

RESOLUTION NO. 2018-046

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. 195-353-07

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 14731 Goldenwest Street 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 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 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 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, 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 18, 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 “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 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 _____ 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. 2018-046, by the following votes:

AYES:

NOES:

ABSENT:

LAURENA WEINERT
CLERK OF THE BOARD

EXHIBIT “A”

PSOMAS

EXHIBIT 'A1'

LEGAL DESCRIPTION

Caltrans Parcel No. 103174-1

FEE

APN 195-353-07

That portion of Tract No. 685, in the City of Westminster, County of Orange, State of California, per the map filed in Book 26, Page 6 of Miscellaneous Maps in the office of the County Recorder of said County, described as follows:

Commencing at the centerline intersection of Sowell Avenue and Goldenwest Street as shown on Tract No. 2038, per the map filed in Book 78, pages 41 through 43 of said Miscellaneous Maps; thence South 00°27'27" West 129.90 feet along the centerline of said Goldenwest Street to the easterly prolongation of the southerly line of said Tract No. 2038; thence North 89°30'48" West 67.64 feet along said easterly prolongation and the southerly line of Lot 1 of said Tract 2038 to the westerly line of Parcel 9 as shown on the map recorded June 23, 1966 in State Highway Map Book No. 4, Pages 12 through 22, in the office of said County Recorder; thence along the westerly lines of said Parcel 9, South 06°07'16" West 288.59 feet and South 58°51'38" West 36.95 feet to the intersection with the southwesterly line of the land described in a document recorded February 20, 1970 in Book 9222, Page 203 of Official Records in the office of said County Recorder and the True Point of Beginning; thence North 44°01'55" West 58.73 feet along said southwesterly line; thence leaving said southwesterly line South 45°21'52" East 18.39 feet; thence South 46°30'37" East 40.89 feet to the westerly line of said Parcel 9; thence South 58°51'38" West 2.25 feet along said westerly line to the True Point of Beginning.

Containing 57 square feet.

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

PSOMAS

1
2 This conveyance is made for the purpose of a freeway and the Grantor hereby releases
3 and relinquishes to the Grantee any and all abutter's rights or access, appurtenant to
4 Grantor's remaining property, in and to said freeway
5

6 The distances shown herein are grid distances. Ground distances may be obtained by
7 dividing grid distances by the combination factor of 0.99997837.
8

