time frame.

Based on your statements to the CTC at the October 8, 2013 meeting, it is the understanding of the Department that you have three outstanding issues with the proposed acquisition and easements:

1. It is your contention the Department is acquiring soil from the easement and acquisition areas and not allowing you to balance your site for your proposed development.
2. It is your opinion the proposed Right of Way line can still be adjusted to reduce the fee acquisition area on the westerly side.
3. You are requesting to review the project grading and drainage plans to further assist with your proposed development plans.

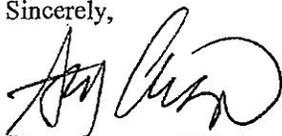
Please confirm in writing that these are the outstanding issues so we may continue our collaborative discussions in a productive manner. If there are additional issues not addressed above, please advise in writing so the Department can address all the remaining issues in a timely manner. Also, please provide in writing a list of additional technical items you would like to review for the SR-11 Segment 1 Project.

Although it's the Department's opinion the necessary engineering documents for the proposed construction of the project have been provided to you and your consultant, enclosed you will find the completed and finalized contract plans on a disk. Due to the size of the document, this was the most efficient way to deliver the file to you for review.

The Department will make itself available to meet and discuss these issues with you in person. Please contact Christine Senteno at (619) 688-6928 or [christine.senteno@dot.ca.gov](mailto:christine.senteno@dot.ca.gov) within 5 business days of receipt of this correspondence to arrange a time to meet within the two week time frame.

Mr. and Mrs. Hanna  
October 14, 2013  
Page 2

Sincerely,



Steve Aragon, Chief  
Acquisition Branch/Condemnation  
Right of Way Division  
Dept. of Transportation  
District 11 - San Diego  
619.688.6971

Enclosures:  
Full contract plan set (pdf.)  
Layout plans; grading plans; drainage sheets (microstation)  
Drainage report (pdf.)

Email dated 10/17/2013

**Senteno, Christine L@DOT**

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**From:** Makram Hanna [mh@equimaxfinancial.com]  
**Sent:** Thursday, October 17, 2013 10:13 PM  
**To:** Aragon, Steve M@DOT  
**Cc:** Senteno, Christine L@DOT; Webster, Michael J@DOT; Orso, Mario H@DOT; Schaffer, Janet L@DOT  
**Subject:** Re: R/W 34808-1 thru 7; SR-11 project  
**Attachments:** object to the adoption of the resolution that will authorize the California Department of Transportation.docx; HANNA-GP-01-12-12-12.pdf

Dear Mr. Aragon:

As you requested what follows, is a written summary of our contentions. Our contentions were explicitly presented to the California Transportation Commission in writing at their meeting of November 08, 2013. I have attached a copy of the document that was presented to the Commission for your reference.

In summary the issues are:

1. We believe that the straight line that the Department has proposed on the west side of the property is excessive. This is based upon our engineer's design which proposed a one hundred foot wide line. (See the attached copy of the design). The Department has proposed a line which nearly 30% wider at one hundred twenty-nine feet. If the one hundred foot line which we have proposed is not sufficient, please furnish us with your technical data that supports the larger acquisition so that we have an opportunity to assess it.
2. We believe that the straight line that the Department has proposed on the east side of the property is excessive. The reason that was given for the acquisition proposed by the Department is that the guidelines set by County of San Diego required the acquisition for the future widening of Enrico Fermi Drive. When we contacted the County of San Diego to confirm this, we were told by the head of the planning department that he had checked with all departments within the agencies in planning and could not find anyone who had knowledge of such requirement. The e-mail confirming our inquiry and the County of San Diego's response was forwarded to your engineering department. Upon receipt of this e-mail, Mr. Webster did not eliminate the proposed acquisition all together, but merely reduced it. This would be harmful to us as it would prevent us from having an access road from Enrico Fermi at the desired location on our parcel.
3. We believe that the proposed drainage area is located in a very awkward area on our parcel and is much larger than necessary than necessary to capture the natural flow of runoff water. We proposed that the drainage area could be contained within your proposed right-of-way acquisition on the east side of the parcel. If the department insists upon constructing the drainage area in its currently proposed position at its currently proposed size, we must have the technical data that supports the location and size of the drainage area so that we have an opportunity to assess it. We would also like to make clear the fact that we do not need the Department's project grading and drainage plans

to assist us with our proposed development plans. Our grading and drainage plans are nearly complete. We have shared several studies and technical information with you engineering department already. Which plan we will execute depends upon the outcome of our negotiation with CalTrans.

4. In regard to the issue of soil, please refer to the attached document which was presented to the California Transportation Commission meeting on November 08, 2013.

Please understand that time is of the essence. We have submitted our pre-application proposal to the County of San Diego. All studies required by the County of San Diego have been completed, including our environmental report. We are indeed ready to submit our final plans, but our final site plan is pending the outcome of these negotiations.

I am available to meet at any date or time between now and October 31, with the exception of October 22 - October 24, 2013. Please co-ordinate a time that is mutually convenient for all of you and notify me so that we may schedule our meeting. The fastest way to communicate with me is via e-mail, with a follow-up phone call to confirm the date and time.

We look forward to resolving these matters as soon as possible so that we may all move forward.

Thank You,

Makram and Maureen Hanna

## October 08, 2013 California Transportation Committee Meeting Agenda # 2:

Makram A. Hanna and Maureen T. Hanna, owners of parcel #34808-1,2,3,4,5 object to the adoption of the resolution that will authorize the California Department of Transportation to acquire our property by eminent domain for the construction of project #1100020519.

There are three matters at issue. These form the basis of our objection to the adoption of the Resolution of Necessity to acquire our property by eminent domain. These issues are:

- 1. Attachment B of the Panel Recommendation dated September 11, 2013 states that in compliance with Section 1245.230 of the Code of Civil Procedure, "An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record."**

This is a false statement. The document states that an offer to purchase had been made as of September 11, 2013, when in fact it had not.

The attached Exhibit A bears the signature of Rene Fletcher, Co-Panel Chair of the Office of the Right of Way Project Delivery of the Division of Right of Way and Land Surveys. This signature indicates that The Panel recommends submitting a Resolution of Necessity to the Commission. Exhibit A also bears the signature of Chief Engineer Karla Sutliff indicating that she concurred with the Panel's recommendation.

A copy of this document was received by us on September 24, 2013 and the envelope in which it was contained bore a postmark of September 20, 2013.

- 2. Section (b) of California Code of Civil Procedure 1240.030 requires that the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.**

The drainage and grading studies, and slope analysis that we have completed, indicates that the amount of property proposed for the right-of-way in this area by CalTrans is excessive. Despite several requests, CalTrans has not provided us with any of its drainage, grading or slope analysis studies to support the acquisition that they have proposed.

In fact, at the Condemnation Panel Review meeting that took place on August 14, 2013, we requested that the Department provide any documentation that supports the proposed acquisition but have received nothing. At the Condemnation Panel Review Meeting, members of the Panel asked the Project Design Engineer, Mr. Webster, if he had brought with him to the meeting any of the designs, drainage, grading, or slope analysis reports in support of the proposed acquisition. His response was that he did not bring any such information. To date, CalTrans has not shared with us any information to support the acquisition.

## October 08, 2013 California Transportation Committee Meeting Agenda # 2:

The Parcel Panel Report indicates that the parcel has varying topography with two areas of higher elevation located within the proposed SR-11 project corridor; the report further states that the existing ground elevations on the subject property are up to 30 feet above profile elevations for the proposed SR-11 project. These two areas of higher elevation are the primary point of contention that exists between us and CalTrans.

Our grading study indicates that in regard to these areas there is a serious issue. If CalTrans is permitted to acquire the parcel raw, the acquisition will include these two areas of higher elevation, which will leave us short the 147,000 cubic yards of dirt that we need to balance our site, which means that we will have to import dirt in order to balance the parcel remainder.

The other possible course of action that we could take should CalTrans be permitted to acquire the parcel raw, would be for us to drop the elevation of our site approximately 20 feet. This would result in an excess of approximately 280,000 cubic yards of dirt that we would have to export, and would also result in a loss of net buildable space due to the downslopes that would be created by dropping the elevation of the site.

The language of the proposed easements also requires revision as they are silent as to how long they will remain in effect. This means that they could remain in place indefinitely and result in unnecessary encumbrances of the property.

It is our belief that acquiring more property than is necessary causes us the greatest amount of private injury. Correspondingly, public funds used to make an acquisition that is larger than necessary is not compatible with the greatest public good as it results in unnecessary additional costs in acquiring such property.

