

RESOLUTION NO. 2018-043

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. 195-373-08.

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 at 6951 Bolsa Avenue, in the City of Westminster, California (the “Subject Property”) are required for the Project. The specific portions of the Subject Property required for the Project include a partial fee interest as legally described in and depicted in Exhibit “1” hereto, a permanent footing easement as legally described in and depicted in Exhibit “2” hereto, a maintenance access easement as legally described in and depicted in Exhibit “3” hereto, and a temporary construction easement as legally described and depicted in Exhibit “4” 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 February 9, 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 Westminster 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 had previously scheduled a hearing for March 26, 2018 at 9:00 a.m. 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 (the "Property Owner") 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, the resolution of necessity hearing was postponed from the March 26, 2018 date to give the Authority and the Property Owner time to negotiate for the potential voluntary acquisition of the Property Interests by OCTA from the Property Owner; and

WHEREAS, the parties continue to attempt to negotiate for a potential informal acquisition of the Property Interests by OCTA from the Property Owner; and

WHEREAS, due to time constraints, the Authority has rescheduled the hearing to consider the adoption of a resolution of necessity to acquire the Property Interests by eminent domain to **May 14, 2018** at 9:00 a.m. at 550 South Main Street, Orange, California pursuant to section 1245.235 of the California Code of Civil Procedure; and

WHEREAS, the Authority gave to the Property Owner and the City of Westminster notice of the continued hearing via letter dated April 30, 2018; 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 "1" through "4" 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, a permanent footing easement, a maintenance access easement, and a temporary construction easement in the real property described and depicted in Exhibits “1” through “4” 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. 2018-043, by the following votes:

AYES:

NOES:

ABSENT:

LAURENA WEINERT
CLERK OF THE BOARD

EXHIBIT “1”

**FEE ACQUISITION
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel No.: 195-373-08

Caltrans Parcel No.: 103165-1

The Orange County Transportation Authority seeks to acquire the real property described in Exhibit "A1" and depicted in Exhibit "A2" attached hereto in fee simple absolute for the construction and use of the I-405 Improvement Project; provided, however, any and all abutter's rights, including access rights, appurtenant to said property shall be reserved and maintained for the benefit of the owner(s) and occupant(s) of the remaining property.

PSOMAS

EXHIBIT 'A1'

LEGAL DESCRIPTION

Caltrans Parcel No. 103165-1

Fee Acquisition

APN 195-373-08

In the City of Westminster, County of Orange, State of California, being a portion of Parcel 6 as per map filed in Book 51, Page 36 of Parcel Maps in the Office of the Recorder of said County, described as follows:

Beginning at the intersection of Goldenwest Street and Bolsa Avenue as shown on Record of Survey No. 86-1103 filed in Book 115, Pages 35 to 38, inclusive, of Records of Survey in the Office of the County Recorder of said County; thence North 89°29'55" West 373.62 feet along the centerline of said Bolsa Avenue to the southerly prolongation of the westerly line of said Parcel 6; thence North 00°30'05" East 324.91 feet along said prolongation and westerly line to the most northerly corner of said Parcel 6; thence South 54°22'53" East 69.57 feet along the northeasterly line of said Parcel 6 to the **True Point of Beginning**; thence continuing South 54°22'53" East 2.55 feet along said northeasterly line; thence North 89°52'47" West 16.29 feet; thence South 00°29'14" West 71.64 feet; thence North 89°30'46" West 1.48 feet; thence North 00°29'14" East 73.11 feet; thence South 89°52'47" East 15.69 feet to the **True Point of Beginning**.

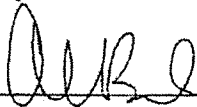
Containing 131 square feet.

