

**RESOLUTION NO. 2018-052**

**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. 107-212-06.**

**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 8041 Edinger 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 permanent footing easement as legally described in and depicted in Exhibit "1" hereto and a temporary construction easement as legally described and depicted in Exhibit "2" hereto (collectively, the "Property Interests"); and

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

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

**WHEREAS**, in accordance with section 1245.235 of the California Code of Civil Procedure on March 30, 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 scheduled a hearing for May 14, 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 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 "1" and "2" 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 footing easement and one temporary construction easement in the real property described and depicted in Exhibits "1" and "2" 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.

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LISA A. BARTLETT, CHAIRWOMAN  
ORANGE COUNTY  
TRANSPORTATION AUTHORITY

APPROVED AS TO FORM:

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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. 2018-052, by the following votes:

AYES:

NOES:

ABSENT:

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LAURENA WEINERT  
CLERK OF THE BOARD

## **Exhibit 1**

**PERMANENT FOOTING EASEMENT  
ATTACHMENT TO LEGAL DESCRIPTION**

**Assessor Parcel No: Portion of 107-212-06**

**Caltrans Parcel No: 103401-1**

The Orange County Transportation Authority seeks to acquire a non-exclusive permanent footing easement in, on and under the real property described in Exhibit "A1" and depicted in Exhibit "A2" 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 I-405 Improvement Project.

The owner 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 "A1" and "A2", respectively, that would impede or in any way interfere with 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 occupant(s) of the real property subject to the Footing Easement will have the right to use only the surface of the easement area described and depicted in the attached Exhibits "A1" and "A2", respectively, and solely for access, automobile parking purposes, or ground cover plants and grasses whose roots shall not impact the subsurface footings, 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.



# PSOMAS

## EXHIBIT 'A1'

### LEGAL DESCRIPTION

Caltrans Parcel No. 103401-1

Permanent Footing Easement

Portion of APN 107-212-06

That portion of Parcel 1 of Parcel Map No. 2008-124, in the City of Westminster, County of Orange, State of California, as per the map filed in Book 368, Pages 21 and 22 of Parcel Maps in the office of the County Recorder of said County, lying northeasterly of the following described line:

Beginning at a point on that certain course in the northeasterly line of said Parcel 1 shown as having a bearing of North 49°16'46" West and a length of 131.51 feet, the bearing of said course being North 49°16'41" West for the purposes of this description, said point being distant thereon North 49°16'41" West 25.33 feet from its southeasterly terminus; thence North 50°18'02" West 131.48 feet to the northeasterly line of said Parcel 1.

Containing 124 square feet.

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

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



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Prepared under the direction of