### **3. Section (c) of California Code of Civil Procedure 1240.030 requires that the property sought to be acquired is necessary for the project.**

It is our belief that the proposed acquisition is larger than is necessary to complete the project, and the size of the proposed drainage pond is much larger than necessary to capture the amount of natural drainage flow that crosses our parcel. In addition, the location of the pond is in an area that will restrict our ability to maximize our net buildable area.

Email dated 10/21/2013

**Senteno, Christine L@DOT**

---

**From:** Senteno, Christine L@DOT  
**Sent:** Monday, October 21, 2013 6:56 AM  
**To:** 'Makram Hanna'  
**Subject:** RE: R/W 34808-1 thru 7; SR-11 project

Mr. Hanna,

I have scheduled a meeting for Friday October 25 at 9 am, at the District Office to discuss the issues and to attempt to resolve them. Please confirm receipt of this email and please confirm your attendance.

Thank you,

Christine Senteno  
Assoc. Right of Way Agent, Caltrans  
619.688.6928

---

**From:** Makram Hanna [mailto:mh@equimaxfinancial.com]  
**Sent:** Thursday, October 17, 2013 10:13 PM  
**To:** Aragon, Steve M@DOT  
**Cc:** Senteno, Christine L@DOT; Webster, Michael J@DOT; Orso, Mario H@DOT; Schaffer, Janet L@DOT  
**Subject:** Re: R/W 34808-1 thru 7; SR-11 project

Dear Mr. Aragon:

As you requested what follows, is a written summary of our contentions. Our contentions were explicitly presented to the California Transportation Commission in writing at their meeting of November 08, 2013. I have attached a copy of the document that was presented to the Commission for your reference.

In summary the issues are:

1. We believe that the straight line that the Department has proposed on the west side of the property is excessive. This is based upon our engineer's design which proposed a one hundred foot wide line. (See the attached copy of the design). The Department has proposed a line which nearly 30% wider at one hundred twenty-nine feet. If the one hundred foot line which we have proposed is not sufficient, please furnish us with your technical data that supports the larger acquisition so that we have an opportunity to assess it.
2. We believe that the straight line that the Department has proposed on the east side of the property is excessive. The reason that was given for the acquisition proposed by the Department is that the guidelines set by County of San Diego required the acquisition for the future widening of Enrico Fermi Drive. When we contacted the County of San Diego to confirm this, we were told by the head of the planning department that he had checked with all departments within the agencies in planning and could not find anyone who had knowledge of such requirement. The e-mail confirming our inquiry and the County of San Diego's

Email dated 10/21/2013

**Senteno, Christine L@DOT**

---

**From:** Makram Hanna [mh@equimaxfinancial.com]  
**Sent:** Monday, October 21, 2013 12:19 PM  
**To:** Senteno, Christine L@DOT  
**Subject:** Re: RW 34808-1 thru 7; SR-11 project

Ms. Senteno

I will attend the District Office meeting that you have scheduled for Friday October 25 at 9 am, at the District Office to discuss the issues and to attempt to resolve them. This email to confirm the receipt of your email and to confirm my attendance.

Thank you,

Makram Hanna

On 10/21/2013 6:55 AM, Senteno, Christine L@DOT wrote:

Mr. Hanna,

I have scheduled a meeting for Friday October 25 at 9 am, at the District Office to discuss the issues and to attempt to resolve them. Please confirm receipt of this email and please confirm your attendance.

Thank you,

Christine Senteno  
Assoc. Right of Way Agent, Caltrans  
619.688.6928

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**To:** Aragon, Steve M@DOT  
**Cc:** Senteno, Christine L@DOT; Webster, Michael J@DOT; Orso, Mario H@DOT; Schaffer, Janet L@DOT  
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In summary the issues are:

1. We believe that the straight line that the Department has proposed on the west side of the property is excessive. This is based upon our engineer's design which proposed a one hundred foot wide line. (See the attached copy of the design). The Department has proposed a

Email dated 11/5/2013, with letter attached

**Senteno, Christine L@DOT**

---

**From:** Senteno, Christine L@DOT  
**Sent:** Tuesday, November 05, 2013 2:49 PM  
**To:** 'Makram Hanna'  
**Cc:** Aragon, Steve M@DOT  
**Subject:** Follow Up of our Meeting on 10/25/13  
**Attachments:** Appraisal Summary Stmt\_Hanna.pdf; Deed\_Hanna.pdf; Map\_Hanna.pdf; RW Contract\_Hanna.pdf; Summary Statement\_Hanna.pdf; Title VI\_Hanna.pdf; Letter\_11513\_Hanna.pdf

Mr. Hanna,

Attached please find a letter dated November 5, 2013 which summarizes our meeting of October 25, 2013. As a furtherance of our ongoing discussions and consistent with your request to reduce the fee acquisition in the west portion of your property, the Department has reverted back to the design requirement presented to you in March 2013 which will tie into the revocable easement area to the east. This is the minimum design requirements. Attached you will also find the latest offer of just compensation from the State. The complete appraisal was mailed to you, as the file was too large to email.

Please contact me to confirm receipt of this email correspondence. As always, I am available to discuss this with you.

Thank you.

Christine Senteno  
Assoc. Right of Way Agent  
California Department of Transportation  
4050 Taylor St., MS 310  
San Diego, CA 92110  
619.688.6928

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 11

4050 TAYLOR STREET, M.S. 310

SAN DIEGO, CA 92110

PHONE (619) 688-6928

FAX (619) 688-2570

Email: christine.senteno@dot.ca.gov

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November 5, 2013

11-SD-11  
P.M. 1.5  
EA 056329/11-0002-0519  
RW 34808-1, 2, 3, 4, 5, 6, 7Makram and Maureen Hanna  
PO Box 9225  
Rancho Santa Fe, CA 92067

Subject: APN 646-130-27 (portion)

Dear Mr. Hanna:

Thank you for meeting District staff on October 25, 2013 to continue our collaborative efforts to resolve your issues regarding Caltrans' proposed partial acquisition of your property required for the SR-11 project.

This written correspondence summarizes the October 25<sup>th</sup> meeting where the coordination of our projects was discussed. It also serves as the District's formal response to your two verbal proposals to resolve the soil issue you presented at the meeting. The District also provides a course of action as a result of our ongoing discussions. The District representatives at the meeting were SR-11 Corridor Manager Mario Orso, Design Manager Michael Webster, Senior Right of Way Agent Steve Aragon, Right of Way Agent Christine Senteno and Project Manager Jacqueline Appleton-Deane.

**1. The straight line that the Department has proposed on the west side of the property is excessive.**

Though the District received verbal and written consent from you and your engineering consultants to move forward with the current straight line at 129 feet from your northerly property line at the west side, you contend the proposed acquisition in this westerly area is excessive and can be reduced and designed at a 100 feet straight line design option that you had submitted to the District. The District reviewed your design and explained why the 100 feet option would not work. It would impact the proposed cross culvert and bio-swale ditch. It was further explained that the drainage design controlled the westerly line and moving the line could compromise the safety and maintenance of the new facility.

**2. The straight line that the Department has proposed on the east side of the property is excessive.**

The proposed right of way along Enrico Fermi Drive is based upon the County circulation element and access control that should extend 100 feet beyond the end of the curb return for new construction per the Highway Design Manual (HDM) section 504.8. A copy of the Highway Design Manual section 504.8 was provided to you at the meeting. Furthermore, the design in this area is based on elements in the approved *Final Tier 2 Environmental Impact Report/Environmental Impact Statement*.

**3. The proposed drainage area is located in a very awkward area and is much larger than necessary to capture the natural flow of run-off water.**

The District explained in detail the cross culvert design and that it was based on the original ground while following the natural drainage path for a 100 year storm event. The District explained the proposed 36-inch pipe is required for adequate maintenance.

It was noted in the meeting that having a permanent drainage easement benefited both Caltrans and the Owner. It was explained the permanent easement protects the State highway facility by preventing others from grading within this area without an approved permit. Any modification or changed condition of the planned drainage system in this area could create potential flooding that could compromise the highway facility and safety of the travelling public. In addition, it was explained having the permanent easement requires Caltrans to be 100% responsible for maintaining this drainage facility, removing the burden and liability from the property owner. It was noted again this was a revocable drainage easement and could be removed if the owner's development plan addressed the drainage across the property.

You expressed additional concerns that our encroachment process was long. Mario told you that Caltrans is committed to working with you to help with the permit. He stated that given the sensitivity and the scope of your project, a special Caltrans Design Manager would be assigned to your permit. In having Mario's staff monitor the permit, it should make the process go faster.

**4. Caltrans' proposed partial acquisition will create a shortage of 147,000 cubic yards of dirt needed to balance the parcel remainder resulting with having to import dirt.**

The District asked for clarification of your soil issue. You advised this issue was explained in the document delivered to the CTC at the October 8, 2013 meeting. You had the opinion the acquisition did not account for the loss of dirt to balance your site. You further explained that there are only the following two possible courses of actions you can take:

Option # 1 – To obtain written assurances from Caltrans that you can grade before Caltrans obtains legal possession of the right of way acquisition so you can balance your parcel's remainder pad.

