

RESOLUTION NO. 2019-033

A RESOLUTION OF THE ORANGE COUNTY TRANSPORTATION AUTHORITY FINDING AND DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION BY EMINENT DOMAIN OF INTERESTS IN CERTAIN REAL PROPERTY FOR PUBLIC USE AND AUTHORIZING AND DIRECTING CONDEMNATION OF A PORTION OF ASSESSOR PARCEL NO. 167-301-03.

WHEREAS, the Orange County Transportation Authority (the "Authority") is undertaking the Interstate 405 ("I-405") Improvement Project between State Route 73 and Interstate 605, a right-of-way for freeway purposes and all public uses appurtenant thereto (the "Project"); and

WHEREAS, the Project is intended to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding general purpose and express lanes and making improvements to freeway entrances, exits and bridges; and

WHEREAS, the Project requires the acquisition of property interests from public and private parties; and

WHEREAS, the Project will be a transportation improvement project serving the public interest; and

WHEREAS, subsection (a) of the California Public Utilities Code section 130220.5, authorizes the Authority to exercise the power of eminent domain to acquire these property interests for public use by condemnation; and

WHEREAS, on May 11, 2015, the Authority's Board of Directors authorized the Authority to acquire property interests for the Project; and

WHEREAS, a portion of the real property located at 9480 Warner Avenue, in the City of Fountain Valley, California (the "Subject Property") is required for the Project. The specific portions of the Subject Property required for the Project include a partial fee interest as legally described and depicted in Exhibit "A" attached hereto, a temporary construction easement as legally described and depicted in Exhibit "B" attached hereto, and a temporary construction easement as legally described and depicted in Exhibit "C" attached hereto (collectively, the "Property Interests"); and

WHEREAS, reasonable vehicular and pedestrian access to and from the Subject Property will be maintained at all times; and

WHEREAS, the Authority communicated an offer of compensation to the owner or owners of record for the acquisition of the Property Interests; and

WHEREAS, in accordance with section 1245.235 of the California Code of Civil Procedure on March 29, 2019, the Authority mailed a Notice of Hearing on the Intent of the Authority to Adopt a Resolution of Necessity for acquisition by eminent domain of the Property Interests. The Notice of Hearing was mailed to the listed address of all persons whose names appear on the last equalized county assessment roll as having an interest in the Subject Property; and

WHEREAS, the Authority provided written notice to the City of Fountain Valley as required by subsection (c) of California Public Utilities Code section 130220.5; and

WHEREAS, the Project, including all amendments thereto, together with the staff reports, environmental documents and all other evidence presented to the Authority's Board of Directors at the times the Project and the amendments thereto were adopted, are incorporated herein by this reference and made a part hereof as though fully set forth herein; and

WHEREAS, pursuant to section 1245.235 of the California Code of Civil Procedure, the Authority scheduled a hearing for May 13, 2019, at 9:00 am at 550 South Main Street, Orange, California and to each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll, the Authority has given notice of the hearing and a reasonable opportunity to appear at said hearing and to be heard on the matters referred to in section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing has been held by the Authority's Board of Directors and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on those matters specified in the Authority's notice of intention to conduct a hearing on whether or not to adopt a Resolution of Necessity and referred to in section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, the Authority may adopt a Resolution of Necessity pursuant to section 1240.040 of the California Code of Civil Procedure.

NOW, THEREFORE, BE IT RESOLVED, by at least a two-thirds vote of the Authority's Board of Directors under Code of Civil Procedure sections 1240.030 and 1245.230, the Authority does hereby find and determine as follows:

Section 1. Incorporation of Findings and Recitals. The above findings and recitals are true and correct and are incorporated herein in full by this reference.

Section 2. Compliance with California Code of Civil Procedure. There has been compliance by the Authority with the requirements of section 1245.235 of the California Code of Civil Procedure regarding notice and hearing.

Section 3. Public Use. The public use for which the interests in the property are to be acquired is for the construction and future maintenance of the Project, a public transportation improvement, as more fully described hereinabove. Subsection (a) of California Public Utilities Code section 130220.5 authorizes the Authority to acquire by eminent domain property and interests in property necessary for such purpose and for all uses incidental or convenient thereto.

