#### **RESOLUTION NO. 2018-001**

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 PORTIONS OF ASSESSOR PARCEL NO. 107-231-17 and 107-231-18.

**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 interests; 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, portions of the real property located at 8955 Riverbend Drive, in the City of Huntington Beach, California (the "Subject Property") are required for the Project for the purposes of constructing a retaining wall, reconstructing the existing sidewalk, and providing an area for the widening of the street; and

WHEREAS, the hereinafter described real property required for the Project includes a partial fee interest, as legally described and depicted in Exhibit "A," which is attached hereto and incorporated herein by reference; and

**WHEREAS**, the hereinafter described real property required for the Project includes a permanent footing easement, as legally described and depicted in Exhibit "B," which is attached hereto and incorporated herein by reference; and

**WHEREAS**, the hereinafter described real property required for the Project includes a temporary construction easement, as legally described and depicted in Exhibit "D," which is attached hereto and incorporated herein by reference; and

**WHEREAS**, the hereinafter described real property required for the Project includes a second partial fee interest, as legally described and depicted in Exhibit "E," which is attached hereto and incorporated herein by reference; and

WHEREAS the property described in Exhibits A, B, D, and E, attached hereto and incorporated herein by reference are collectively referred to as the "Property Interests"; 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, the property interests describe herein do not encroach upon any access to the remainder of the property and thus access to the remainder will be maintained during construction; and

WHEREAS, in accordance with section 1245.235 of the California Code of Civil Procedure on November 13, 2017, 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 Huntington Beach 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 January 22, 2018 at 9:00 am at 550 South Main Street, Orange, California and gave 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 notice 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:
- <u>Section 1.</u> <u>Incorporation of Findings and Recitals.</u> 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 the Property Interests.
- Section 5. Description of Property Interests. The Property Interests to be acquired are more particular described and depicted in Exhibits "A", "B", "D", and "E" 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.

<u>Section 8.</u> <u>Authority to Exercise Eminent Domain.</u> The Authority is hereby authorized and empowered to acquire two partial fees, one permanent footing easement, and one temporary construction easement in the real property described and depicted in Exhibits "A", "B", "D", and "E," 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.