Option # 2 - To drop the elevation of your site if Caltrans acquires the right of way before you can grade the dirt in order to balance your site.

You presented a possible "resolution" to each of these options. You also indicated that if an agreement is reached on this issue, all the remaining issues would be resolved. The following are your proposed resolutions to Option 1 and 2:

Makram and Maureen Hanna  
November 5, 2013  
Page 3

**Resolution #1** - Allow your grading to happen first so you can balance your site. This will increase your buildable area and should make the drainage requirements smaller. This will also allow you to move the location and size of your proposed detention basin.

The District commented, and you agreed, this action will be a timing issue and depends on who begins work first. As previously advised at the Condemnation Panel Review meeting, the District reiterated there is nothing to prevent you from grading in this area first and you can do as you choose in this area assuming you have approval from the County of San Diego prior to Caltrans obtaining legal possession.

The District proposed a hypothetical solution that if Caltrans found a way to have the contractors push the dirt onto your remainder (it was reiterated this was a hypothetical solution because this action would be outside of Caltrans' approved environmental footprint), would that solve this issue? You responded this is a risk you could not take and would create additional problems ("dirt could get washed away if there's a 100 year flood") and there would be additional costs for moving more mounds of dirt unless it was graded and compacted. Further discussions regarding the status of your grading plans with the County and Caltrans construction schedule surmised the high probability Caltrans contractors may grade first.

**Resolution #2** - If Caltrans' project goes first and removes the dirt, you advised you will have to "drop" your site and will have approximately 280,000 cubic yards of excess dirt that will need to be exported or sold. In addition, you advised you will lose net buildable area due to dropping your site. You indicated you would have severance damages due to less net buildable area. Furthermore, the District advised that the project has been awarded and the contractor is aware they can independently ask you for dirt if they need it.

Though you expressed a strong opinion that the dirt issue is "not a compensation issue", the District explained that "severance damages" is an appraisal term and that this typically is a compensation component that could be resolved through hiring expert witness appraisers and ultimately allowing the courts to decide this issue.

#### **DISTRICT RESPONSE AND ACTIONS**

As a result of our ongoing discussions and consistent with your written and verbal requests to reduce the acquisition at the west side of your property, the District has reduced the fee acquisition in this area by reverting back to the most minimum design requirements. Please be advised this line was previously presented to you at the initiation of negotiations back on March 13, 2013. The line will tie it into the current design requirements at the revocable easement areas to the east as shown on the attached map.

Enclosed is the updated offer as a result of this design change.

Makram and Maureen Hanna  
November 5, 2013  
Page 4

In response to your proposed Resolution #1, unfortunately the District cannot provide assurances that your grading will precede Caltrans construction project based on the current status of your grading and development plans with the County of San Diego and Caltrans project schedule. Furthermore, it is the District's opinion Resolution #2 is a compensation issue as it pertains to a "severance damage" claim that can be resolved by the courts.

The District appreciates our continued discussions and will continue to make itself available to meet to maintain our negotiation efforts. I can be reached at (619) 688-6928.

Sincerely,



CHRISTINE SENTENO  
Associate Right of Way Agent  
Acquisition/Condemnation

Enclosure: Map

Letter dated 11/14/2013

## DEPARTMENT OF TRANSPORTATION

District 11  
4050 Taylor Street, MS 310  
San Diego, CA 92110

PHONE (619) 688-6928  
FAX (619) 688-2527  
TTY (619) 688-3214  
Email: christine\_senteno@dot.ca.gov



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November 14, 2013

11-SD-11  
KP 1.31  
EA 053629 (11-0002-0519)  
RW 34808-1,2,3,4,5,6,7

Makram and Maureen Hanna  
PO Box 9225  
Rancho Santa Fe, CA 92067

Dear Mr. and Mrs. Hanna:

Thank you for meeting with the Department on Nov. 8, 2013. Below is a follow-up to our meeting with the Department's responses to your inquiries:

1. You had requested contact information for the SR-11 Contractor for the purpose of negotiating the use of excess dirt you may have on your remainder parcel. To confirm, Coffman Specialties, Inc. has been awarded the construction contract for Segment 1 of the SR-11 freeway project. Stephen Harder with Coffman is the focal point of contact. His phone number is 858-536-3100.
2. In response to your concerns with the water quality control related to the proposed bioswales, the project bioswales are a Caltrans treatment Best Management Practice (BMP) to remove pollutants to the maximum extent practicable and meets the requirements in the current State Water Quality Control Board permit. The NPDES permit number is 2012-0011-DWQ.

Please contact me for any additional information. The District can make itself available to meet to further our discussions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christine Senteno".

Christine Senteno  
Associate Right of Way Agent  
R/W Acquisition Branch

Letter Dated 11/14/2013



MARK WARDLAW  
Director

DARREN GRETLER  
Assistant Director

**County of San Diego**  
**PLANNING & DEVELOPMENT SERVICES**

5510 OVERLAND AVENUE, SUITE 110, SAN DIEGO, CALIFORNIA 92123  
INFORMATION (858) 894-2968  
TOLL FREE (800) 411-0817  
[www.sdcounty.ca.gov/pds](http://www.sdcounty.ca.gov/pds)

November 14, 2013

Mario Orso, Caltrans  
[Mario.orso@dot.ca.gov](mailto:Mario.orso@dot.ca.gov)

Re: Hanna Property, APN 646-130-27

This letter certifies that Mr. Hanna does not have an active permit application open with the County of San Diego Department of Planning & Development Services (PDS). PDS held an Initial Consultation meeting with Mr. Hanna on February 1, 2013. Mr. Hanna submitted a plot plan for discussion during that meeting, but did not receive formal review or any type of approval for his plans since an Initial Consultation meeting is only intended to outline the permitting process and does not constitute a permit application. There have been no further submittals from Mr. Hanna since February 1.

Sincerely,

David Sibbet, Planning Manager  
Project Planning, Planning & Development Services

CC: [Michael.Webster@dot.ca.gov](mailto:Michael.Webster@dot.ca.gov)  
[Jacqueline.Appleton-Deane@dot.ca.gov](mailto:Jacqueline.Appleton-Deane@dot.ca.gov)  
[Nicola.Bernard@dot.ca.gov](mailto:Nicola.Bernard@dot.ca.gov)  
[Francisco.Ortiz@sdcounty.ca.gov](mailto:Francisco.Ortiz@sdcounty.ca.gov)

Email dated 11/18/2013

**Senteno, Christine L@DOT**

---

**From:** Senteno, Christine L@DOT  
**Sent:** Monday, November 18, 2013 2:48 PM  
**To:** 'Makram Hanna'  
**Cc:** Aragon, Steve M@DOT  
**Subject:** Caltrans SR 11 project - Follow up.

Mr. Hanna,

Per our conversation earlier today, you requested to speak with District Director Laurie Berman. She is at a conference today. Her earliest availability to call you will be either Tuesday afternoon or on Wednesday.

Thank you.

Christine Senteno  
Assoc. Right of Way Agent  
California Department of Transportation  
4050 Taylor St., MS 310  
San Diego, CA 92110  
619.688.6928

Email dated 11/18/2013

**Senteno, Christine L@DOT**

---

**From:** Makram Hanna [mh@equimaxfinancial.com]  
**Sent:** Monday, November 18, 2013 3:50 PM  
**To:** Senteno, Christine L@DOT  
**Subject:** Re: Caltrans SR 11 project - Follow up.

I'm available after 11 am tomorrow and all day Wednesday. Again thank you for all your help

On 11/18/2013 2:48 PM, Senteno, Christine L@DOT wrote:

Mr. Hanna,

Per our conversation earlier today, you requested to speak with District Director Laurie Berman. She is at a conference today. Her earliest availability to call you will be either Tuesday afternoon or on Wednesday.

Thank you.

Christine Senteno  
Assoc. Right of Way Agent  
California Department of Transportation  
4050 Taylor St., MS 310  
San Diego, CA 92110  
619.688.6928

Respectfully,

**Makram Hanna**

Equimax Financial Services, Inc.