9 This legal description was prepared by me or under my direction.
10

11 Peter J. Fitzpatrick
12

13 Peter J. Fitzpatrick, PLS 6777
14

15 June 1, 2017
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17 Date
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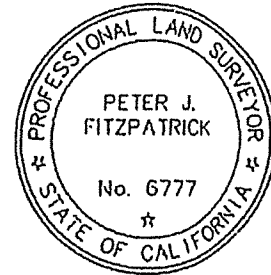
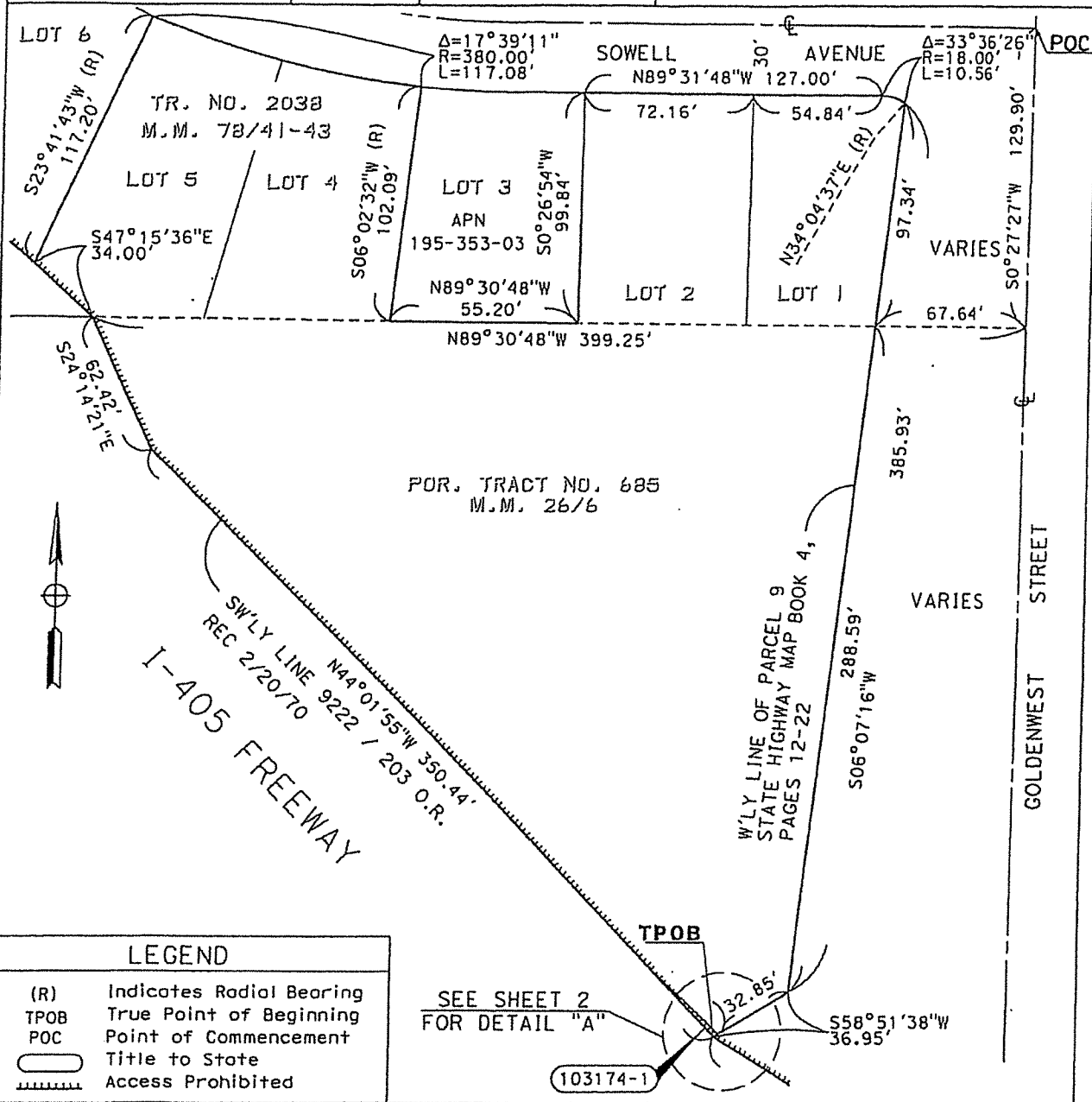


EXHIBIT A2

PARCEL#	TITLE	AREA	APN
103174-1	FEE	57 SF	195-353-07

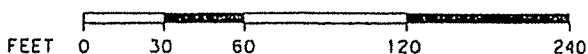


LEGEND	
(R)	Indicates Radial Bearing
TPOB	True Point of Beginning
POC	Point of Commencement
	Title to State
	Access Prohibited

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

103174-1

FEE ACQUISITION



PREPARED BY:

PSOMAS

3 Huston Centre Drive, Ste. 200
Santa Ana, California 92707
(714)751-7373/(714)545-8883 (Fax)

DATE: 4/12/17

REV.: 06/01/17

EA:

FA#:

DISTRICT

COUNTY

ROUTE

SHEET PM

SHEET NO.