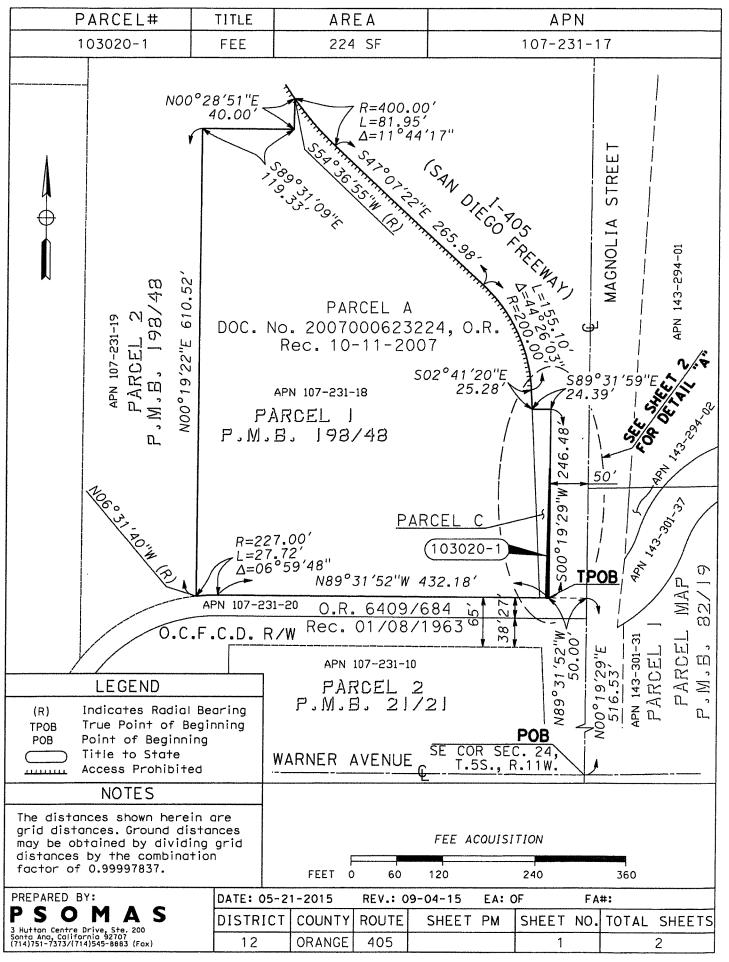
{SIGNATURES ON FOLLOWING PAGE}

PASSED, APPROVED, and ADOPTED on this	day of	, 2018.
LISA A. BARTLETT, CHAIR		
ORANGE COUNTY		
TRANSPORTATION AUTHORITY		
APPROVED AS TO FORM:		
JAMES M. DONICH		
GENERAL COUNSEL		
ATTEST:		
I, Laurena Weinert, Clerk of the Board of D Authority, do hereby certify that the foregoing R		•
AYES:		
NOES:		
ABSENT:		
	LAURENA WEINERT	
	CLERK OF THE BOARD	

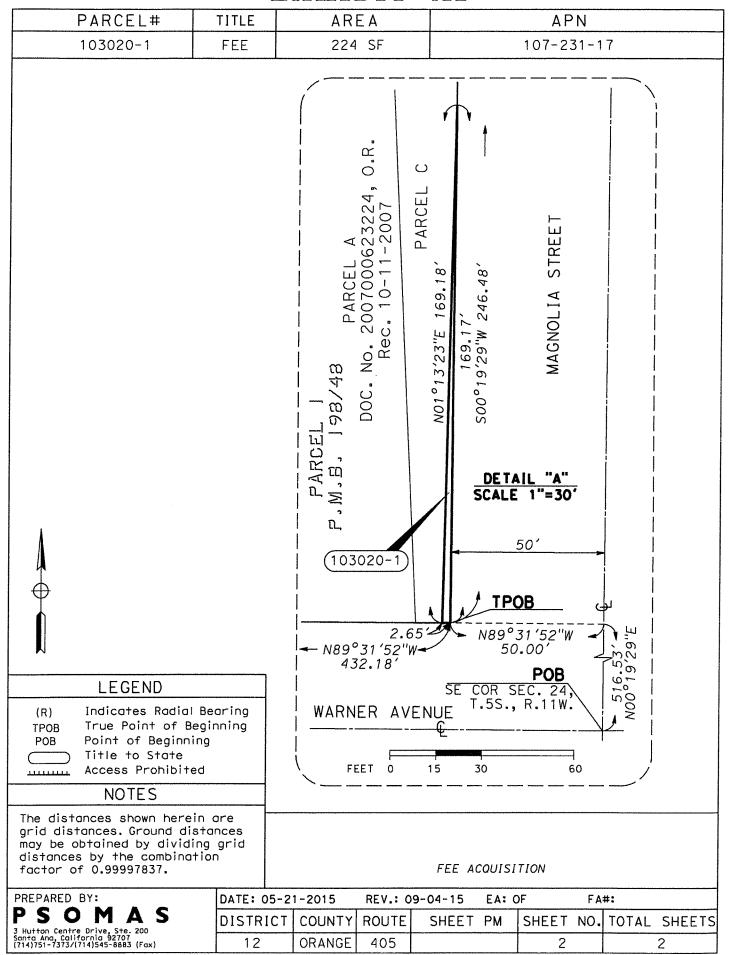
EXHIBIT 'A1' 1 2 **LEGAL DESCRIPTION** 3 Caltrans Parcel No. 103020-1 4 5 Fee Acquisition 6 APN 107-231-17 7 8 In the City of Huntington Beach, County of Orange, State of California, being a portion 9 of the lands described as Parcel C in that certain Grant Deed recorded October 11, 2007 as Document No. 2007000623224 of Official Records of said County, described as 10 follows: 11 12 13 Beginning at the intersection of the centerlines of Warner Avenue and Magnolia Street, said beginning also being the Southeast corner of Section 24, Township 5 South, Range 14 11 West in the Rancho Las Bolsas, as shown on the parcel map filed in Book 198 of 15 Parcel Maps, Pages 48 through 50, Orange County Records; thence northerly along the 16 centerline of Magnolia Street North 00°19'29" East 516.53 feet to a point thereon, said 17 point being the northeasterly corner of the lands described in that certain grant deed 18 recorded January 8, 1963 in Book 6409, Page 684 of Official Records of said County; 19 thence along the northerly line of last said lands North 89°31'52" West 50.00 feet to the 20 southeasterly corner of said Parcel C, said corner being the True Point of Beginning; 21 thence continuing along last said northerly line and along the southerly line of said Parcel 22 C North 89°31'52" West 2.65 feet to a point thereon; thence North 01°13'23" East 169.18 23 feet to a point on the easterly line of said Parcel C; thence along said easterly line South 24 00°19'29" West 169.17 feet to the True Point of Beginning. 25 26 27 Containing 224 square feet. 28 The distances shown herein are grid distances. Ground distances may be obtained by 29 30 dividing grid distances by the combination factor of 0.99997837. 31