P.O. Box 9225 | Rancho Santa Fe, CA 92067

P. (858) 353-1186 | F. (858) 759-6879

**mh@equimaxfinancial.com**

 **Think Green, please RECYCLE! Is printing this necessary?**

# ATTACHMENT C



**MARK WARDLAW**  
*Director*

**County of San Diego**  
**PLANNING & DEVELOPMENT SERVICES**

**DARREN GRETLER**  
*Assistant Director*

5510 OVERLAND AVENUE, SUITE 110, SAN DIEGO, CALIFORNIA 92123  
INFORMATION (858) 694-2960  
TOLL FREE (800) 411-0017  
[www.sdcounty.ca.gov/pds](http://www.sdcounty.ca.gov/pds)

November 14, 2013

Mario Orso, Caltrans  
[Mario.orso@dot.ca.gov](mailto:Mario.orso@dot.ca.gov)

Re: Hanna Property, APN 646-130-27

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Sincerely,

David Sibbet, Planning Manager  
Project Planning, Planning & Development Services

CC: [Michael.Webster@dot.ca.gov](mailto:Michael.Webster@dot.ca.gov)  
[Jacqueline.Appleton-Deane@dot.ca.gov](mailto:Jacqueline.Appleton-Deane@dot.ca.gov)  
[Nicola.Bernard@dot.ca.gov](mailto:Nicola.Bernard@dot.ca.gov)  
[Francisco.Ortiz@sdcounty.ca.gov](mailto:Francisco.Ortiz@sdcounty.ca.gov)

# ATTACHMENT D

## Memorandum

To: CHAIR AND COMMISSIONERS  
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: October 8, 2013

Reference No.: 2.4a.  
Action Item

From: STEVEN KECK  
Acting 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-21102 summarized on the following page. This Resolution is related to construction of the State Route 11 project in District 11 in San Diego 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 owners 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 relate to project design issues, easement deed terms, and the owners' request for the Department to purchase soil in identified right of way and remainder areas on the subject property in coordination with the owners' pending development plans. 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.

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, 2013 Commission meeting. Legal possession will allow the construction activities on the parcel 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.

C-21102 - Makram A. Hanna and Maureen T. Hanna

11-SD-11-PM 1.52 - Parcel 34808-1, 2, 3, 4, 5, 6, 7 - EA 056329.

Right of Way Certification Date: 03/15/13; Ready to List Date: 03/25/13. Freeway – construct new freeway. Authorizes condemnation of land in fee for a State highway, underlying fee, extinguishment of abutter's rights of access, and permanent easements for slope, drainage, and access purposes. Located in the unincorporated area of San Diego County in Otay Mesa at the intersection of Airway Drive and Enrico Fermi Drive. Assessor's Parcel Number: 646-130-27-00.

Attachments:

- Attachment A - Project Information
- Exhibit A1 through A3 - Project Maps
- Attachment B - Parcel Panel Report
- Exhibit B1 through B5 - Parcel Maps

## PROJECT INFORMATION

<b>PROJECT DATA</b>	11-SD-11/905-PM 0.0/1.6, R9.9/R10.7 Expenditure Authorization: 056329/ 11-00002-0519
<u>Location:</u>	Route 11 in Otay Mesa, San Diego County
<u>Limits:</u>	In San Diego County, in and near San Diego from the 11/905 Separation to Enrico Fermi Drive
<u>Cost:</u>	Programmed Construction Cost: \$67,100,000.00 Current Right of Way Cost Estimate: \$31,219,000.00
<u>Funding Source:</u>	Proposition 1B/Trade Corridor Improvement Funds (TCIF) Coordinated Border Infrastructure Funds (CBI)
<u>Number of Lanes:</u>	Existing: Not Applicable Proposed: New 4-Lane Freeway
<u>Proposed Major Features:</u>	Construct Freeway to Freeway Connectors and New Freeway.
<u>Traffic:</u>	Existing: Not Applicable Proposed (2035): 66,000 Annual Daily Traffic (ADT)

## NEED FOR THE PROJECT

The proposed State Route 11 (SR-11) freeway, in addition to a new Commercial Vehicle Enforcement Facility (CVEF) and Federal Port of Entry (POE), are to be constructed in order to reduce congestion and facilitate increased trade and personal travel across the United States-Mexico border in the San Diego-Tijuana area. The capacities of the existing POEs in the region are currently being exceeded, causing delays for commercial and non-commercial vehicles crossing the border. Such delays at the existing Otay Mesa POE have been correlated with economic yearly output losses (direct, indirect, and induced) in the San Diego region of up to \$1.2 billion for the study year 2008. Traffic delays are expected to increase and the economic losses incurred by the regional and national economies would more than double in the next ten years, unless significant improvements in border crossing and transportation infrastructure/management take place. The long-term need for a third regional crossing has been identified by transportation and planning agencies on both sides of the border.

## **PROJECT PLANNING AND LOCATION**

SR-11 will be constructed as a four-lane toll highway. The project is split into three segments. The Hanna subject property is located in Segment 1, which includes a new four-lane highway (approximately 1.7 miles in length) connecting the SR-905/SR-11 interchange to Enrico Fermi Drive.

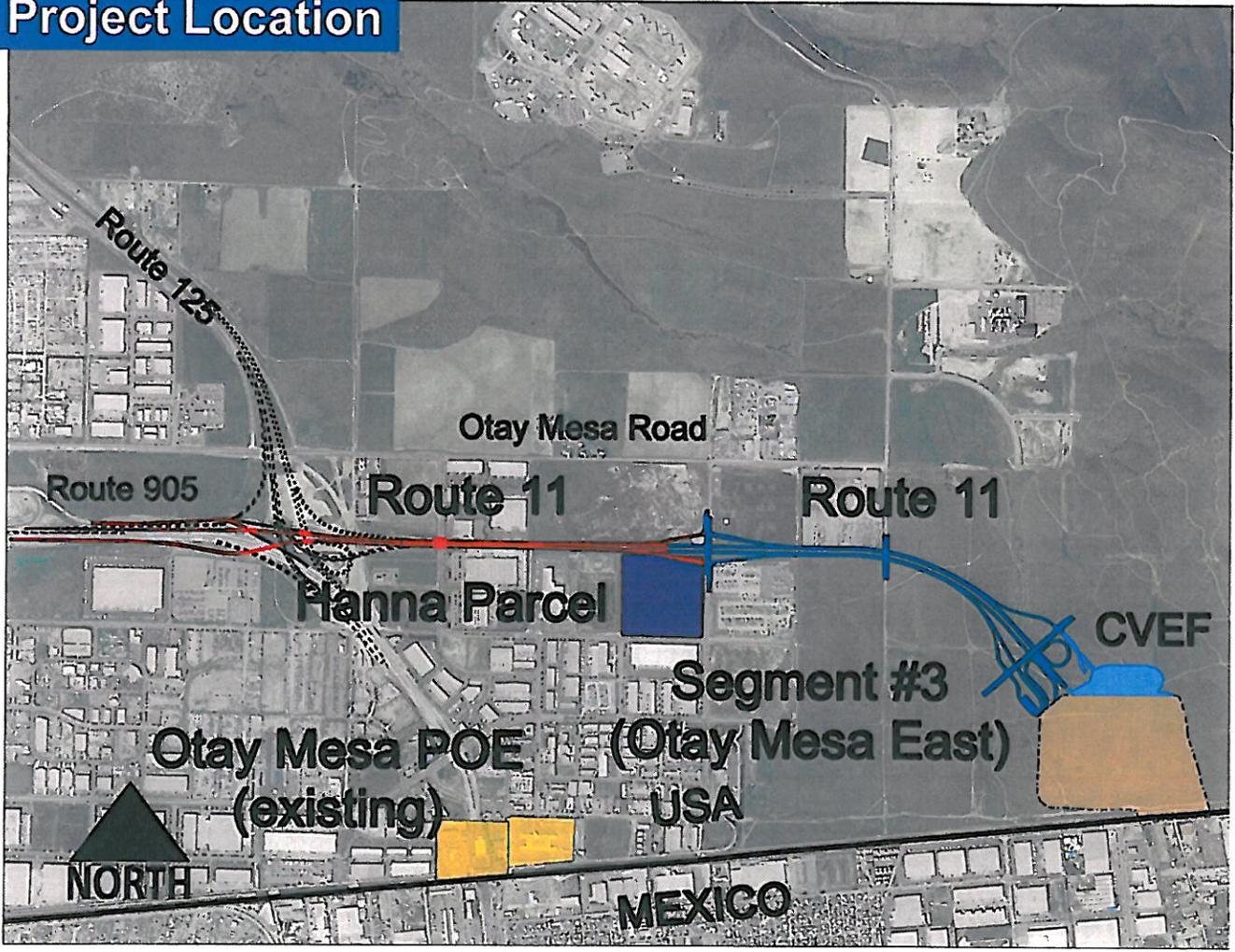
An additional project is in the design phase, which will extend SR-11 easterly from Enrico Fermi Drive to a proposed Otay Mesa East Port of Entry (OME POE) and Commercial Vehicle Enforcement Facility (CVEF) at the United States-Mexico border. This second project is referred to as Segment 2.