TOTAL SHEETS

12

ORANGE

405

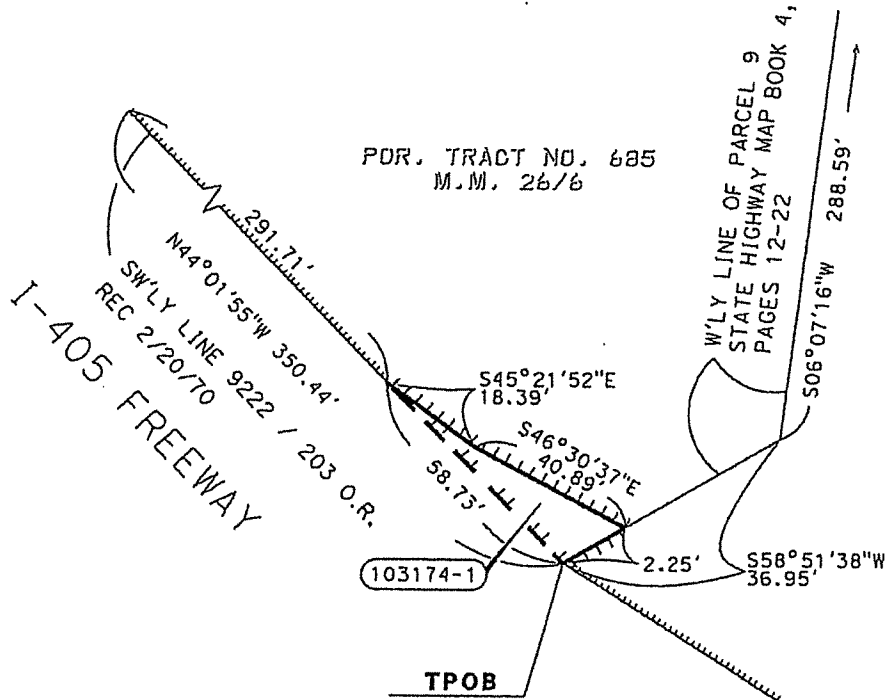
18.00

1

2

EXHIBIT A2

PARCEL#	TITLE	AREA	APN
103174-1	FEE	57 SF	195-353-07



DETAIL "A"
NOT TO SCALE

LEGEND

(R)	Indicates Radial Bearing
TPOB	True Point of Beginning
POC	Point of Commencement
	Title to State
	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.

103174-1

FEE ACQUISITION

NOT TO SCALE

PREPARED BY:

PSOMAS

3 Hutton Centre Drive, Ste. 200
Santa Ana, California 92707
(714)751-7373/(714)545-8883 (Fax)

DATE: 4/12/17

REV.: 06/01/17

EA:

FA#:

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
12	ORANGE	405	18.00	2	2

EXHIBIT “B”

**TEMPORARY CONSTRUCTION EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel Nos.: 195-353-07

Caltrans Parcel No.: 103174-2

The Orange County Transportation Authority seeks to acquire a temporary construction easement within and upon the real property described in Exhibit "B1" and depicted in Exhibit "B2" 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. 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 will 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, with the exception of one existing sign which will be sheltered in place. 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, the 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.

PSOMAS

EXHIBIT 'B1'

LEGAL DESCRIPTION

Caltrans Parcel No. 103174-2

Temporary Construction Easement

APN 195-353-07

That portion of Tract No. 685, in the City of Westminster, County of Orange, State of California, per the map filed in Book 26, Page 6 of Miscellaneous Maps in the office of the County Recorder of said County, described as follows:

Commencing at the centerline intersection of Sowell Avenue and Goldenwest Street as shown on Tract No. 2038, per the map filed in Book 78, pages 41 through 43 of said Miscellaneous Maps; thence South $00^{\circ}27'27''$ West 129.90 feet along the centerline of said Goldenwest Street to the easterly prolongation of the southerly line of said Tract No. 2038; thence North $89^{\circ}30'48''$ West 67.64 feet along said easterly prolongation and the southerly line of Lot 1 of said Tract 2038 to the westerly line of Parcel 9 as shown on the map recorded June 23, 1966 in State Highway Map Book No. 4, Pages 12 through 22, in the office of said County Recorder; thence along the westerly lines of said Parcel 9, South $06^{\circ}07'16''$ West 288.59 feet and South $58^{\circ}51'38''$ West 36.95 feet to the intersection with the southwesterly line of the land described in a document recorded February 20, 1970 in Book 9222, Page 203 of Official Records in the office of said County Recorder; thence North $44^{\circ}01'55''$ West 58.73 feet along said southwesterly line to the True Point of Beginning; thence leaving said southwesterly line South $45^{\circ}21'52''$ East 18.39 feet; thence South $46^{\circ}30'37''$ East 40.89 feet to the westerly line of said Parcel 9; thence North $58^{\circ}51'38''$ East 1.85 feet along said westerly line; thence leaving said westerly line North $44^{\circ}01'55''$ West 362.47 feet to the southwesterly line of the land described in said Book 9222, Page 203; thence along said southwesterly lines, South $24^{\circ}14'21''$ East 11.81 feet and South $44^{\circ}01'55''$ East 291.71 feet to the True Point of Beginning.

PSOMAS

Containing 1,369 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.