See Exhibit 'A2' attached hereto and made apart hereof. Prepared under the direction of 9-4-15 Brian E. Bullock, PLS 5260 Date 

## EXHIBIT A2



#### EXHIBIT A2



#### PERMANENT FOOTING EASEMENT ATTACHMENT TO LEGAL DESCRIPTION

Assessor Parcel No.: 107-231-17 Caltrans Parcel No.: 103020-2

The Orange County Transportation Authority seeks to acquire a non-exclusive permanent footing easement in, on and under the real property described in Exhibit "B1" and depicted in Exhibit "B2" attached hereto, subject to the rights and limitations described herein ("Footing Easement"). The Footing Easement shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors, and assigns (collectively, "OCTA") for purposes of constructing, maintaining, repairing, relocating, and adjusting, as applicable, subsurface footings and appurtenances thereto in connection with the construction of the I-405 Improvement Project.

The owner and occupants of the real property subject to the Footing Easement shall not construct any permanent improvements within the easement area described and depicted in the attached Exhibits "B1" and "B2," respectively, that would impede OCTA's rights as defined herein. OCTA will backfill to grade, with dirt, or will install pavement material, within that portion of the Footing Easement area affected by OCTA's work. The owner and occupants of the real property subject to the Footing Easement will have the right to use the surface of the easement area described and depicted in the attached Exhibits "B1" and "B2," respectively, for access or automobile parking purposes, once the subsurface footings are in place.

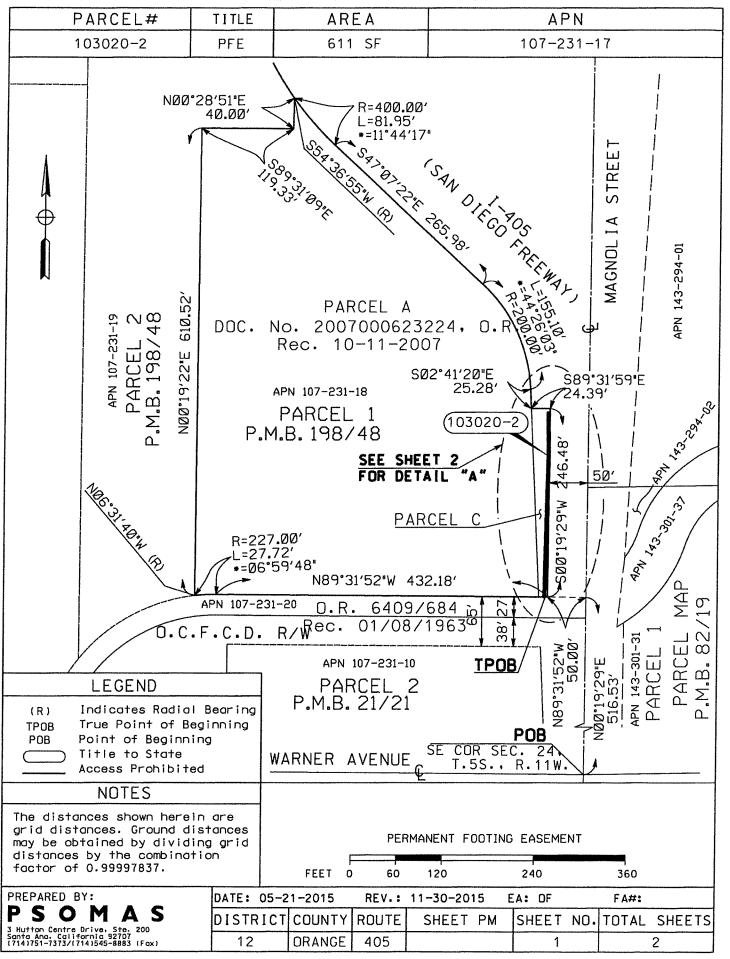
The rights and obligations of OCTA and the owner of the real property subject to the Footing Easement shall run with the land and be binding upon and/or inure to the benefit of OCTA's and the property owner's respective heirs, successors and assigns.