The Project Report for SR-11 approved both projects (Segments 1 and 2) proceeding to the design phase. Due to funding and scheduling issues, the SR-11 project was separated into two segments for design and construction phases, however, freeway and ramp geometrics for Segment 1 are designed based on traffic volumes projected for the 2035 Horizon Year with both segments constructed.

Several alternatives were investigated for SR-11 during the Project Approval/Environmental Document stage. These alternatives included One-Interchange, Two-Interchange, and No-Interchange Alternatives, as well as a No-Bid Alternative.

Projected traffic volumes and analysis from the Tier II Traffic Technical Report (dated October 5, 2010) and two Value Analysis (VA) Studies resulted in the choice of the Two-Interchange Alternative with Segment 1 now constructing the portion of the project to Enrico Fermi Drive.

# Project Location



# Project Impact

Otay Mesa Road

Route 11

Enrico Fermi Drive

**Underlying Fee**  
(2.32 ac)

**Fee**  
(2.75 ac)

**Total Fee Area**  
(5.07 ac)



**Hanna Parcel**  
(40.73 acres)  
(35.65 ac Remainder)

NORTH

Airway Road

Not to Scale

**Project Impact**

Otay Mesa Road

Route 11

Enrico Fermi Drive

- Drainage Easement (0.25 ac)
- Slope Easement (0.97 ac)
- Access Easement (0.29 ac)



Hanna Parcel (40.73 acres)  
(35.65 ac Remainder)

NORTH

Airway Road

Not to Scale

**PARCEL PANEL REPORT**

**PARCEL DATA**

**Property Owner:** Makram A. Hanna and Maureen T. Hanna

**Parcel Location:** Airway Road in Otay Mesa, west of Enrico Fermi Drive  
Unincorporated San Diego County

**Present Use:** Vacant Land

**Zoning:** Light Industrial

**Size of Property:** 40.725 Acres (AC)

**Right of Way Areas** 34808-1: 0.526 AC Unencumbered Fee  
**Required for Project:** 34808-2: 2.329 AC Underlying Fee (Unnamed Road & Enrico Fermi Drive)  
34808-3: 0.736 AC Access & Utility Easement  
34808-4: 0.202 AC Road & Utility Easement  
34808-5: 0.253 AC Access, Construction, Drainage Easement  
34808-6: 0.968 AC Slope Easement  
34808-7: 0.292 AC Access Easement

**PARCEL DESCRIPTION**

The vacant, unimproved subject parcel is currently 40.725 AC in size. It is located on Airway Road in Otay Mesa, an unincorporated area of San Diego County, abutting the United States-Mexico Border. The property is currently zoned Light Industrial. The subject parcel has varying topography, with two areas of higher elevation located within the proposed SR-11 project corridor. At present, natural drainage flows across the middle of the subject property in a southeasterly direction. Existing ground elevations on the subject property are up to 30 feet above profile elevations for the proposed SR-11 project.

**NEED FOR SUBJECT PROPERTY**

The SR-11 freeway, in addition to a new Commercial Vehicle Enforcement Facility (CVEF) and Federal Port of Entry (POE) are being constructed to reduce congestion and facilitate increased trade and personal travel across the United States-Mexico border in the San Diego-Tijuana area. The capacities of the existing POEs in the region are currently being exceeded, causing delays for commercial and non-commercial vehicles crossing the border. The long-term need for a third regional border crossing has been identified by transportation and planning agencies on both sides of the border.

Construction of the above-referenced transportation improvements have been split into three segments. The subject parcel is located in Segment 1, which includes new SR-905/SR-11 freeway to freeway connectors and a four-lane SR-11 freeway segment that extends 1.7 miles east to Enrico Fermi Drive.

## **RESOLUTION OF NECESSITY REVIEW PANEL REPORT**

The Condemnation Review Panel (Panel) met in San Diego on August 14, 2013. The Panel members included Donald Grebe, Panel Chair, Department of Transportation-Headquarters Division of Right of Way and Land Surveys; Rene Fletcher, Co-Panel Chair, Department of Transportation-Headquarters Division of Right of Way and Land Surveys; Scott Fridell, Department of Transportation-San Diego Legal Division; Linda Fong, Department of Transportation-Headquarters Division of Design; and Robert Dauffenbach, Department of Transportation-Headquarters Division of Right of Way and Land Surveys, Secretary to the Panel. Mr. Makram Hanna, the property owner, attended and represented himself at the Panel meeting.

This report summarizes the findings of the Panel with regard to the four criteria required for adoption of a Resolution of Necessity and makes a recommendation to the Department's Chief Engineer. The primary concerns and objections expressed by the property owner relate to project design issues, easement deed terms, and the owner's request for the State to purchase soil in identified right of way and remainder areas on the subject property in coordination with the owner's pending development plans.

The following is a description of the concerns expressed by the property owner, followed by the Department's responses:

### **Owner:**

The Department should acquire 140,000 cubic yards of soil located in the currently proposed acquisition areas for the project and an additional 280,000 cubic yards located on the remainder parcel, for a total of 420,000 cubic yards of soil.

### **Department Response:**

The Owners have been offered the appraised fair market value for all required right of way areas necessary to construct the project. As the subject property is currently vacant and unimproved, the sales of comparable industrial properties were used in valuing the required right of way areas on the subject property. Any additional payments, as requested by the owner to purchase soil located within the already-appraised right of way areas, is considered by the Department to be an unwarranted and unsupported duplication of payment.

In addition, the Department has advised the property owner that any sale of soil from the remainder property for construction of the project, if pursued, would be facilitated by separate and independent negotiations between the Highway Contractor and the property owner, with the Department not being a party to said negotiations.

### **Owner:**

The Department did not appropriately coordinate the project, and as a result, development activities could not be initiated by the property owner as planned.

### **Department Response:**

The Department has prepared all necessary and required environmental documents for this project and has provided multiple opportunities for public comment and project review as required by law, and as outlined below:

- As part of the SR-11 environmental review process several letters were sent to area landowners from **2007-2011** notifying them of project scoping activities and public meetings.
- A Permit to Enter to conduct environmental and engineering studies on the subject property was executed by the current property owner on **December 8, 2008**.

- A copy of the SR-11 Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) was sent to the owner on **December 1, 2010**, with no returning comments.
- A copy of the SR-11 Final EIR/EIS was sent to the property owner on **April 6, 2012**.
- Right of way appraisal activities, initiated with an on-site field review with the Department's appraiser and the property owner, commenced on **July 11, 2012**.
- Following the **July 11, 2012** appraisal field review meeting, the property owner requested electronic copies of SR-11 design plans. Based on recent "lessons learned" on the nearby SR-125 and SR-905 projects in Otay Mesa, such requests for electronic copies of project design plans were channeled through the County of San Diego.
- The Department subsequently conveyed updated hard copy design plans to the owner on **March 7, 2013**.
- Department representatives met with the owner on **May 1, 2013**. It was at this time that the property owner first presented the Department with his conceptual development plans for the subject property. Said conceptual plans did not have San Diego County approval as of May 1, 2013, and have not yet received County approval, based on the latest information provided to the Department.
- The Department conducted a District Condemnation Evaluation Meeting (DCEM) with the owner on **June 19, 2013**. Following this meeting, Department representatives worked closely with the property owner and his private design consultant in revising the size, type, and shape of required right of way areas and investigating the inclusion of language in the various easement descriptions reserving unto the owner, successors, and assigns, the right to remove said easement encumbrances based on specified requirements.
- After the DCEM, Department representatives met with the owner's design consultant on **July 12, 2013** to address/discuss revisions to the project's design, revised right of way requirements, and modified deed language. The owner's consultant expressed satisfaction with the changes.
- The property owner subsequently requested that the right of way impacts at the west end of the subject parcel also be changed to minimize a jog in the right of way line, that if left unchanged, would impact/reduce the developable building area on the remainder parcel, as per the owner's assertions. As such, the Department revised the project design and related right of way requirements, but in doing so, straightened out the right of way limits by marginally increasing the acquisition requirements in this northwesterly area of the subject property. This nominal increase in right of way area was necessitated by existing topography and project design standards. The owner subsequently advised the Department that he had hoped that the right of way limits could instead be pulled back in this area, thus further reducing right of way impacts. (Reasons why this could not be done were discussed and explained with the owner at the August 14, 2013 Condemnation Panel Review Meeting.)
- On **July 24, 2013** the property owner was sent updated deed language and appraisal maps showing revised right of way requirements.
- A Condemnation Panel Review Meeting (CPRM) was conducted with the property owner in San Diego on **August 14, 2013** (this report summarizes the issues addressed at this meeting).

● Revised right of way maps and legal descriptions were conveyed to the owner via e-mail on **September 6, 2013**.