Section 4. Necessity.

(a) The proposed Project is necessary to enhance road safety, increase freeway capacity, and improve traffic and interchange operations by adding general purpose and express lanes and making improvements to freeway entrances, exits and bridges; and

(b) The public interest and necessity require the acquisition by eminent domain proceedings of the Property Interests.

Section 5. Description of Property Interests. The Property Interests sought to be acquired are more particularly described and depicted in Exhibits "A," "B," and "C" attached hereto and incorporated herein by reference.

Section 6. Findings. The Authority hereby finds, determines and declares each of the following:

- (a) The public interest and necessity require the proposed Project;
- (b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;
- (c) The Property Interests sought to be acquired are necessary for the proposed Project; and
- (d) The offer required by section 7267.2 of the California Government Code has been made to the owner or owners of record.

Section 7. Existing Public Use(s). Pursuant to sections 1240.510 and 1240.610 of the Code of Civil Procedure, to the extent that any of the real property to be acquired is already devoted to a public use, the use proposed by this Project is a more necessary public use than the use to which the real property, or any portion thereof, is already devoted, or, in the alternative, is a compatible public use which will not unreasonably interfere with or impair the continuance of the public use to which the real property, or any portion thereof, is already devoted.

Section 8. Authority to Exercise Eminent Domain. The Authority is hereby authorized and empowered to acquire a partial fee interest and two temporary construction easements as to the real property described and depicted in Exhibits "A," "B," and "C" attached hereto, including the improvements thereon, if any, by eminent domain for the proposed Project.

Section 9. Further Activities. The Authority's legal counsel ("Counsel") is hereby authorized and empowered to acquire the Property Interests in the name of and on behalf of the Authority by eminent domain, and is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Counsel is further authorized to take such steps as may be permitted and required by law, and to make such security deposits as may be required by law and/or order of court, to permit the Authority to take possession of the Property Interests at the earliest possible time.

Section 10. Effective Date. This Resolution of Necessity shall take effect upon adoption.

PASSED, APPROVED, and ADOPTED on this 13th day of May 2019.

TIM SHAW, CHAIRMAN
ORANGE COUNTY TRANSPORTATION AUTHORITY

APPROVED AS TO FORM:

JAMES M. DONICH
GENERAL COUNSEL

ATTEST:

I, Laurna Weinert, Clerk of the Board of Directors of the Orange County Transportation Authority, do hereby certify that the foregoing Resolution No. 2019-033, by the following votes:

AYES:

NOES:

ABSENT:

LAURENA WEINERT
CLERK OF THE BOARD

EXHIBIT A

PSOMAS

EXHIBIT 'A1'

LEGAL DESCRIPTION

Caltrans Parcel No. 102989-1

Fee Acquisition

APN 167-301-03

That portion of Parcel 2, In the City of Fountain Valley, County of Orange, State of California, as per map filed in Book 109, Page 13 of Parcel Maps, Records of said County described as follows:

Beginning at the easterly terminus of that certain course on the northerly line of said parcel shown as "North 88°10'41" East 237.70 feet" on said Parcel Map, said course having a bearing of North 89°06'54" East for the purpose of this description; thence South 89°06'54" West 166.10 feet along said northerly line to the **True Point of Beginning**; thence leaving said northerly line South 37°47'12" West 5.07 feet; thence South 88°24'09" West 34.22 feet; thence South 89°19'35" West 34.22 feet to the westerly line of said parcel; thence North 0°53'06" West 4.25 feet along said westerly line to the northerly line of said parcel; thence along said northerly line North 89°06'54" East 71.60 feet to the **True Point of Beginning**

Containing 297 square feet.

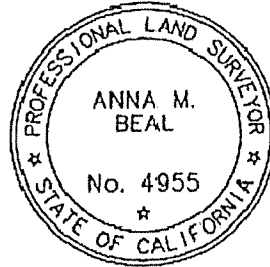
See Exhibit 'A2' attached hereto and made a part hereof.