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

PSOMAS

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

Prepared under the direction of


Anna M. Beal, PLS 4955

6/15/15
Date

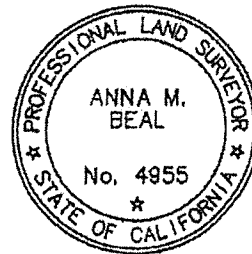


EXHIBIT A2

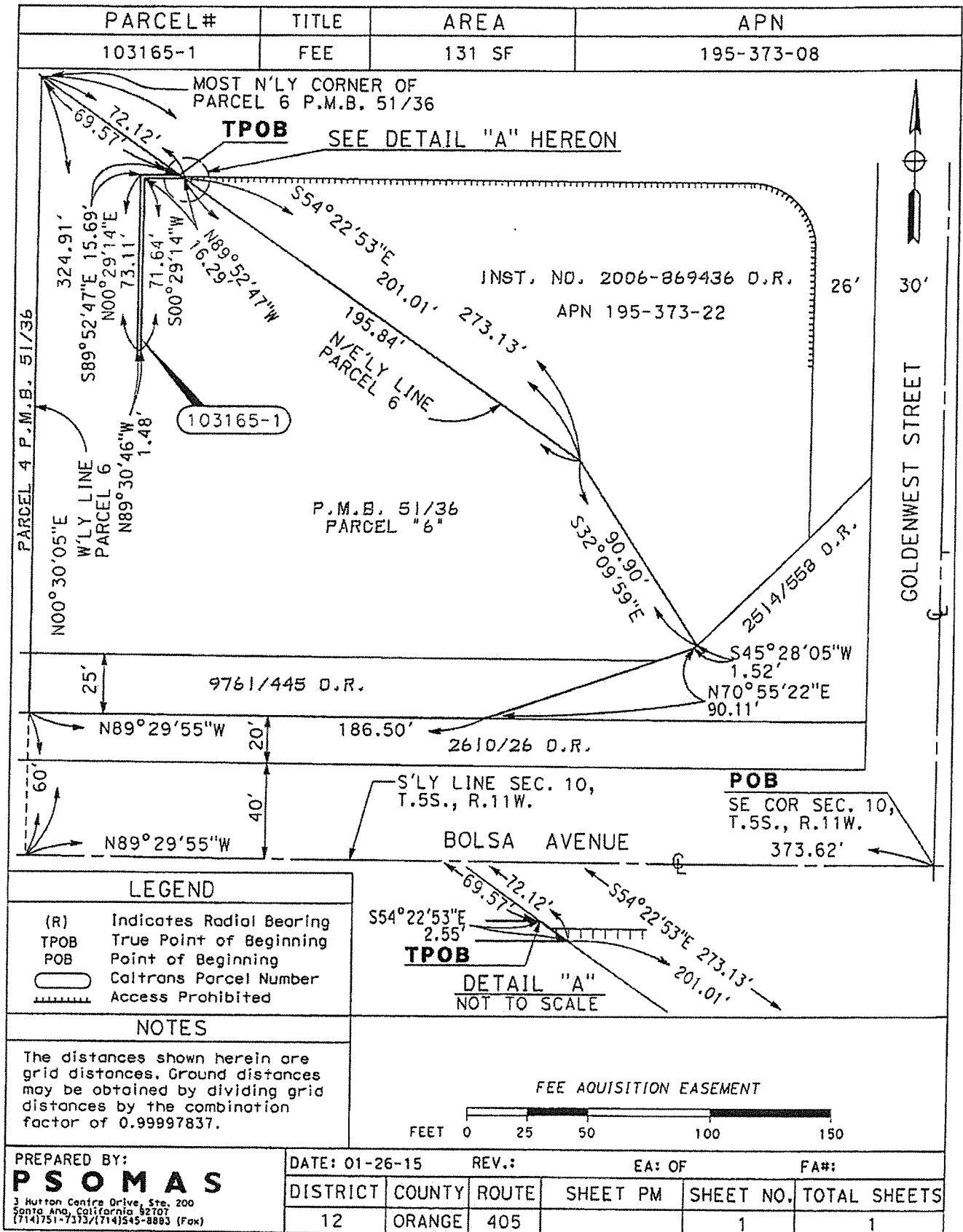


EXHIBIT “2”

**PERMANENT FOOTING EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel No.: 195-373-08

Caltrans Parcel No.: 103165-2

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(s) and occupant(s) 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(s) and occupant(s) 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(s) 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.