● The owner submitted a follow-up e-mail, dated **September 9, 2013**, noting his perceptions about the CPRM, the personnel in attendance, and the Department's repeated failures to address and resolve his concerns, etc. On Page 3 of the above e-mail, the owner states "*The third unresolved issue pertains to the unwillingness of Caltrans to permit us to grade our parcel prior to the seizure of the property by eminent domain, or to at least commit to cooperating in the grading of the parcel and the purchase of the excess dirt that is underlying the easement.*" At the August 14, 2013 CPRM, and as has occurred previously, the property owner was advised that it is the Department's position that it will not be negotiating for the purchase of soil in the right of way areas, as the Department's fair market value offer includes the purchase of said soil in the right of way areas. In addition, it was repeatedly reiterated to the owner that until the Department secures an agreement with the owner or legal possession through condemnation activities, he was free to pursue the sale of soil from the right of way areas and/or the remainder property with the highway contractor or anyone else, in order to facilitate his pending development plans and related activities. He was also advised that he could commence grading, excavation, and soil removal activities on the subject property at any time with all appropriate County of San Diego approvals, as again, the Department does not now have any sort of negotiated agreement with the owner, nor legal possession via condemnation action. The Department's position continues to be that any payment for the required right of way, in addition to a separate payment for the soil within those right of way areas and any related costs associated with the purchase, excavation, and removal of soil on the remainder parcel to facilitate the property owner's development plans, is a gift of public funds.

**Owner:**

The proposed acquisition area has a greater impact than required. The Department should provide revocable language in the easement deeds and provide assurances that an encroachment permit will be approved.

**Department Response:**

The Department has repeatedly made efforts to revise right of way requirements where possible in response to the property owner's suggestions, recommendations, and questions related to the necessity for all project requirements and their potential impact on his future development plans for the subject property. Such efforts by the Department have included changing/converting portions of originally-identified fee acquisition areas to a slope easement area with a related access easement and drainage easement, which can be extinguished when their function and necessity are replaced by other facilities at the time of development. Negotiations and discussions regarding specific deed language addressing these issues have been ongoing and continuous over the last several months. Assurances have also been provided to the property owner that when development occurs and the slope, drainage, and access easements are no longer required for the safety, operation, and maintenance of the freeway as their function and necessity have been replaced, an encroachment permit will not be unreasonably delayed or withheld to facilitate the owner's removal of said facilities and the extinguishment of said easements.

The owner has asked for date-specific termination dates for all the easement areas, but the Department cannot agree to this, as removal of said facilities and extinguishment of these easements are contingent on uncertain factors outside the control of the Department, and more specifically, if/when the subject property is developed to a degree where said facilities are no longer necessary.

As noted above, the Department based on information and recommendations conveyed by the owner at the June 19, 2013 DCEM, revised right of way requirements associated with straightening out a jog in the right of way line in the northwesterly area of the subject property to increase net developable area on the remainder parcel.

In addition, based on information and drawings provided by the owner at the August 14, 2013 CPRM, and after subsequent confirmation with the County of San Diego, the Department immediately revised and marginally reduced right of way requirements at the eastern limits of the property abutting Enrico Fermi Drive.

As outlined above, the Department has now identified all necessary project requirements while striving to plan and locate this project in a manner most compatible with the greatest public good and the least private injury on the subject property. The above efforts document the Department's commitment to accommodating the owner's multiple requests to mitigate project impacts where possible, while also ensuring that adequate property rights are acquired for the safety, operation, and maintenance of the SR-11 freeway.

**DEPARTMENT'S CONTACTS**

The following contacts have been made with the property owner:

Type of Contact	Number of Contacts
Mailing of information	3
E-Mail of information	4
Telephone contacts	11
Personal / meeting contacts	5

**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 owner 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 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 a Resolution of Necessity to the Commission:



RENE FLETCHER  
Office of Right of Way Project Delivery  
Division of Right of Way and Land Surveys  
Co-Panel Chair

I concur with the Panel's recommendation:



KARLA SUTLIFF  
Chief Engineer

Reference No.: 2.4a.

October 8, 2013

Attachment B

Page 7 of 7

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING HEARING ON August 14, 2013**

Don Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair

Rene Fletcher, HQ's Division of Right of Way and Land Surveys, Co-Panel Chair

Scott Fridell, San Diego Legal Office Attorney, Panel Member

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

Robert Dauffenbach, HQ's Division of Right of Way and Land Surveys, Panel Secretary

Makram A. Hanna, Property Owner

Laurie Berman, District 11 Director

Michael Webster, District 11 Design Manager

Nicola Bernard, District 11 TCIF Coordinator

Laura Espinoza, HQ Liaison, Division of Design

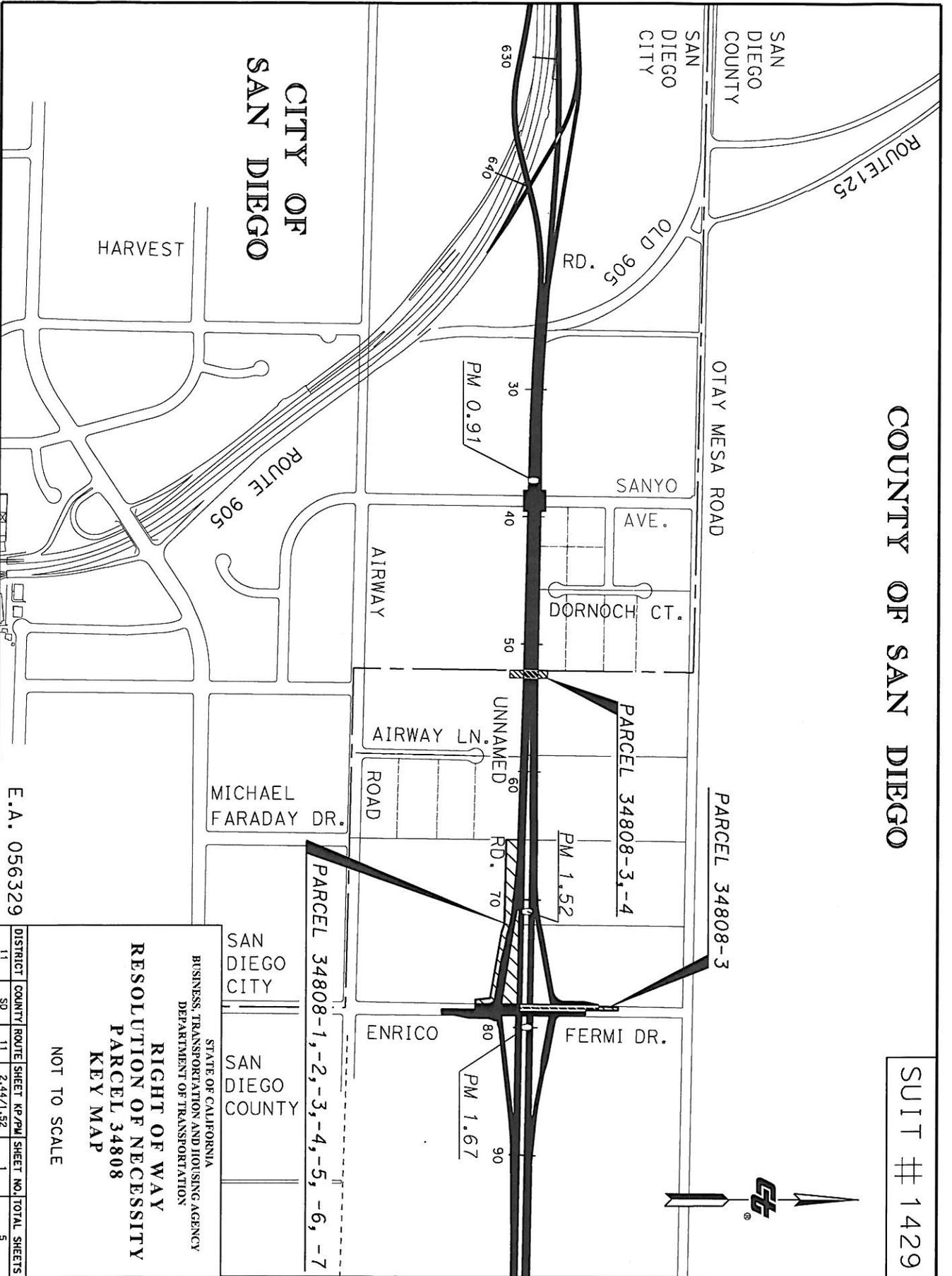
Janet Schaffer, Deputy District Director, District 11 Right of Way