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

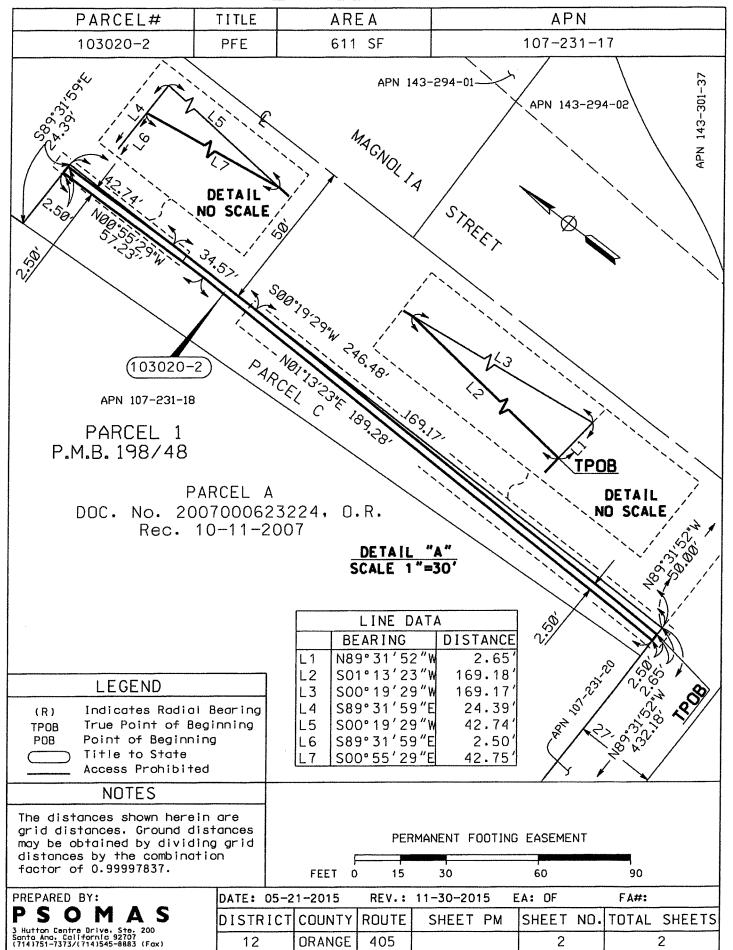
1	EXHIBIT 'B1'
2	LEGAL DESCRIPTION
3	
4	Caltrans Parcel No. 103020-2
5	Permanent Footing Easement
6	APN 107-231-17
7	
8	In the City of Huntington Beach, County of Orange, State of California, being a portion
9	of the lands described as Parcel C in that certain Grant Deed recorded October 11, 2007
10	as Document No. 2007000623224 of Official Records of said County, described as
11	follows:
12	
13	Beginning at the intersection of the centerlines of Warner Avenue and Magnolia Street,
14	said beginning also being the Southeast corner of Section 24, Township 5 South, Range
15	11 West in the Rancho Las Bolsas, as shown on the parcel map filed in Book 198 of
16	Parcel Maps, Pages 48 through 50, Orange County Records; thence northerly along the
17	centerline of Magnolia Street North 00°19'29" East 516.53 feet, said point being the
18	northeasterly corner of the lands described in that certain grant deed recorded January 8,
19	1963 in Book 6409, Page 684 of Official Records of said County; thence along the
20	northerly line of last said lands North 89°31'52" West 50.00 feet to the southeasterly
21	corner of said Parcel C; thence continuing along the southerly line of said parcel North
22	89°31'52" West 2.65 feet to the True Point of Beginning; thence continuing along said
23	southerly line North 89°31'52" West 2.50 feet; thence North 01°13'23" East 189.28 feet;
24	thence North 00°55'29" West 57.23 feet to a point on the northerly line of said parcel;
25	thence along said northerly line South 89°31'59" East 2.50 feet; thence
26	South 00°55'29" East 42.75 feet to a point on the easterly line of said parcel; thence
27	South 00°19'29" West 34.57 feet; thence South 01°13'23" West 169.18 feet to the True
28	Point of Beginning.
29	
30	Containing 611 square feet.
31	