Jeremy L. Evans

Jeremy L. Evans, PLS 5282

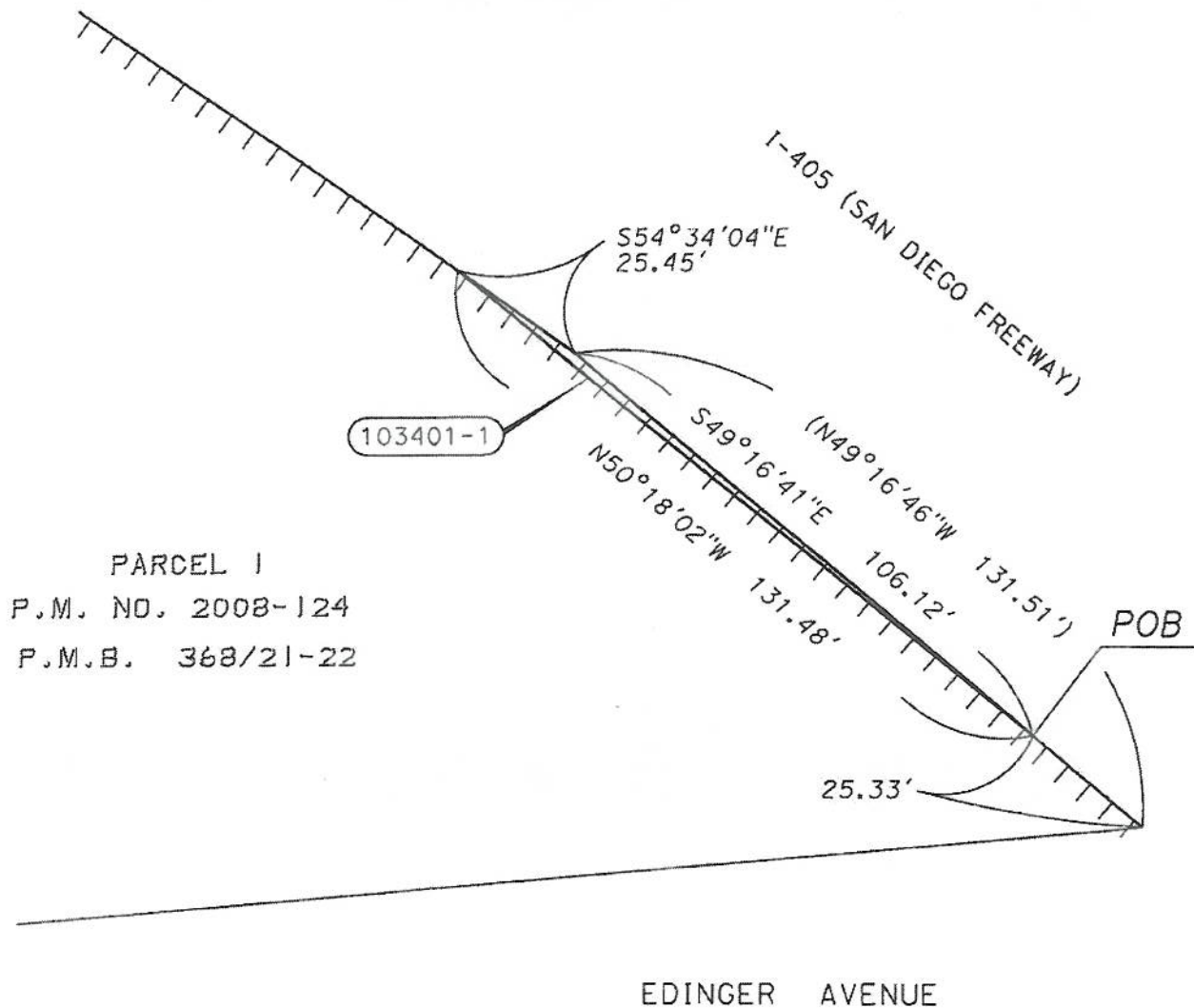
1-16-2017

Date



# EXHIBIT A2

PARCEL#	TITLE	AREA	APN
103401-1	PFE	124 SF	107-212-06 (PORTION)



## LEGEND

(RAD) Indicates Radial Bearing  
 POC Point of Commencement  
 TPOB True Point of Beginning  
 ( ) Caltrans Parcel Number  
 Old Right of Way(Superseded)  
 Exist Right of Way  
 Proposed Right of Way  
 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.

( ) INDICATES RECORD PER PARCEL MAP NO. 2008-124 P.M.B. 368/21 & 22

103401-1

PERMANENT FOOTING EASEMENT

FEET 0 15 30 60 90

PREPARED BY:

**PSOMAS**

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

DATE: 01-16-17

REV.:

EA:

FA#:

DISTRICT

COUNTY

ROUTE

SHEET PM

SHEET NO.

TOTAL SHEETS

12

ORANGE

405

16.44

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## **Exhibit 2**

**TEMPORARY CONSTRUCTION EASEMENT  
ATTACHMENT TO LEGAL DESCRIPTION**

**Assessor Parcel No.: 107-212-06**

**Caltrans Parcel No.: 103401-2**

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

**Rights and 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.
- 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 or doorway or sidewalk within the TCE area.
- Reasonable pedestrian and vehicular access to the property including all driveways, doorways, and fire department facilities shall be maintained at all times.
- Access to the TCE area shall be from the public right of way.
- Improvements within the TCE area will be removed as needed by OCTA to allow for construction activities. All improvements so removed and their cost of replacement shall be included in the compensation paid by OCTA for this TCE.
- All sidewalks and fire department facilities adjacent to the TCE shall be protected in place.
- Prior to the termination of the Construction Period, OCTA will remove from the TCE area all construction equipment and materials including, without limitation, any temporary fence, any temporary improvements, and all construction-related debris. The TCE area will be graded and compacted.

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



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## EXHIBIT 'B1'

### LEGAL DESCRIPTION

Caltrans Parcel No. 103401-2

Temporary Construction Easement

Portion of APN 107-212-06

That portion of Parcel 1 of Parcel Map No. 2008-124, in the City of Westminster, County of Orange, State of California, as per the map filed in Book 368, Pages 21 and 22 of Parcel Maps in the office of the County Recorder of said County, described as follows:

Beginning at the southeasterly corner of said Parcel 1; thence South 85°16'42" West 7.02 feet along the southerly line of said Parcel 1 to a line that is parallel with and 5.00 feet southwesterly of the northeasterly line of said Parcel 1; thence North 49°16'41" West 126.29 feet along said parallel line to a line that is parallel with and 5.00 feet southwesterly of the northeasterly line of said Parcel 1; thence North 54°34'04" West 142.59 feet along said parallel line; thence North 36°46'06" East 5.00 feet to the northeasterly line of said Parcel 1; thence along the northeasterly line of said Parcel 1 the following two (2) courses:

1. South 54°34'04" East 142.70 feet; and
2. South 49°16'41" East 131.44 to the **Point of Beginning**.

Containing 1358 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.

