

RESOLUTION NO. 2018-008

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. 142-073-17.

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, portions of the real property located on the northeasterly side of Center Drive, beginning 1,028.15 feet northwesterly of Beach Boulevard, in the City of Huntington Beach, California (the "Subject Property") are required for the Project. The specific portions of the Subject Property required for the Project include a permanent highway easement and the relinquishment of abutter's rights, including access rights, as legally described and depicted in Exhibit "A" hereto and a temporary construction easement as legally described and depicted in Exhibit "B" hereto (collectively, 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, in accordance with section 1245.235 of the California Code of Civil Procedure on January 12, 2018, 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 February 26, 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:

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" and "B" 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 one permanent highway easement and the relinquishment of abutter's rights, including access rights, and one temporary construction easement in the real property described and depicted in Exhibits "A" and "B" 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 _____ day of _____, 2018.

LISA A. BARTLETT, CHAIRWOMAN
ORANGE COUNTY
TRANSPORTATION AUTHORITY

APPROVED AS TO FORM:

JAMES M. DONICH
GENERAL COUNSEL

ATTEST:

I, Laurena Weinert, Clerk of the Board of Directors of the Orange County Transportation Authority, do hereby certify that the foregoing Resolution No. 2018-008, by the following votes:

AYES:

NOES:

ABSENT:

LAURENA WEINERT
CLERK OF THE BOARD

EXHIBIT "A"

PSOMAS

EXHIBIT 'A1'

LEGAL DESCRIPTION

Caltrans Parcel No. 103091-1

Permanent Highway Easement

APN 142-073-17

In the City of Huntington Beach, County of Orange, State of California, being a portion of the lands described in that certain Corporation Grant Deed recorded December 18, 1958 in Book 4519, Page 491 of Official Records of said County, described as follows:

Beginning on the centerline of Center Drive at the westerly terminus of that certain curve shown as concave southerly having a radius of 550.00 feet, length of 270.64 feet and the central angle of 28°11'37" on that certain Parcel Map filed in Book 344 of Parcel Maps at Pages 18 thru 20, Orange County Records; thence from said point of beginning, to which point a radial line bears North 00°27'28" East, southeasterly along said centerline and said curve 270.99 feet through a central angle of 28°13'47" to a point thereon; thence along a radial bearing North 28°41'15" East 40.00 feet to the westerly terminus of the most southerly line of Parcel A as said parcel is shown on said Parcel Map, said line also being the northerly line of said lands described in said Corporation Grant Deed; thence along last said lines South 89°32'32" East 115.05 feet to the most easterly corner of said Parcel A, said corner being the **True Point of Beginning**; thence South 89°32'32" East 14.95 feet continuing along the easterly prolongation of said most southerly line to the northwesterly corner of Parcel 3 as said parcel is described in that certain Highway Easement Deed recorded March 24, 1967 in Book 8207, Page 446 of Official Records of said County; thence South 20°04'56" East 23.54 feet along the westerly line of the lands described in said Highway Easement Deed to a point thereon; thence North 46°00'59" West 32.01 feet to the **True Point of Beginning**.

Containing 165 square feet.

PSOMAS

This conveyance is made for the purpose of a freeway and the GRANTOR hereby releases and relinquishes to the GRANTEE any and all abutter's rights including access rights, appurtenant to GRANTOR's remaining property, in and to the freeway.

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 'A2' attached hereto and made apart hereof.