1	The distances show	vn herein are grid o	distances. Ground distances may l	be obtained by
2	dividing grid dista	nces by the combir	nation factor of 0.99997837.	
3				
4	See Exhibit 'B2' a	ttached hereto and	made apart hereof.	
5				
6	Prepared under the	direction of		ONAL LAND
7	18. 11.0		1	
8	- ( U ( ( Sin )	0/	12/14/15	ANNA M.
9	Anna M. Beal	PLS 4955	Date	No. 4955
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## EXHIBIT B2



## EXHIBIT B2



# TEMPORARY CONSTRUCTION EASEMENT ATTACHMENT TO LEGAL DESCRIPTION

Assessor Parcel Nos.: 107-231-17 Caltrans Parcel No.: 103020-4

The Orange County Transportation Authority seeks to acquire a temporary construction easement within and upon the real property described in Exhibit "D1" and depicted in Exhibit "D2" attached hereto, subject to the rights and limitations described 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 sixty (60) months, a portion of which shall be exclusive (subject to the 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 sixty (60) month TCE period (hereinafter the "Construction Period"). During the Construction Period, OCTA's use and occupancy of the TCE will be exclusive, subject to the limitations set forth below. OCTA's use and occupancy of the TCE during the remaining thirty-six (36) months of the TCE period will be non-exclusive. OCTA will access the TCE from existing public right-of-way.

Rights and Restrictions of Use and Occupancy of TCE:

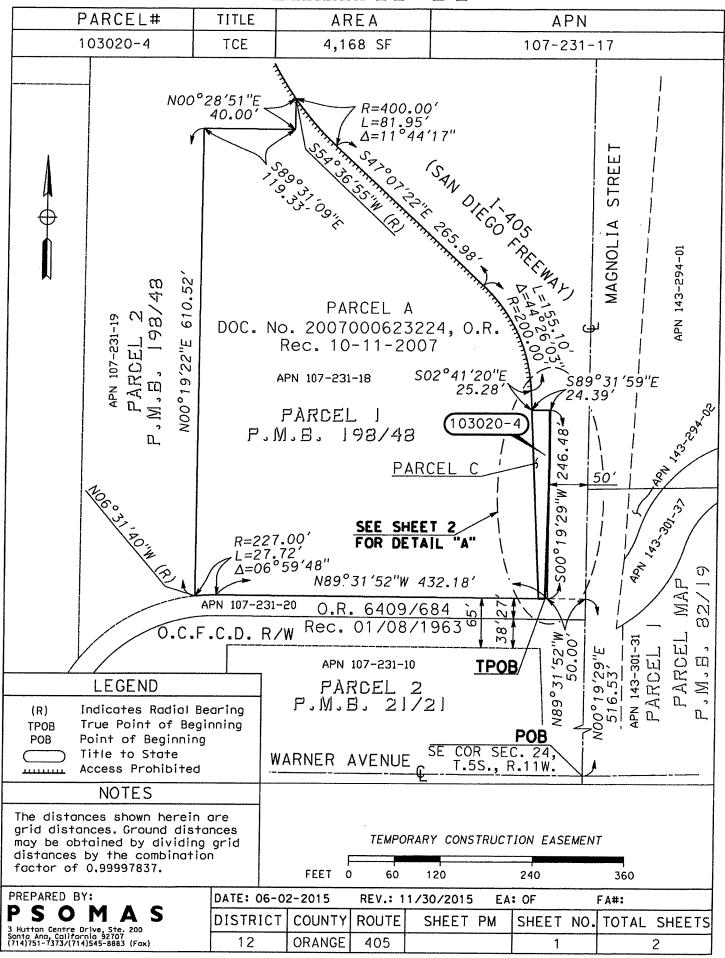
- OCTA shall provide the owner and occupants of the property subject to this TCE a minimum of thirty (30)-days written notice as to when the Construction Period will commence.
- At the commencement of Construction Period, OCTA may place a temporary fence around the TCE area, provided, however, reasonable pedestrian and vehicular access to the remaining property outside of the TCE area shall be maintained.
- Pedestrian and vehicular access will be maintained on Riverbend Drive at all times.
- Improvements within the TCE area will be removed as needed by OCTA to allow for construction activities. Any improvements so removed will either be replaced in kind or included in the compensation paid by OCTA. Landscaping will not be replaced 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 graded and compacted to restore it to a condition that is as functionally
  equivalent as is practicable to its condition 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.