PSOMAS

EXHIBIT 'B1'

LEGAL DESCRIPTION

Caltrans Parcel No. 103165-2

Permanent Footing Easement

APN 195-373-08

In the City of Westminster, County of Orange, State of California, being a portion of Parcel 6 as per map filed in Book 51, Page 36 of Parcel Maps in the Office of the Recorder of said County, described as follows:

Beginning at the intersection of Goldenwest Street and Bolsa Avenue as shown on Record of Survey No. 86-1103 filed in Book 115, Pages 35 to 38, inclusive, of Records of Survey in the Office of the County Recorder of said County; thence North 89°29'55" West 373.62 feet along the centerline of said Bolsa Avenue to the southerly prolongation of the westerly line of said Parcel 6; thence North 00°30'05" East 324.91 feet along said prolongation and westerly line to the most northerly corner of said Parcel 6; thence South 54°22'53" East 72.12 feet along the northeasterly line of said Parcel 6 to the **True Point of Beginning**; thence continuing South 54°22'53" East 5.17 feet along said northeasterly line; thence North 89°52'47" West 17.52 feet; thence South 00°29'14" West 68.66 feet; thence North 89°30'46" West 3.00 feet; thence North 00°29'14" East 71.64 feet; thence South 89°52'47" East 16.29 feet to the **True Point of Beginning**.

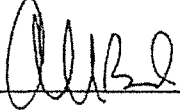
Containing 261 square feet.