The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997837

PSOMAS

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Prepared under the direction of



Anna M. Beal

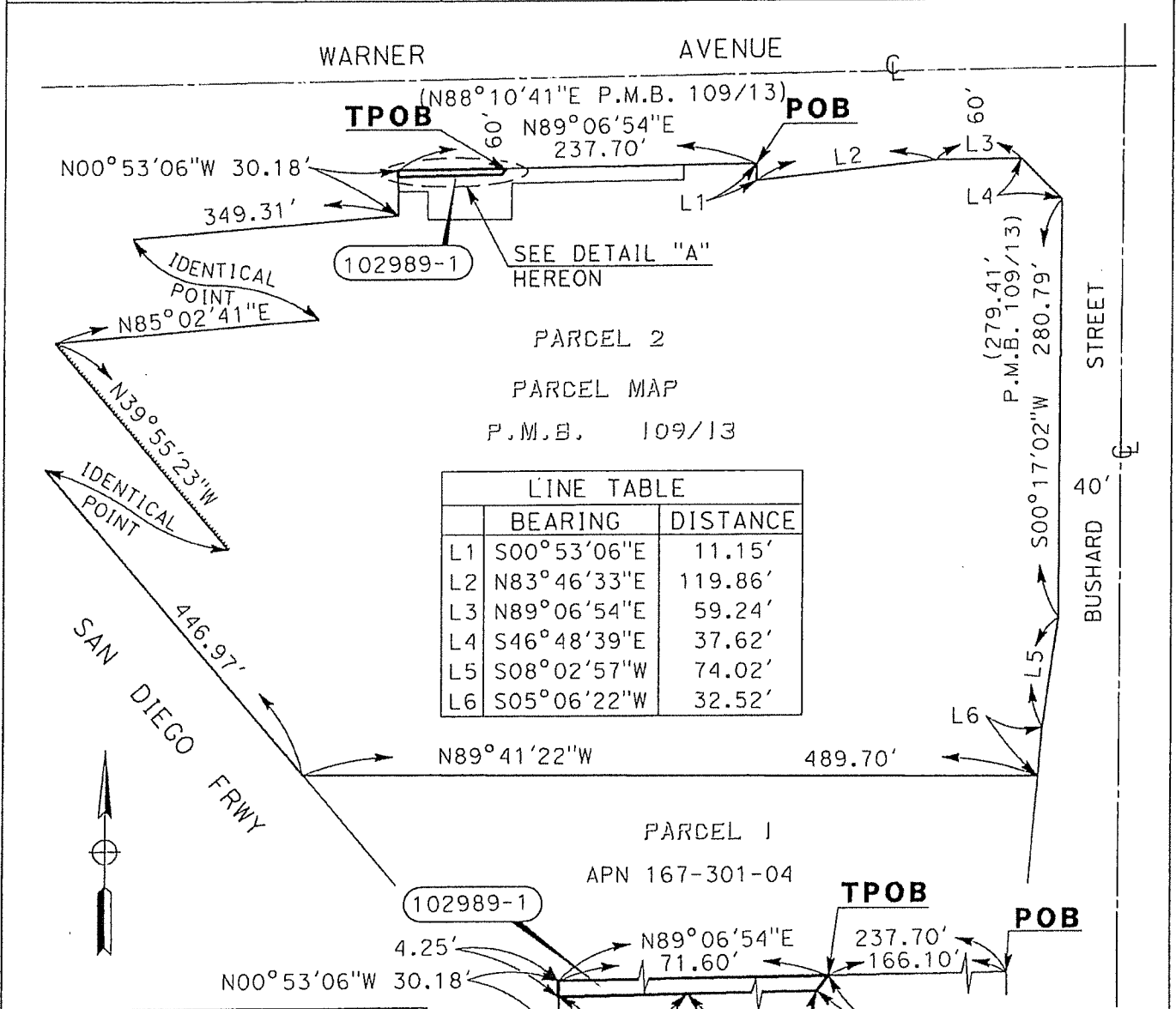
Anna M. Beal, PLS 4955

5/8/15

Date

EXHIBIT A2

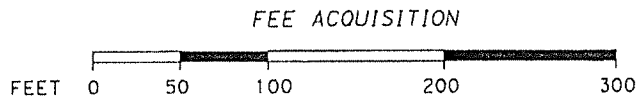
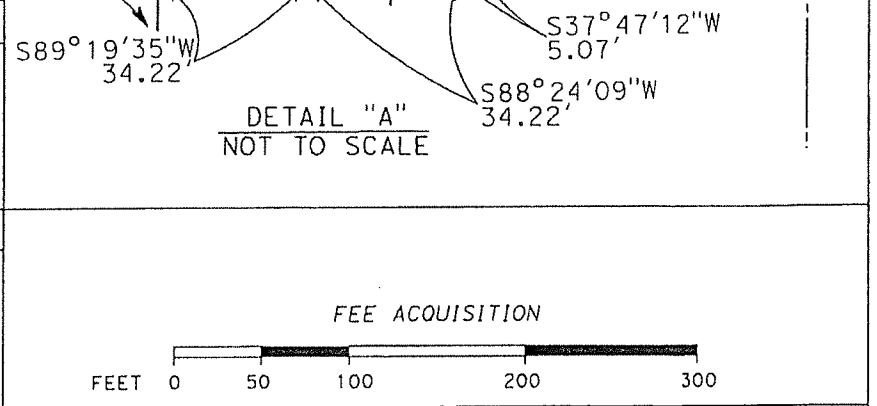
PARCEL#	TITLE	AREA	APN
102989-1	FEE	297 SF	167-301-03



LEGEND	
(R)	Indicates Radial Bearing
TPOB	True Point of Beginning
POB	Point of Beginning
102989-1	Caltrans Parcel Number
	Access Prohibited

NOTES

The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997837.



PREPARED BY: PSOMAS <small>3 Hutton Centre Drive, Ste. 200 Santa Ana, California 92707 (714)751-7373/(714)545-8883 (Fax)</small>	DATE: 04-08-15	REV.:	EA: OF	FA#:	
DISTRICT 12	COUNTY ORANGE	ROUTE 405	SHEET PM	SHEET NO. 1	TOTAL SHEETS 1

EXHIBIT B

**TEMPORARY CONSTRUCTION EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel No: 167-301-03

Caltrans Parcel No: 102989-2

This temporary construction easement shall be in, on, over, under, and across that certain real property described in Exhibit "B1" and depicted in Exhibit "B2" attached hereto, subject to the rights and limitations set forth herein ("TCE"). The TCE shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors and assigns (collectively, "OCTA") in connection with the construction of the I-405 Improvement Project. The TCE shall be for a period of forty-eight (48) months, a portion of which shall be exclusive (subject to the rights and limitations set forth below) and a portion of which shall be non-exclusive. Specifically, the actual physical construction activities within the TCE area shall be limited to a period of twenty-four (24) consecutive months within the forty-eight (48) month