Steve Aragon, Acquisition/Condemnation Branch Chief, District 11 Right of Way

Laura Farah, Associate Right of Way Agent, District 11 Right of Way

COUNTY OF SAN DIEGO

SUIT # 1429



STATE OF CALIFORNIA  
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
 DEPARTMENT OF TRANSPORTATION  
**RIGHT OF WAY  
 RESOLUTION OF NECESSITY  
 PARCEL 34808  
 KEY MAP**  
 NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET	KP/PM	SHEET	NO.	TOTAL SHEETS
11	SD	11	2,447	1,52	1		5

E.A. 056329

CITY OF  
 SAN DIEGO

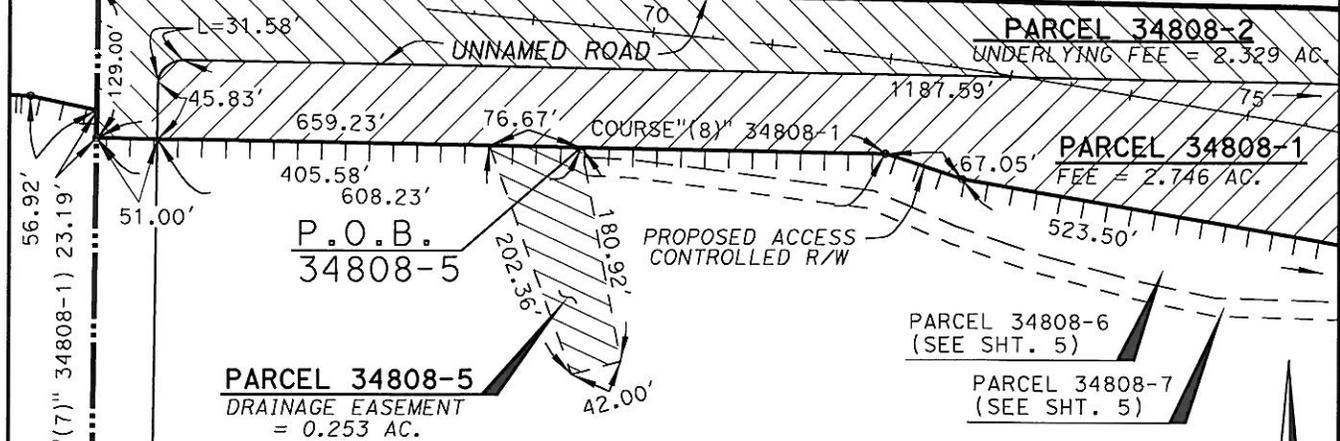
SAN  
 DIEGO  
 COUNTY

SAN  
 DIEGO  
 CITY

SAN  
 DIEGO  
 COUNTY



65 PROPOSED ROUTE 11-SD-11 PM 1.52 70 71 SUIT # 1429  
 1329.47'



COUNTY OF SAN DIEGO  
 T. 18 S. R. 1 W. S.B.M.  
 SE 1/4 OF NE 1/4  
 SECTION 36

APN 646-130-27

REMAINDER  
 (INCLUDES UNDERLYING FEE OF PUBLIC ROADS)  
 = 35.650 AC.

PARCEL#	TITLE CODE	AREAS		
		TOTAL	REQUIRED	REMAINDER
34808-1&-2	F	40.725 AC	2.746 AC [2.329]	35.650 AC.
34808-3 *	E		0.736 AC	
34808-4 *	E		0.202 AC	
34808-5	E		0.253 AC	
34808-6 *	E		0.968 AC	
34808-7 *	E		0.292 AC	

NOTES:

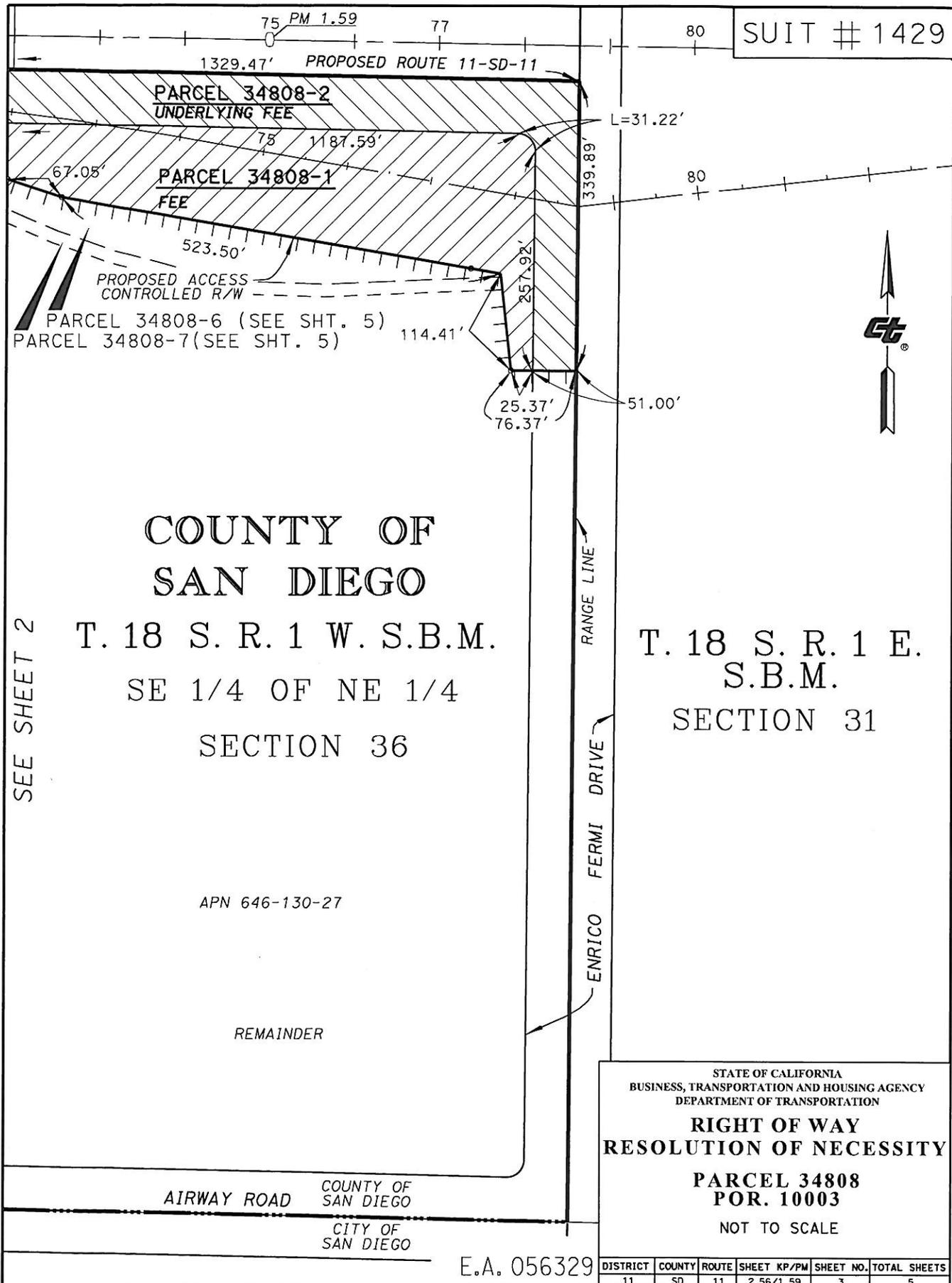
\* FOR PARCEL 34808-3 AND PARCEL 34808-4 DETAILS, SEE SHEET 4  
 FOR PARCEL 34808-6 AND PARCEL 34808-7 DETAILS, SEE SHEET 5

STATE OF CALIFORNIA  
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
 DEPARTMENT OF TRANSPORTATION  
**RIGHT OF WAY  
 RESOLUTION OF NECESSITY**  
 PARCEL 34808  
 POR. 10003  
 NOT TO SCALE