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

Peter J. Fitzpatrick

Peter J. Fitzpatrick, PLS 6777

June 1, 2017

Date

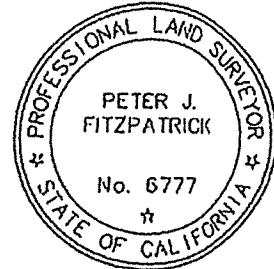
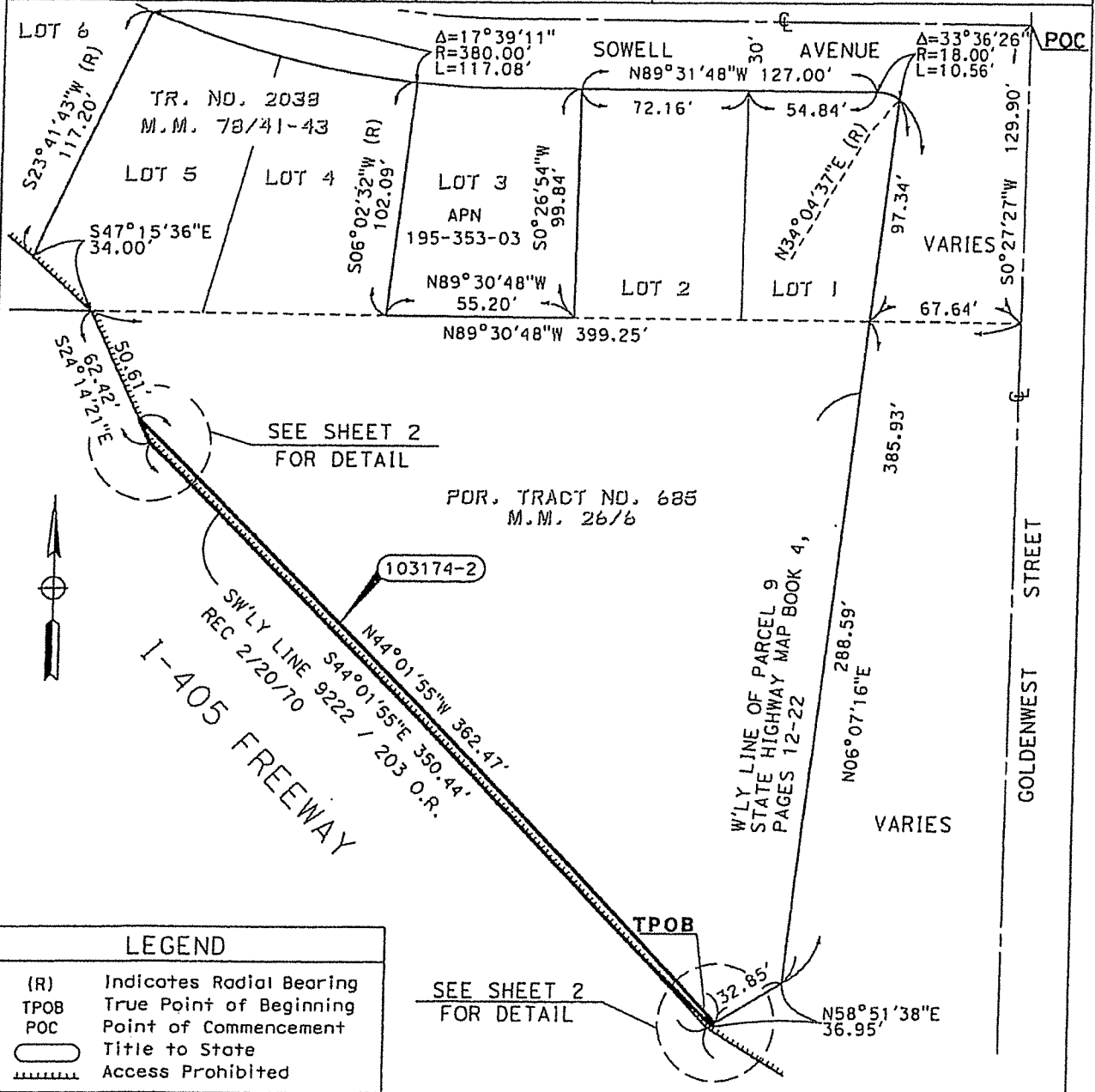


EXHIBIT B2

PARCEL#	TITLE	AREA	APN
103174-2	TCE	1,369 SF	195-353-07



LEGEND	
(R)	Indicates Radial Bearing
TPOB	True Point of Beginning
POC	Point of Commencement
	Title to State
	Access Prohibited