TCE period (the "Construction Period"). During the Construction Period, OCTA's use and occupancy of the TCE will be exclusive, subject to the rights and limitations set forth below. OCTA's use and occupancy of the TCE during the remaining twenty-four (24) months of the TCE period will be non-exclusive.

Rights and Limitations of Use and Occupancy of TCE:

- OCTA shall provide the owner(s) and occupant(s) of the property subject to this TCE a minimum of thirty (30)-days written notice as to when the Construction Period will commence.
- During the Construction Period, OCTA may place a temporary fence around the TCE area, provided however, no fence will be placed around or across any driveway within the TCE area.
- Reasonable pedestrian and vehicular access to the property shall be maintained at all times.
- Access to the TCE area shall be from the public right of way.
- Improvements within the TCE area will be removed as needed by OCTA to allow for construction activities. All improvements so removed shall be included in the compensation paid by OCTA for this TCE.
- The existing monument sign shall be relocated by owner and compensation for same shall be provided for by OCTA.
- Prior to the termination of the Construction Period, OCTA will remove from the TCE area all construction equipment and materials including, without limitation, any temporary fence, any temporary improvements, and all construction-related debris. The TCE area will be backfilled to grade and functionally equivalent pavement material will be installed to restore it to a similar condition that existed prior to commencement of the construction activities.

OCTA expressly reserves the right to convey, transfer, or assign the TCE subject to the same rights and limitations described herein.