# PSOMAS

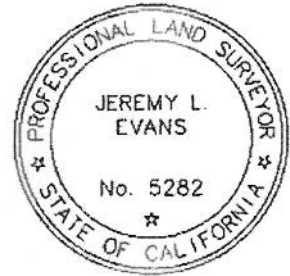
Prepared under the direction of

Jeremy L. Evans

Jeremy L. Evans, PLS 5282

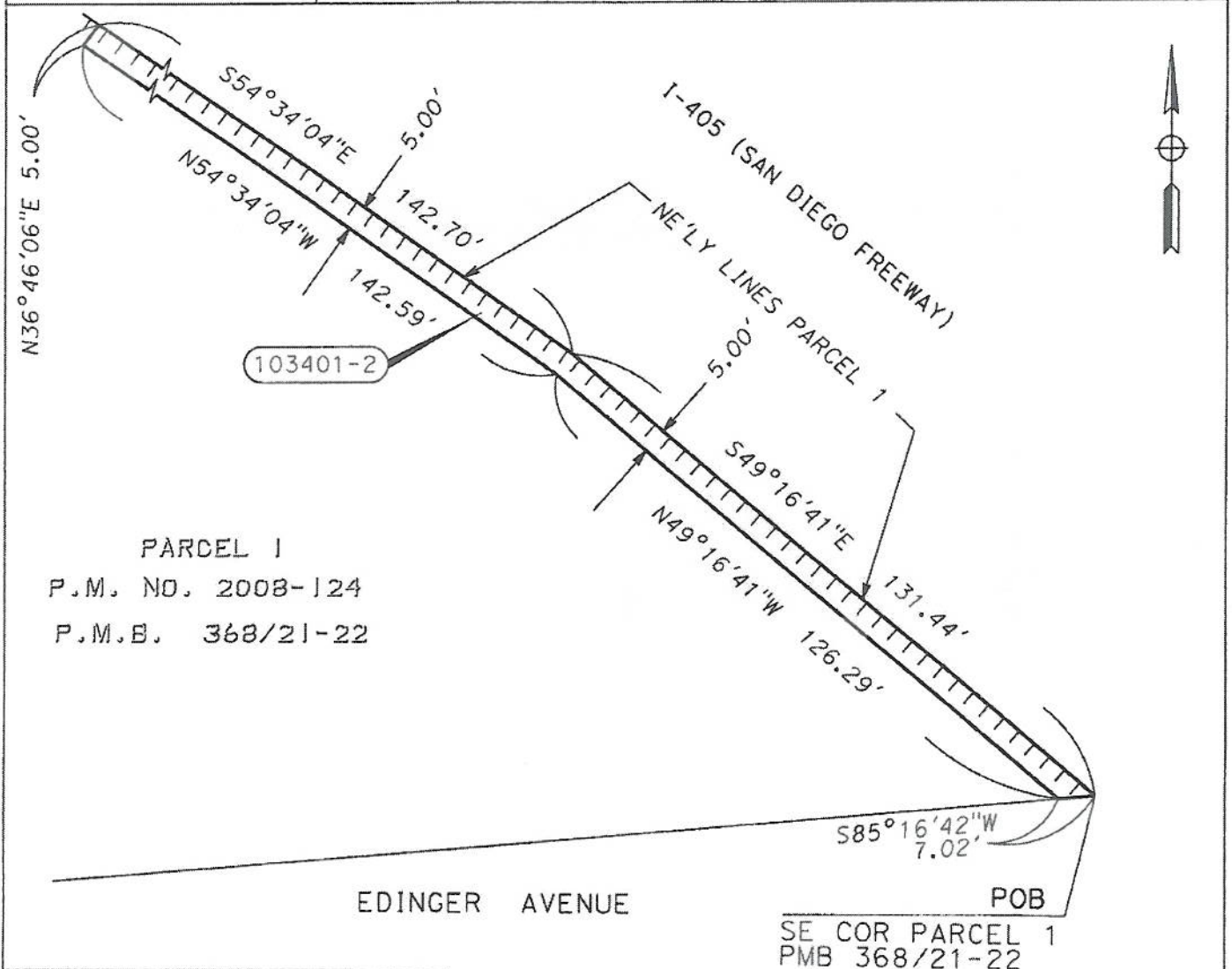
1-16-2017

Date



# EXHIBIT B2

PARCEL#	TITLE	AREA	APN
103401-2	TCE	1358 SF	107-212-06 (PORTION)



LEGEND
(RAD) Indicates Radial Bearing
POC Point of Commencement
TPOB True Point of Beginning
Caltrans Parcel Number
Old Right of Way(Superseded)
Exist Right of Way
Proposed Right of Way
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.

103401-2
TEMPORARY CONSTRUCTION EASEMENT
FEET 0 15 30 60 90

PREPARED BY: <b>PSOMAS</b> 3 Hutton Centre Drive, Ste. 200 Santa Ana, California 92707 (714)751-7373/(714)545-8983 (Fax)	DATE: 01-16-17		REV.:	EA:	FA#:	
	DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
	12	ORANGE	405	16.44	1	1