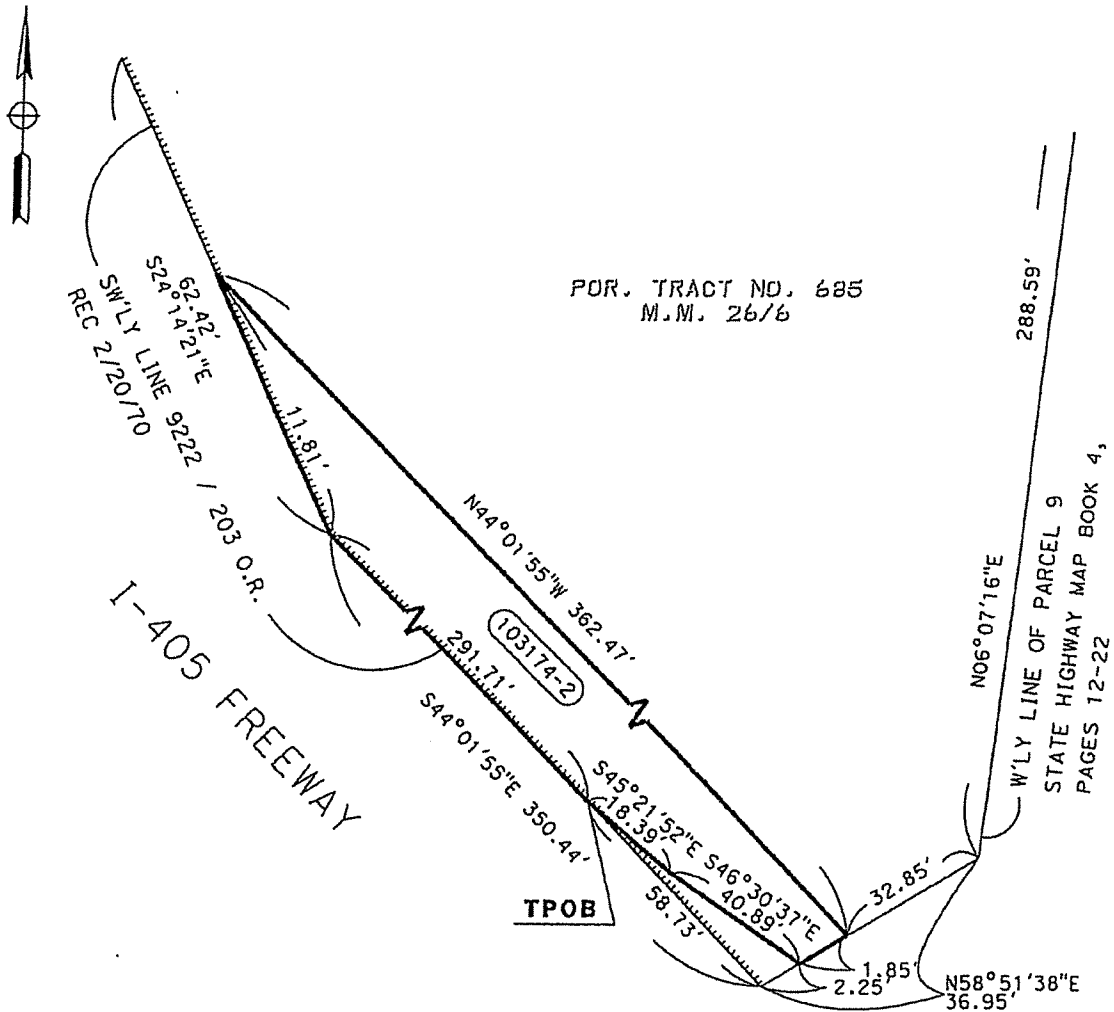
NOTES
The distances shown herein are grid distances. Ground distances may be obtained by dividing grid distances by the combination factor of 0.99997837.