Prepared under the direction of



Brian E. Bullock, PLS 5260

9-15-16

Date



EXHIBIT A2

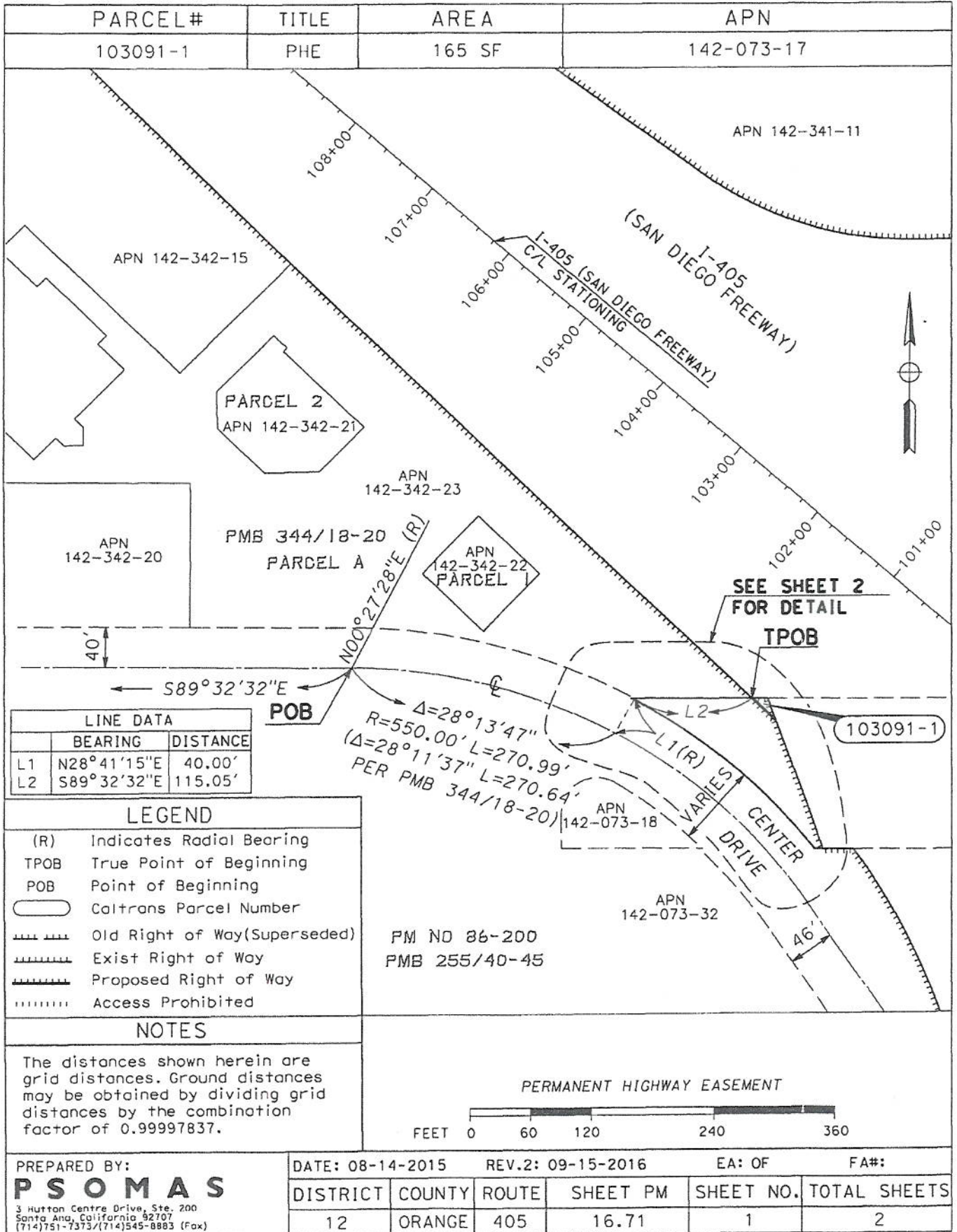


EXHIBIT A2

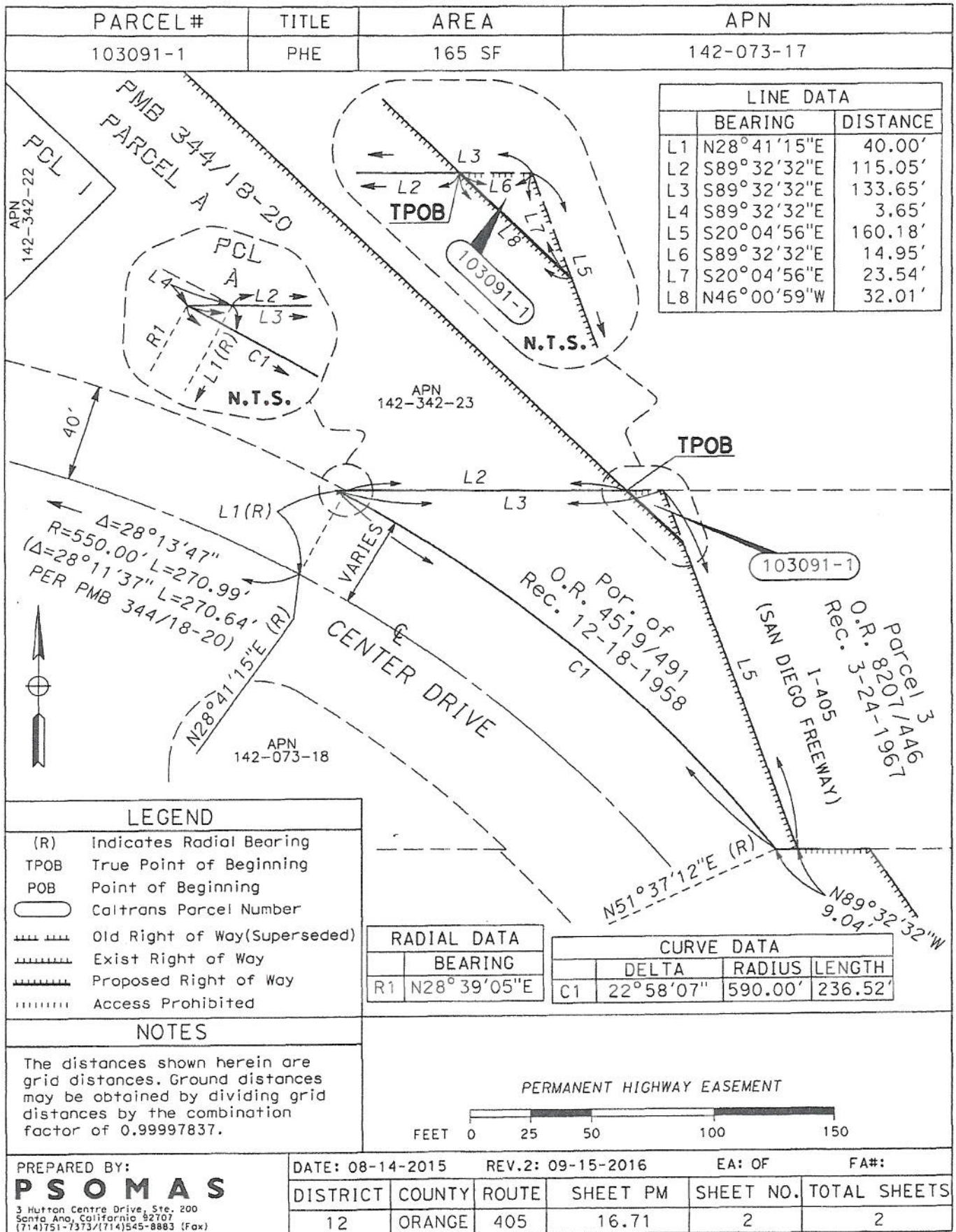


EXHIBIT "B"

**TEMPORARY CONSTRUCTION EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel No.: 142-073-17

Caltrans Parcel No.: 103091-2

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 sixty (60) 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 sixty (60) 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 thirty-six (36) 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 I-405 Freeway.
- 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 by OCTA.

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. 103091-2

Temporary Construction Easement

APN 142-073-17

In the City of Huntington Beach, County of Orange, State of California, being a portion of the lands described in that certain Corporation Grant Deed recorded December 18, 1958 in Book 4519, Page 491 of Official Records of said County, described as follows:

Beginning on the centerline of Center Drive at the westerly terminus of that certain curve shown as concave southerly having a radius of 550.00 feet, length of 270.64 feet and the central angle of 28°11'37" on that certain Parcel Map filed in Book 344 of Parcel Maps at Pages 18 thru 20, Orange County Records; thence from said point of beginning, to which point a radial line bears North 00°27'28" East, southeasterly along said centerline and said curve 270.99 feet through a central angle of 28°13'47" to a point thereon; thence along a radial bearing North 28°41'15" East 40.00 feet to the westerly terminus of the most southerly line of Parcel A as said parcel is shown on said Parcel Map, said line also being the northerly line of said lands described in said Corporation Grant Deed; thence along last said lines South 89°32'32" East 115.05 feet to the most easterly corner of said Parcel A, said corner being the **True Point of Beginning**; thence South 46°00'59" East 32.01 feet to a point on the westerly line of Parcel 3 as said parcel is described in that certain Highway Easement Deed recorded March 24, 1967 in Book 8207, Page 446 of Official Records of said County; thence South 20°04'56" East 29.73 feet along said westerly line to a point thereon; thence North 46°00'59" West 72.43 feet to a point on said southerly line of said Parcel A; thence South 89°32'32" East 18.88 feet along last said line to the **True Point of Beginning**.