PSOMAS

EXHIBIT 'B1'

LEGAL DESCRIPTION

Caltrans Parcel No. 102989-2
Temporary Construction Easement
APN 167-301-03

That portion of Parcel 2, In the City of Fountain Valley, County of Orange, State of California, as per map filed in Book 109, Page 13 of Parcel Maps, Records of said County described as follows:

Beginning at the easterly terminus of that certain course on the northerly line of said parcel shown as "North 88°10'41" East 237.70 feet" on said Parcel Map, said course having a bearing of North 89°06'54" East for the purpose of this description; thence South 89°06'54" West 166.10 feet along said northerly line to the **True Point of Beginning**; thence leaving said northerly line South 37°47'12" West 5.07 feet; thence South 88°24'09" West 34.22 feet; thence South 89°19'35" West 34.22 feet to the westerly line of said parcel; thence along said westerly line South 0°53'06 East 10.00 feet; thence leaving said westerly line North 89°31'25" East 19.57 feet; thence South 0°04'51" East 18.86 feet; thence North 89°55'08" East 55.45 feet; thence North 0° 04'52" West 24.13 feet; thence North 89°07'21" East 114.47 feet; thence North 0°52'39" West 9.92 feet to said northerly line; thence along said northerly line South 89°06'54" West 117.96 feet to the **True Point of Beginning**

Containing 2985 square feet.

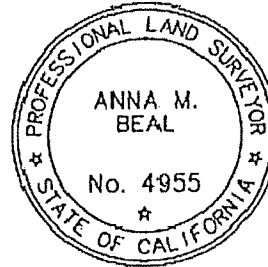
See Exhibit 'B2' attached hereto and made a part hereof.

The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997837

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Prepared under the direction of