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

PSOMAS

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

Prepared under the direction of



Anna M. Beal, PLS 4955

6/15/15
Date



EXHIBIT B2

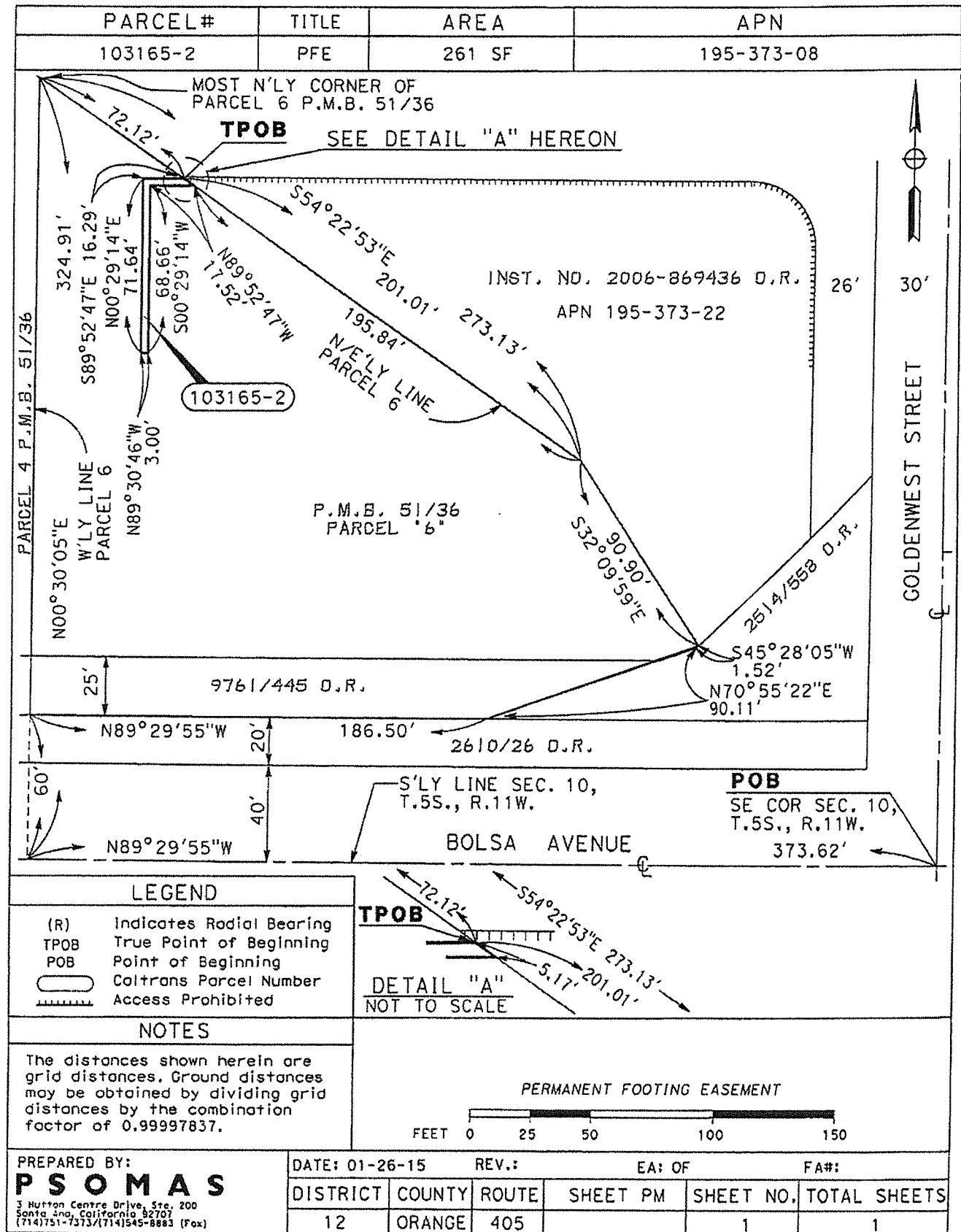


EXHIBIT “3”

**MAINTENANCE ACCESS EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel No.: 195-373-08

Caltrans Parcel No.: 103165-3

The Orange County Transportation Authority seeks to acquire a non-exclusive maintenance access easement in, on and across the real property described in Exhibit "C1" and depicted in Exhibit "C2" attached hereto, subject to the rights and limitations described herein ("Access Easement"). The Access Easement shall be used by the Orange County Transportation Authority and its employees, agents, representatives, contractors, successors, and assigns (collectively, "OCTA") for the purpose of providing access to, and maintenance of, a retaining wall and appurtenances thereto constructed on the adjoining public right of way in connection with the I-405 Improvement Project.

The owner(s) and occupant(s) of the real property subject to the Access Easement shall not construct any permanent improvements within the easement area described and depicted in the attached Exhibits "C1" and "C2," respectively, that would impede OCTA's rights as defined herein, including without limitation, landscaping of the type that would prohibit or restrict reasonable pedestrian and vehicular access. OCTA's access to the Access Easement shall be limited to responding to emergency situations relating to the retaining wall and appurtenances thereto and periodic visual inspections, cleaning, and maintenance as may be necessary. The owner(s) and occupant(s) of the real property subject to the Access Easement will have the right to use the surface of the easement area described and depicted in the attached Exhibits "C1" and "C2," respectively, for access or automobile parking purposes.

The rights and obligations of OCTA and the owner(s) of the real property subject to the Access 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 Access Easement subject to the same rights and limitations described herein.