Containing 679 square feet

PSOMAS

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 'B2' attached hereto and made apart hereof.

Prepared under the direction of

Jeremy L Evans

Jeremy L. Evans, PLS 5282

1-14-2017

Date

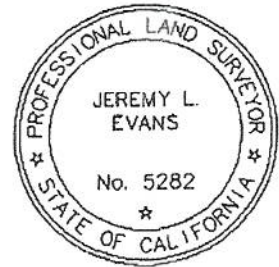


EXHIBIT B2

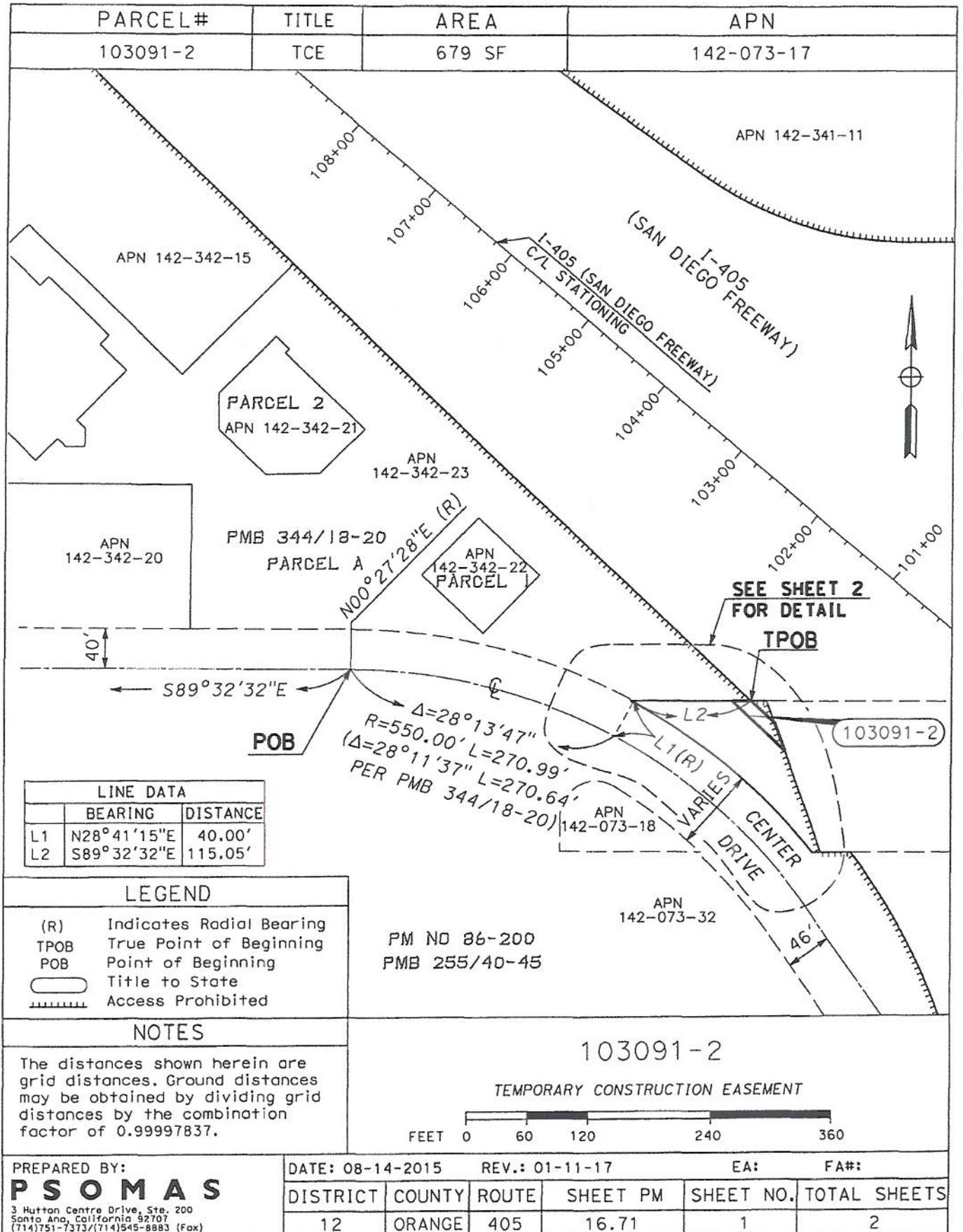


EXHIBIT B2