AMB

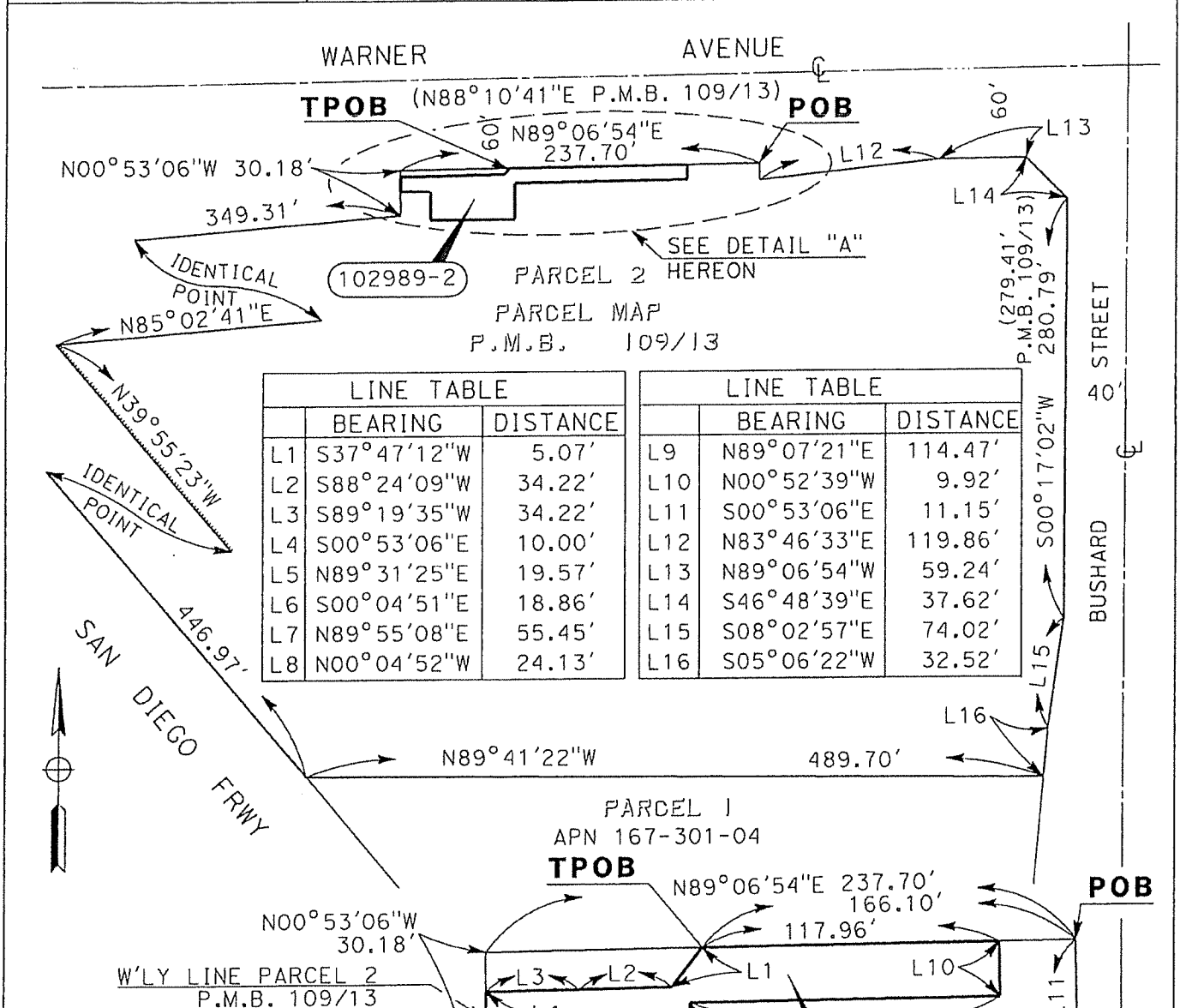
Anna M. Beal, PLS 4955

5/8/15

Date

EXHIBIT B2

PARCEL#	TITLE	AREA	APN
102989-2	TCE	2985 SF	167-301-03



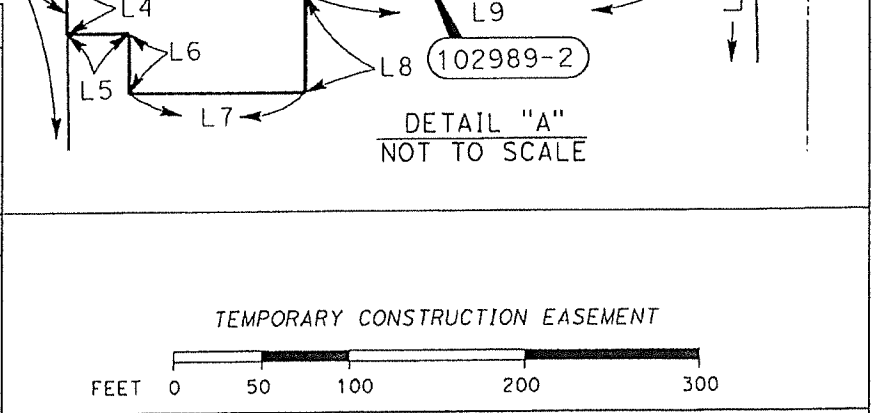
LINE TABLE		
	BEARING	DISTANCE
L1	S37°47'12"W	5.07'
L2	S88°24'09"W	34.22'
L3	S89°19'35"W	34.22'
L4	S00°53'06"E	10.00'
L5	N89°31'25"E	19.57'
L6	S00°04'51"E	18.86'
L7	N89°55'08"E	55.45'
L8	N00°04'52"W	24.13'

LINE TABLE		
	BEARING	DISTANCE
L9	N89°07'21"E	114.47'
L10	N00°52'39"W	9.92'
L11	S00°53'06"E	11.15'
L12	N83°46'33"E	119.86'
L13	N89°06'54"W	59.24'
L14	S46°48'39"E	37.62'
L15	S08°02'57"E	74.02'
L16	S05°06'22"W	32.52'

LEGEND	
(R)	Indicates Radial Bearing
TPOB	True Point of Beginning
POB	Point of Beginning
	Caltrans Parcel Number
	Access Prohibited

NOTES

The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997837.