PSOMAS

EXHIBIT 'C1'

LEGAL DESCRIPTION

Caltrans Parcel No. 103165-3

Maintenance Access Easement

APN 195-373-08

In the City of Westminster, County of Orange, State of California, being a portion of Parcel 6 as per map filed in Book 51, Page 36 of Parcel Maps in the Office of the Recorder of said County, described as follows:

Beginning at the intersection of Goldenwest Street and Bolsa Avenue as shown on Record of Survey No. 86-1103 filed in Book 115, Pages 35 to 38, inclusive, of Records of Survey in the Office of the County Recorder of said County; thence North 89°29'55" West 373.62 feet along the centerline of said Bolsa Avenue to the southerly prolongation of the westerly line of said Parcel 6; thence North 00°30'05" East 324.91 feet along said prolongation and westerly line to the most northerly corner of said Parcel 6; thence South 54°22'53" East 72.12 feet along the northeasterly line of said Parcel 6 to the **True Point of Beginning**; thence continuing South 54°22'53" East 25.83 feet along said northeasterly line; thence North 89°52'47" West 22.42 feet; thence South 00°29'14" West 56.74 feet; thence North 89°30'46" West 15.00 feet; thence North 00°29'14" East 71.64 feet; thence South 89°52'47" East 16.29 feet to the **True Point of Beginning**.

Containing 1,253 square feet.

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

PSOMAS

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Prepared under the direction of