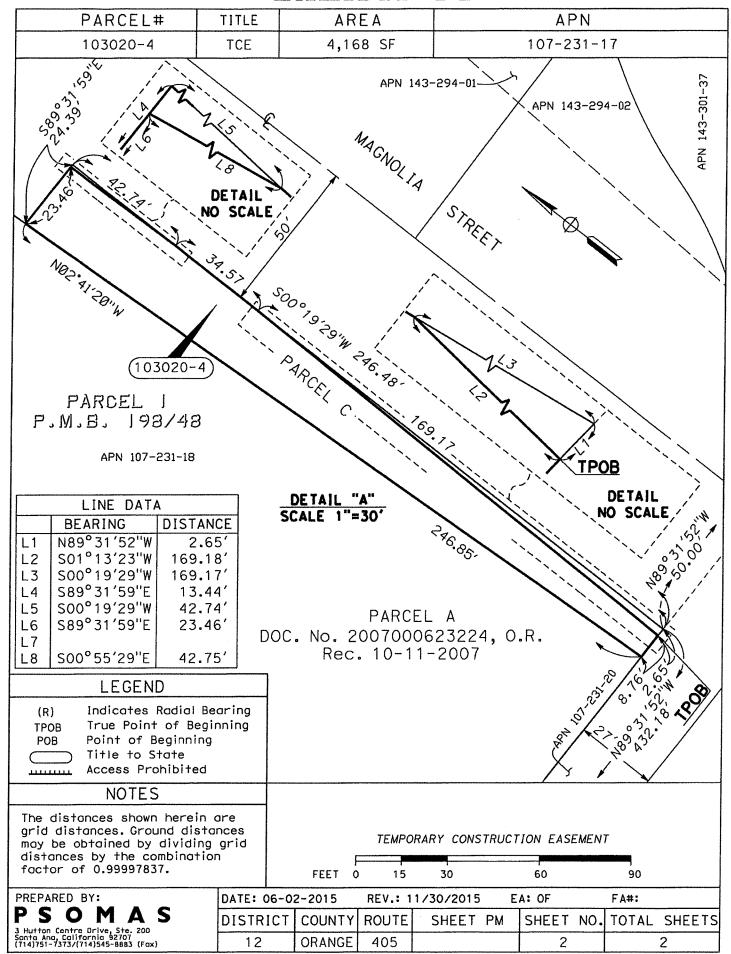
1	EXHIBIT 'D1'
2	LEGAL DESCRIPTION
3	
4	Caltrans Parcel No. 103020-4
5	Temporary Construction Easement
6	APN 107-231-17
7	
8	In the City of Huntington Beach, County of Orange, State of California, being a portion
9	of the lands described as Parcel C in that certain Grant Deed recorded October 11, 2007
10	as Document No. 2007000623224 of Official Records of said County, described as
11	follows:
12	
13	Beginning at the intersection of the centerlines of Warner Avenue and Magnolia Street,
14	said beginning also being the Southeast corner of Section 24, Township 5 South, Range
15	11 West in the Rancho Las Bolsas, as shown on the parcel map filed in Book 198 of
16	Parcel Maps, Pages 48 through 50, Orange County Records; thence northerly along the
17	centerline of Magnolia Street North 00°19'29" East 516.53 feet, said point being the
18	northeasterly corner of the lands described in that certain grant deed recorded January 8,
19	1963 in Book 6409, Page 684 of Official Records of said County; thence along the
20	northerly line of last said lands North 89°31'52" West 50.00 feet to the southeasterly
21	corner of said Parcel C; thence continuing along the southerly line of said parcel
22	North 89°31'52" West 2.65 feet to the True Point of Beginning; thence continuing along
23	said southerly line North 89°31'52" West 8.76 feet to the southwesterly corner of said
24	parcel; thence along the westerly line of said parcel North 02°41'20" West 246.85 feet to
25	the northwesterly corner of said parcel; thence along said northerly line
26	South 89°31'59" East 23.46 feet; thence South 00°55'29" East 42.75feet to a point on the
27	easterly line of said parcel; thence along said easterly line South 00°19'29" West
28	34.57 feet; thence South 01°13'23" West 169.18 feet to the True Point of Beginning.
29	
30	Containing 4,168 square feet.
31	

The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997837. See Exhibit 'D2' attached hereto and made apart hereof. Prepared under the direction of ANNA M. BEAL Anna M. Beal, PLS 4955 No. 4955 