PREPARED BY: PSOMAS	DATE: 04-08-15	REV.:	EA: OF	FA#:		
3 Hutton Centre Drive, Ste. 200 Santa Ana, California 92707 (714)751-7373/(714)545-8803 (Fax)	DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
	12	ORANGE	405		1	1

EXHIBIT C

**TEMPORARY CONSTRUCTION EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel No: 167-301-03

Caltrans Parcel No: 102989-3

This temporary construction easement shall be in, on, over, under, and across that certain real property described in Exhibit "C1" and depicted in Exhibit "C2" attached hereto, subject to the rights and limitations set forth herein ("TCE"). The TCE shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors and assigns (collectively, "OCTA") in connection with the construction of the I-405 Improvement Project. The TCE shall be for a period of forty-eight (48) months, a portion of which shall be exclusive (subject to the rights and limitations set forth below) and a portion of which shall be non-exclusive. Specifically, the actual physical construction activities within the TCE area shall be limited to a period of twenty-four (24) consecutive months within the forty-eight (48) month TCE period (the "Construction Period"). During the Construction Period, OCTA's use and occupancy of the TCE will be exclusive, subject to the rights and limitations set forth below. OCTA's use and occupancy of the TCE during the remaining twenty-four (24) months of the TCE period will be non-exclusive.

Rights and Limitations of Use and Occupancy of TCE:

- OCTA shall provide the owner(s) and occupant(s) of the property subject to this TCE a minimum of thirty (30)-days written notice as to when the Construction Period will commence.
- During the Construction Period, OCTA may place a temporary fence around the TCE area, provided however, no fence will be placed around or across any driveway within the TCE area.
- Reasonable pedestrian and vehicular access to the property shall be maintained at all times.
- Access to the TCE area shall be from the public right of way.
- Improvements within the TCE area will be removed as needed by OCTA to allow for construction activities. All improvements so removed shall be included in the compensation paid by OCTA for this TCE.
- Prior to the termination of the Construction Period, OCTA will remove from the TCE area all construction equipment and materials including, without limitation, any temporary fence, any temporary improvements, and all construction-related debris. The TCE area will be graded and compacted.

OCTA expressly reserves the right to convey, transfer, or assign the TCE subject to the same rights and limitations described herein.

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EXHIBIT 'C1'
LEGAL DESCRIPTION

Caltrans Parcel No. 102989-3
Temporary Construction Easement
APN 167-301-03

That portion of Parcel 2, In the City of Fountain Valley, County of Orange, State of California, as per map filed in Book 109, Page 13 of Parcel Maps in the office of the County Recorder of said County, described as follows:

Beginning at the southwest corner of said parcel; thence South 89°41'23" East 13.37 feet along the southerly line of said parcel; thence leaving said southerly line North 39°55'23" West 125.40 feet; thence South 51°42'54" West 5.13 feet; thence North 39°52'48" West 200.00 feet; thence North 43°00'02" West 105.54 feet to the southwesterly line of said parcel; thence South 39°58'56" East 422.30 feet along said southwesterly line to the **Point of Beginning**.

Containing 2,613 square feet.

See Exhibit 'C2' attached hereto and made a part hereof.

The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997837

This legal description was prepared by me or under my direction.