COUNTY OF SAN DIEGO AIRWAY ROAD  
 CITY OF SAN DIEGO

E.A. 056329

DISTRICT	COUNTY	ROUTE	SHEET KP/PM	SHEET NO.	TOTAL SHEETS
11	SD	11	2.44/1.52	2	5

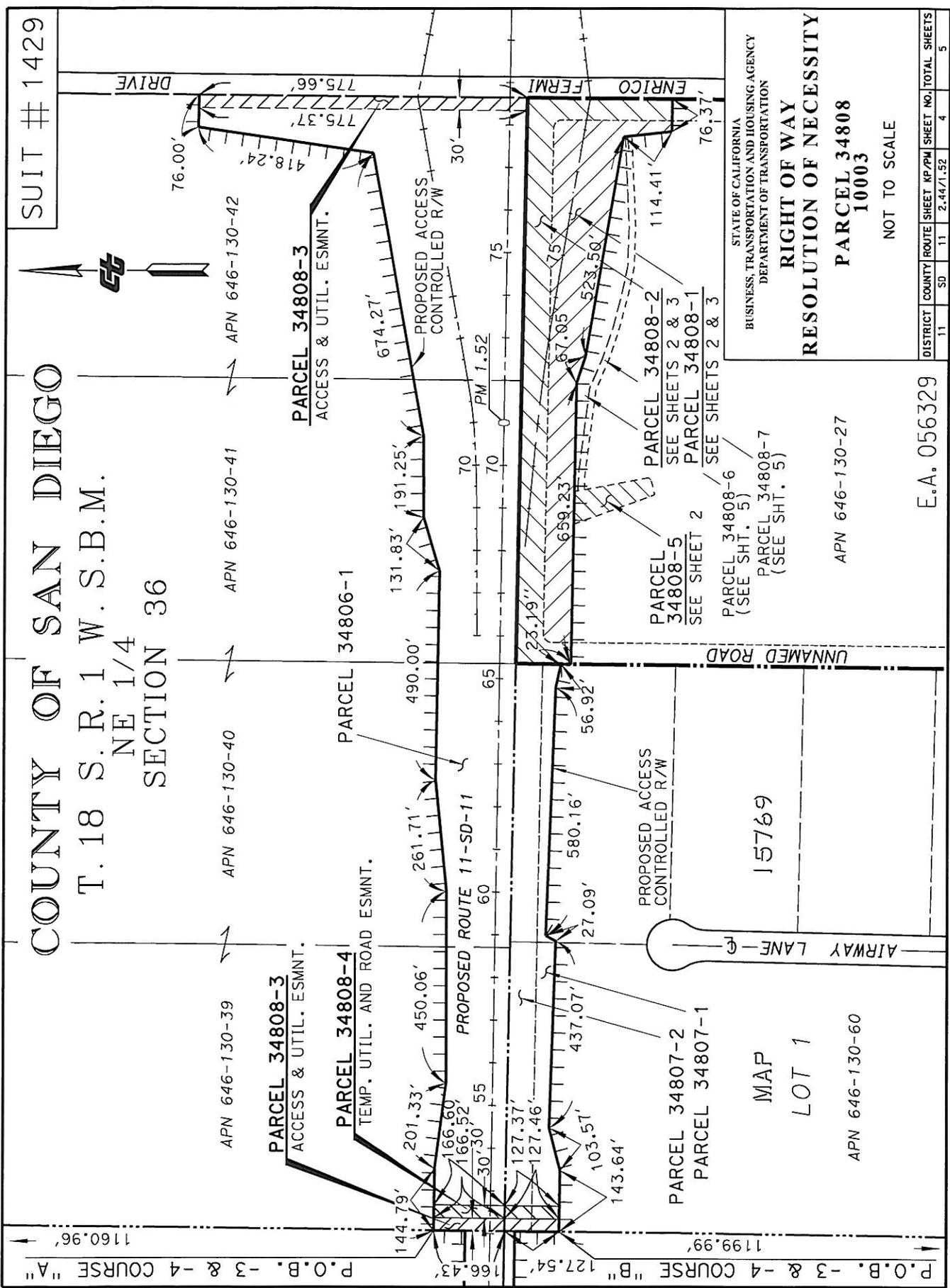


SUIT # 1429

COUNTY OF SAN DIEGO  
T. 18 S. R. 1 W. S.B.M.  
NE 1/4  
SECTION 36



Exhibit B4



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

**RIGHT OF WAY  
RESOLUTION OF NECESSITY**

**PARCEL 34808  
10003**

NOT TO SCALE

DISTRICT	COUNTY	ROUTE SHEET	AP/PM	SHEET NO.	TOTAL SHEETS
11	SD	11	2-44/1-52	4	5

E.A. 056329

APN 646-130-27

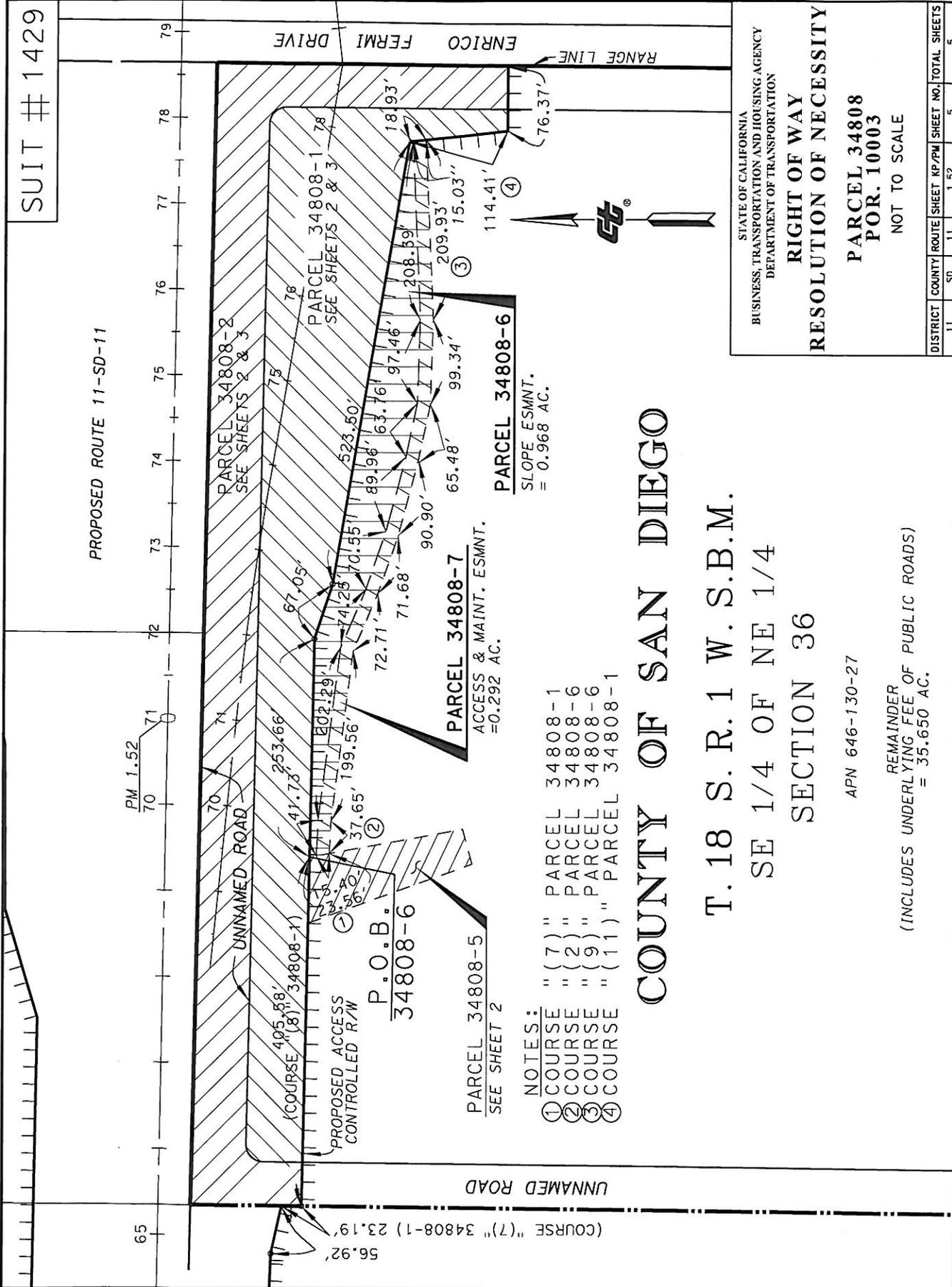
15769

MAP  
LOT 1  
APN 646-130-60

P.O.B. -3 & -4 COURSE "A" 1160.96'

P.O.B. -3 & -4 COURSE "B" 1199.99'

Exhibit B4



- NOTES:
- ① COURSE "(7)" PARCEL 34808-1
  - ② COURSE "(2)" PARCEL 34808-6
  - ③ COURSE "(9)" PARCEL 34808-6
  - ④ COURSE "(11)" PARCEL 34808-1

# COUNTY OF SAN DIEGO

T. 18 S. R. 1 W. S.B.M.  
 SE 1/4 OF NE 1/4  
 SECTION 36

APN 646-130-27

REMAINDER  
 (INCLUDES UNDERLYING FEE OF PUBLIC ROADS)  
 = 35.650 AC.

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

**RIGHT OF WAY  
 RESOLUTION OF NECESSITY**

**PARCEL 34808  
 POR. 10003  
 NOT TO SCALE**

DISTRICT	COUNTY	ROUTE SHEET	RP/PM SHEET NO.	TOTAL SHEETS
11	SD	11	1-52	5