### EXHIBIT D2



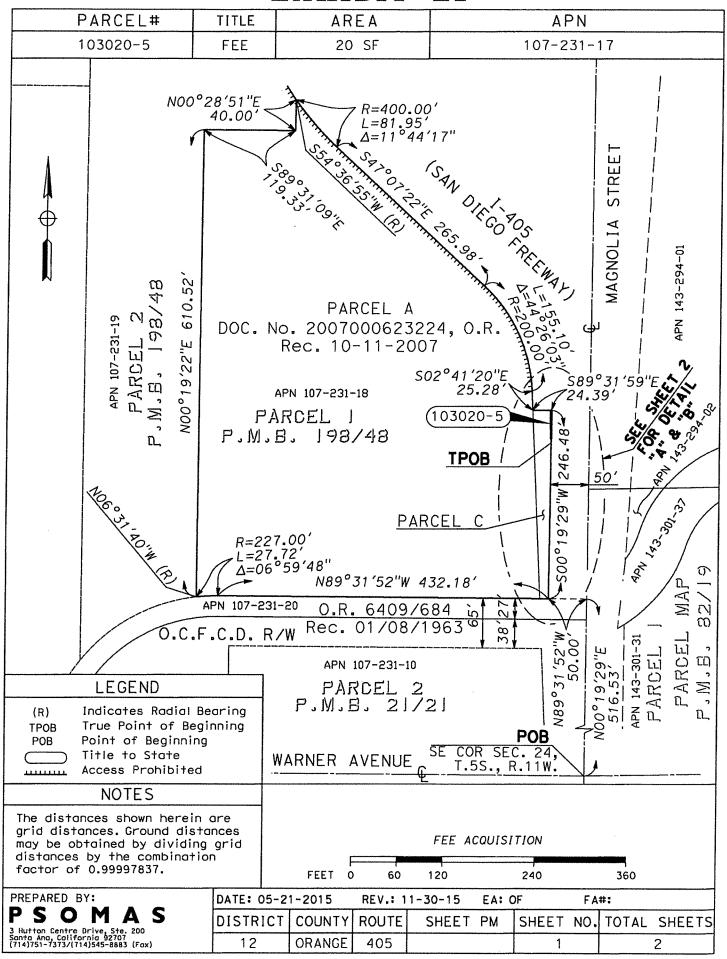
#### EXHIBIT D2



1	EXHIBIT 'E1'
2	LEGAL DESCRIPTION
3	
4	Caltrans Parcel No. 103020-5
5	Fee Acquisition
6	APN 107-231-17
7	
8	In the City of Huntington Beach, County of Orange, State of California, being a portion
9	of the lands described as Parcel C in that certain Grant Deed recorded October 11, 2007
10	as Document No. 2007000623224 of Official Records of said County, described as
11	follows:
12	
13	Beginning at the intersection of the centerlines of Warner Avenue and Magnolia Street,
14	said beginning also being the Southeast corner of Section 24, Township 5 South, Range
15	11 West in the Rancho Las Bolsas, as shown on the parcel map filed in Book 198 of
16	Parcel Maps, Pages 48 through 50, Orange County Records; thence northerly along the
17	centerline of Magnolia Street North 00°19'29" East 516.53 feet to the northeasterly
18	corner of the lands described in that certain grant deed recorded January 8, 1963 in Book
19	6409, Page 684 of Official Records of said County; thence along the northerly line of last
20	said lands North 89°31'52" West 50.00 feet to the southeasterly corner of said Parcel C;
21	thence along the easterly line of said parcel North 00°19'29" East 203.74 feet to the <b>True</b>
22	Point of Beginning; thence North 00°55'29" West 42.75 feet to a point on the northerly
23	line of said parcel; thence along said northerly line South 89°31'59" East 0.93 feet to the
24	northeasterly corner of said parcel; thence along the easterly line of said parcel
25	South 00°19'29" West 42.74 feet to the True Point of Beginning.
26	
27	Containing 20 square feet.
28	
29	The distances shown herein are grid distances. Ground distances may be obtained by
30	dividing grid distances by the combination factor of 0.99997837.
31	

See Exhibit 'E2' attached hereto and made apart hereof. l LAND Prepared under the direction of ANNA M. BEAL 12/14/15 No. 4955 Anna M. Beal, PLS 4955 Date 

#### EXHIBIT E2



### EXHIBIT E2