Peter J. Fitzpatrick
Peter J. Fitzpatrick, PLS 6777
December 19, 2018
Date

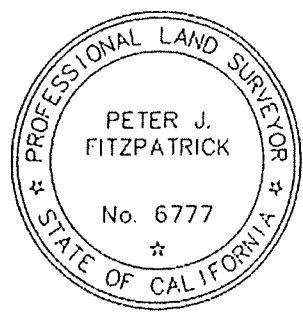
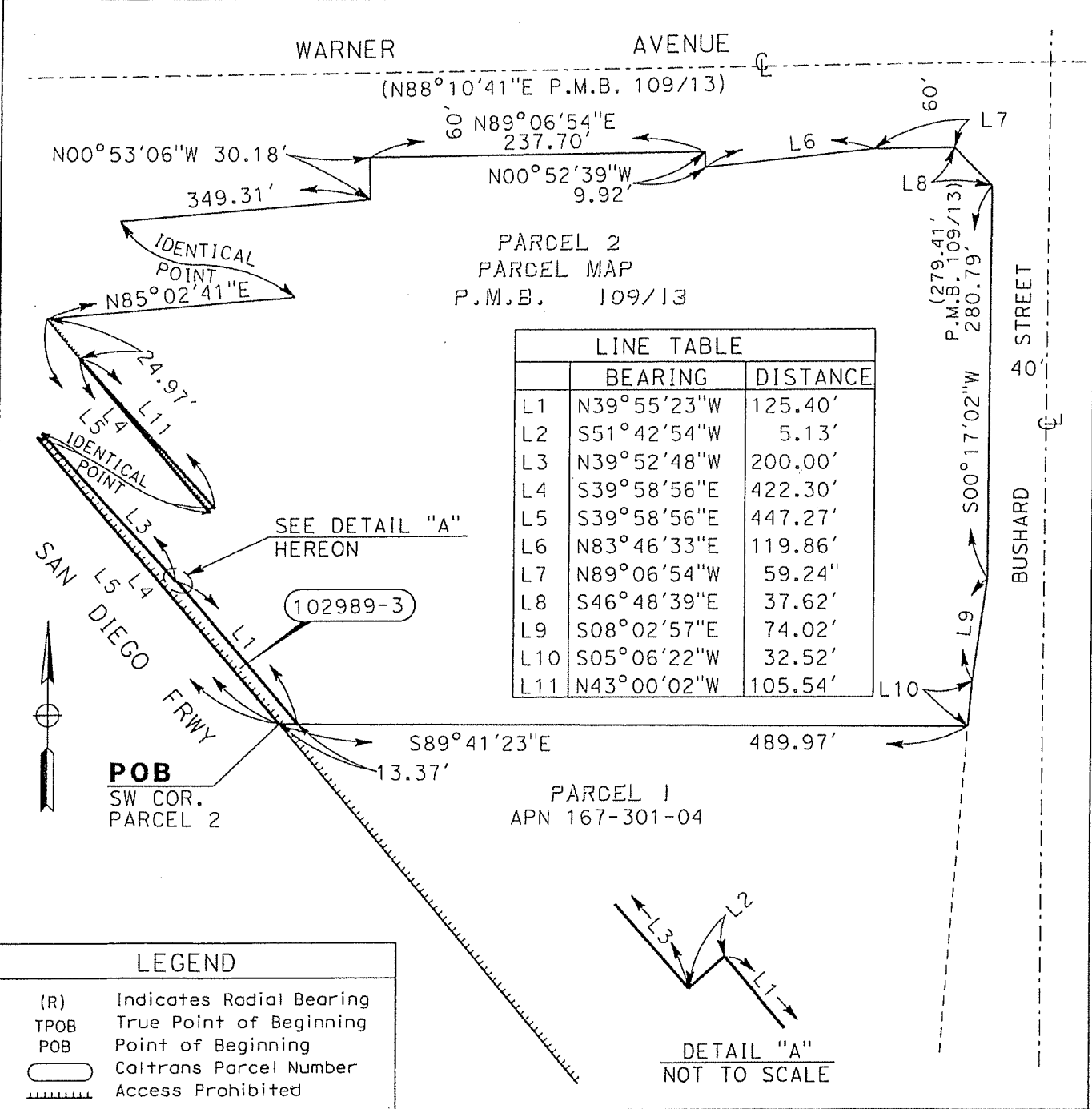


EXHIBIT C2

PARCEL#	TITLE	AREA	APN
102989-3	TCE	2613 SF	167-301-03



LEGEND	
(R)	Indicates Radial Bearing
TPOB	True Point of Beginning
POB	Point of Beginning
102989-3	Caltrans Parcel Number
	Access Prohibited

NOTES

The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997837.

102989-3

TEMPORARY CONSTRUCTION EASEMENT

FEET 0 50 100 200 300

PREPARED BY: PSOMAS <small>3 Hutton Centre Drive, Ste. 200 Santa Ana, California 92707 (714)751-7373 / (714)545-6883 (Fax)</small>	DATE: 03-28-17	REV.: 12-18-18	EA:	FA#:	
DISTRICT 12	COUNTY ORANGE	ROUTE 405	SHEET PM 17.70	SHEET NO. 1	TOTAL SHEETS 1