Jeremy L Evans
Jeremy L. Evans, PLS 5282

9.22.16
Date

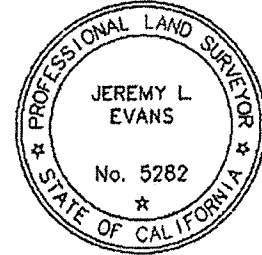


EXHIBIT C2

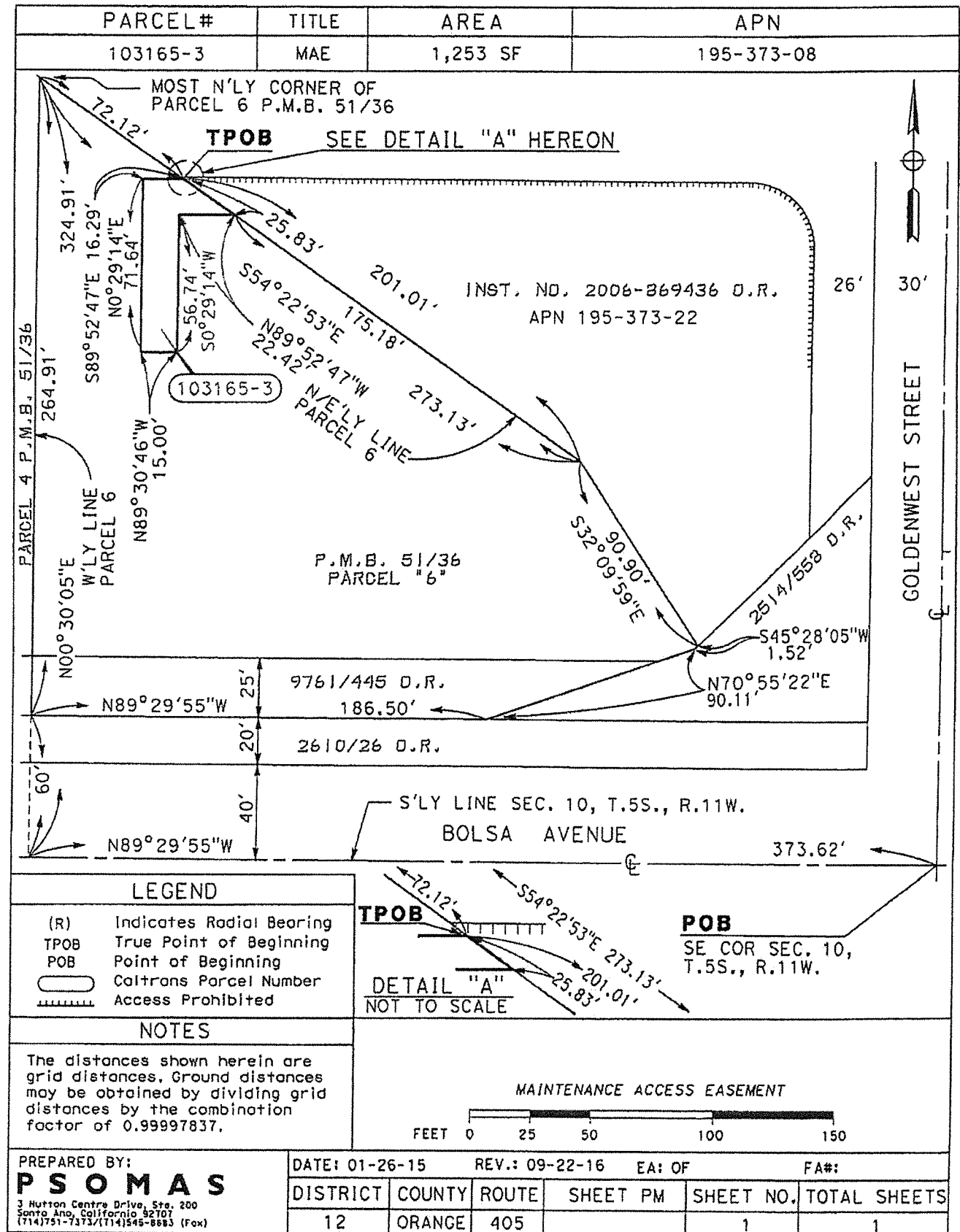


EXHIBIT “4”

**TEMPORARY CONSTRUCTION EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel No.: 195-373-08

Caltrans Parcel No.: 103165-4

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 forty-eight (48) 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 forty-eight (48) 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 twenty-four (24) months of the TCE period will be non-exclusive.

Rights and Restrictions 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.
- 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.
- 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.
- 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, as necessary, 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 'D1'

LEGAL DESCRIPTION

Caltrans Parcel No. 103165-4

Temporary Construction Easement

APN 195-373-08

In the City of Westminster, County of Orange, State of California, being a portion of Parcel 6 as per the map filed in Book 51, Page 36 of Parcel Maps, in the Office of the Recorder of said County, described as follows:

Beginning at the intersection of Goldenwest Street and Bolsa Avenue as shown on Record of Survey No. 86-1103 filed in Book 115, Pages 35 through 38 of Records of Survey in the Office of the County Recorder of said County; thence North 89°29'55" West 373.62 feet along the centerline of said Bolsa Avenue to the southerly prolongation of the westerly line of said Parcel 6; thence North 00°30'05" East 60.00 feet along said prolongation to the southwesterly corner of said Parcel 6; thence North 00°30'05" East 264.91 feet along said westerly line to the most northerly corner of said Parcel 6; thence South 54°22'53" East 72.05 feet along the northeasterly line of said Parcel 6 to the **True Point of Beginning**; thence continuing along said northeasterly line South 54°22'53" East 22.39 feet; thence North 89°52'47" West 21.60 feet; thence South 00°29'14" West 53.46 feet; thence North 89°26'19" East 15.52 feet; thence South 00°29'14" West 47.19 feet; thence North 88°38'47" West 17.48 feet; thence South 00°29'44" West 110.30 feet to the southerly line of said Parcel 6; thence along said southerly line North 89°29'55" West 10.49 feet; thence North 00°30'36" East 151.68 feet; thence North 89°30'46" West 0.59 feet; thence North 00°29'14" East 71.64 feet; thence South 89°52'47" East 16.29 feet to the **True Point of Beginning**.

Containing 3491 square feet.

PSOMAS

See Exhibit 'D2' 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

May 31, 2017

Date

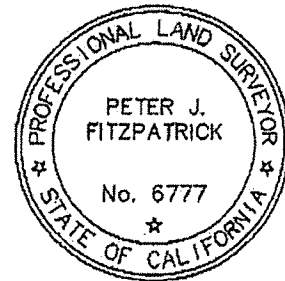


EXHIBIT D2