103174-2
TEMPORARY CONSTRUCTION EASEMENT
FEET 0 30 60 120 240

PREPARED BY:	DATE: 4/11/17	REV.: 06/01/17	EA:	FA#:
PSOMAS	DISTRICT	COUNTY	ROUTE	SHEET PM
3 Hutton Centre Drive, Ste. 200 Santa Ana, California 92701 (714)751-7373/(714)545-8853 (Fax)	12	ORANGE	405	18.00
				SHEET NO.
				1
				TOTAL SHEETS
				2

EXHIBIT B2

PARCEL#	TITLE	AREA	APN
103174-2	TCE	1,369 SF	195-353-07



LEGEND

(R)	Indicates Radial Bearing
TPOB	True Point of Beginning
POC	Point of Commencement
	Title to State
	Access Prohibited

DETAIL

NOT TO SCALE

NOTES

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

103174-2

TEMPORARY CONSTRUCTION EASEMENT

NOT TO SCALE

PREPARED BY:

PSOMAS

3 Hutton Centre Drive, Ste. 200
Santa Ana, California 92707
(714)751-7373/(714)545-8883 (Fax)

DATE: 4/11/17

REV.: 06/01/17

EA:

FA#:

DISTRICT

COUNTY

ROUTE

SHEET PM

SHEET NO.

TOTAL SHEETS

12

ORANGE

405

18.00

2

2

EXHIBIT “C”

**TEMPORARY CONSTRUCTION EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

Assessor Parcel Nos.: 195-353-07

Caltrans Parcel No.: 103174-3

The Orange County Transportation Authority seeks to acquire a temporary construction easement within and upon the real property described in Exhibit "C1" and depicted in Exhibit "C2" 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 six (6) 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 forty-two (42) months of the TCE period will be non-exclusive.

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 during the Construction Period, at least one-half of the width of the existing driveway within the TCE area will remain open at all times.
- OCTA will use the TCE to adjust any grade differentials between the remaining property and adjoining public right-of-way and/or perform any necessary matchwork within the TCE area.
- 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 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.

PSOMAS

EXHIBIT 'C1'

LEGAL DESCRIPTION

Caltrans Parcel No. 103174-3

Temporary Construction Easement

APN 195-353-07

That portion of Lot 1 of Tract No. 2038 as per map filed in Book 78, Pages 41 through 43 of Miscellaneous Maps and that portion of Tract No. 685 as per map filed in Book 26, Page 6, in the City of Westminster, County of Orange, State of California in the Office of the County Recorder of said County, described as follows:

Commencing at the centerline intersection of Sowell Avenue and Goldenwest Street as shown on said map, thence South 00°27'27" West 129.90 feet along the centerline of said Goldenwest Street to the easterly prolongation of the southerly line of said Lot 1; thence North 89°30'48" West 67.64 feet along said easterly prolongation and the southerly line of said Lot 1 to the westerly line of Parcel 9 as shown on the map recorded in State Highway Map Book No. 4 Pages 12 through 22, in the office of County Recorder; thence along said westerly line South 06°07'16" West 9.72 to the **True Point of Beginning**; thence leaving said westerly line North 83°52'44" West 40.00 feet; thence North 06°07'16" East 72.88 feet; thence South 83°52'44" East 40.00 feet to said westerly line; thence along said westerly line South 06°07'16" West 72.88 to the **True Point of Beginning**.

Containing 2915 square feet.

See Exhibit 'C2' 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.

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

Peter J. Fitzpatrick

Peter J. Fitzpatrick, PLS 6777

Nov. 13, 2017

Date

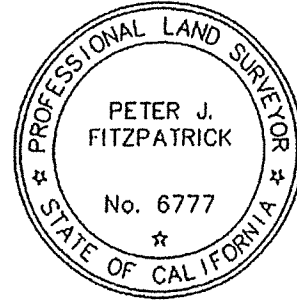
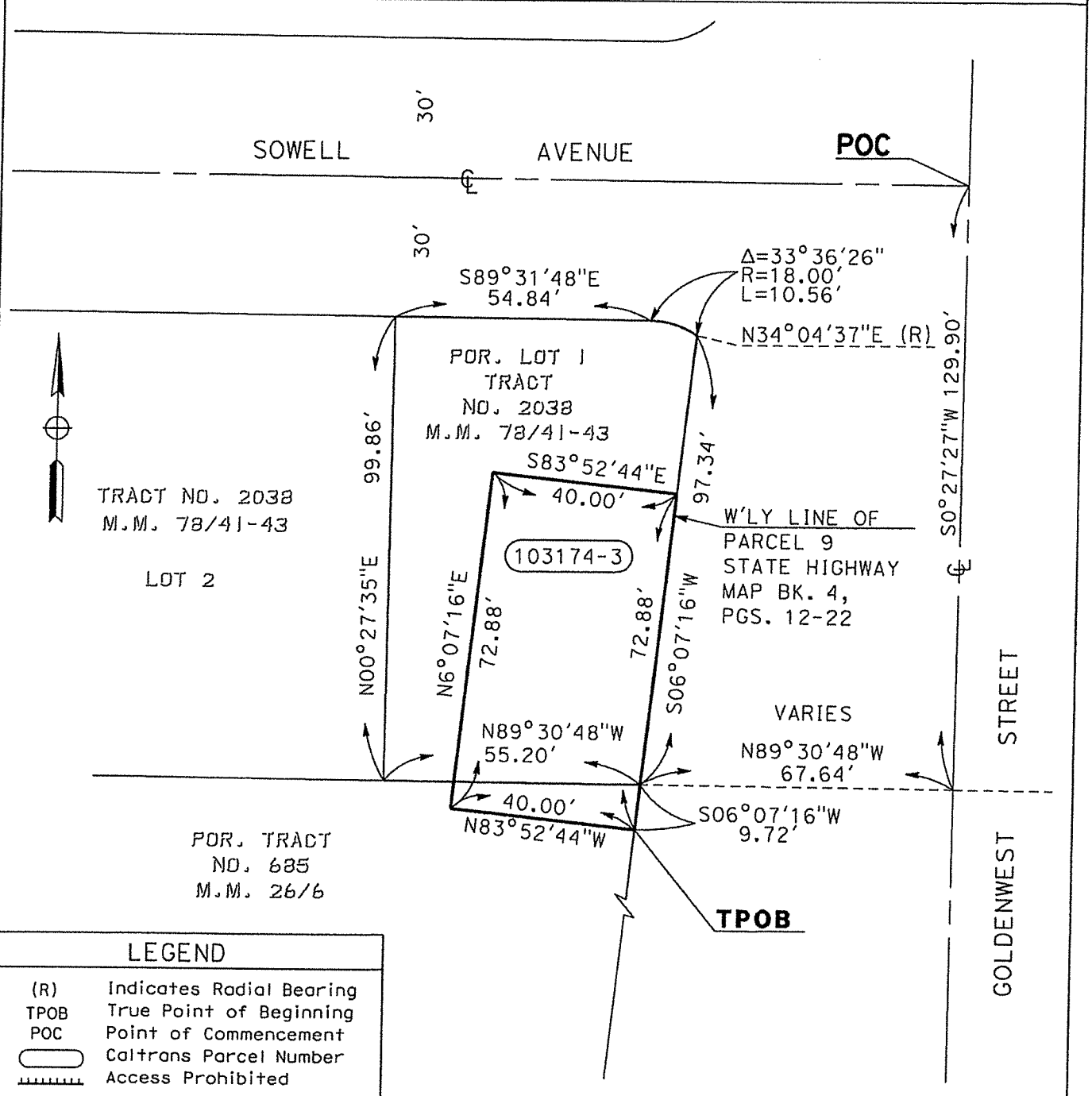


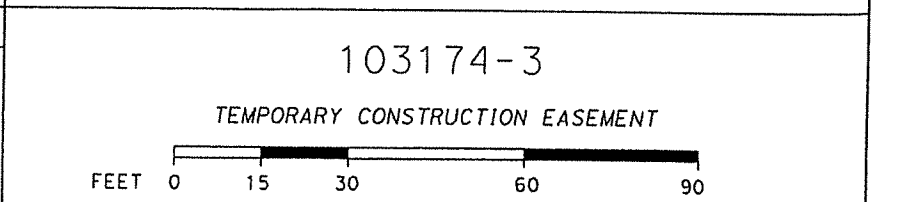
EXHIBIT C2

PARCEL#	TITLE	AREA	APN
103174-3	TCE	2915 SF	195-353-07



NOTES

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PREPARED BY: PSOMAS 3 Hutton Centre Drive, Ste. 200 Santa Ana, California 92707 (714)751-7373/(714)545-8883 (Fax)	DATE: 06/01/17 REV.: 11/13/17 EA: FA#:					
	DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
	12	ORANGE	405	18.00	1	1