

**RESOLUTION NO. 2018-062**

**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. 139-032-11.**

**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 3303-3323 Hyland Avenue, in the City of Costa Mesa, 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 and depicted in Exhibit “A” hereto, a partial fee interest as legally described and depicted in Exhibit “B” hereto, and a temporary construction easement as legally described and depicted in Exhibit “C” 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 May 11, 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 Costa Mesa 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 July 23, 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," "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 two partial fee interests and a temporary construction easement in the real property described and depicted in Exhibits "A," "B," and "C" 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:

---

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. 2018-062, by the following votes:

AYES:

NOES:

ABSENT:

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LAURENA WEINERT  
CLERK OF THE BOARD

# EXHIBIT “A”

# PSOMAS

## EXHIBIT 'A1'

### LEGAL DESCRIPTION

#### Caltrans Parcel No. 102869-1

#### Fee Acquisition

APN 139-032-11

In the City of Costa Mesa, County of Orange, State of California, being a portion of Parcel "A" per Parcel Map No. 2006-230 filed in Book 360, Pages 40 through 45 of Parcel Maps in the Office of the Recorder of said County, described as follows:

**Beginning** at the centerline intersection of Hyland Avenue and South Coast Drive as shown on said Parcel Map; thence North 00°21'16" East 52.39 feet along said centerline of Hyland Avenue to the southeasterly prolongation of the southwesterly line of said Parcel "A"; thence North 67°56'16" West 99.97 feet along said southeasterly prolongation to the most southerly corner of said Parcel "A"; thence continuing along the southwesterly line of said Parcel "A" North 67°56'16" West 89.97 feet to the **True Point of Beginning** and the beginning of a non-tangent curve concave southwesterly having a radius of 3032.00 feet, a radial line to said beginning bears North 25°52'54" East; thence northwesterly 125.47 feet along said curve through a central angle of 02°22'16" to the beginning of a non-tangent curve concave southwesterly having a radius of 3029.46 feet, a radial line to said beginning bears North 21°37'18 East; thence northwesterly 10.91 feet along said curve through a central angle of 00°12'22"; thence North 68°35'13" West 214.80 feet to a point on said southwesterly line; thence along said southwesterly line the following two (2) courses:

1. South 60°05'05" East 23.62 feet and
2. South 67°56'16 East 327.62 feet to the **True Point of Beginning**.

Containing 1395 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.

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.

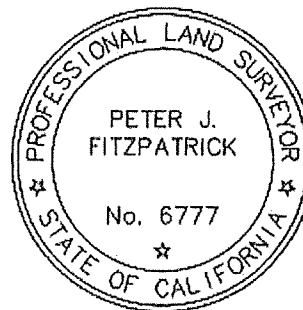
This legal description was prepared by me or under my direction.

*Peter J. Fitzpatrick*

Peter J. Fitzpatrick, PLS 6777

*May 11, 2018*

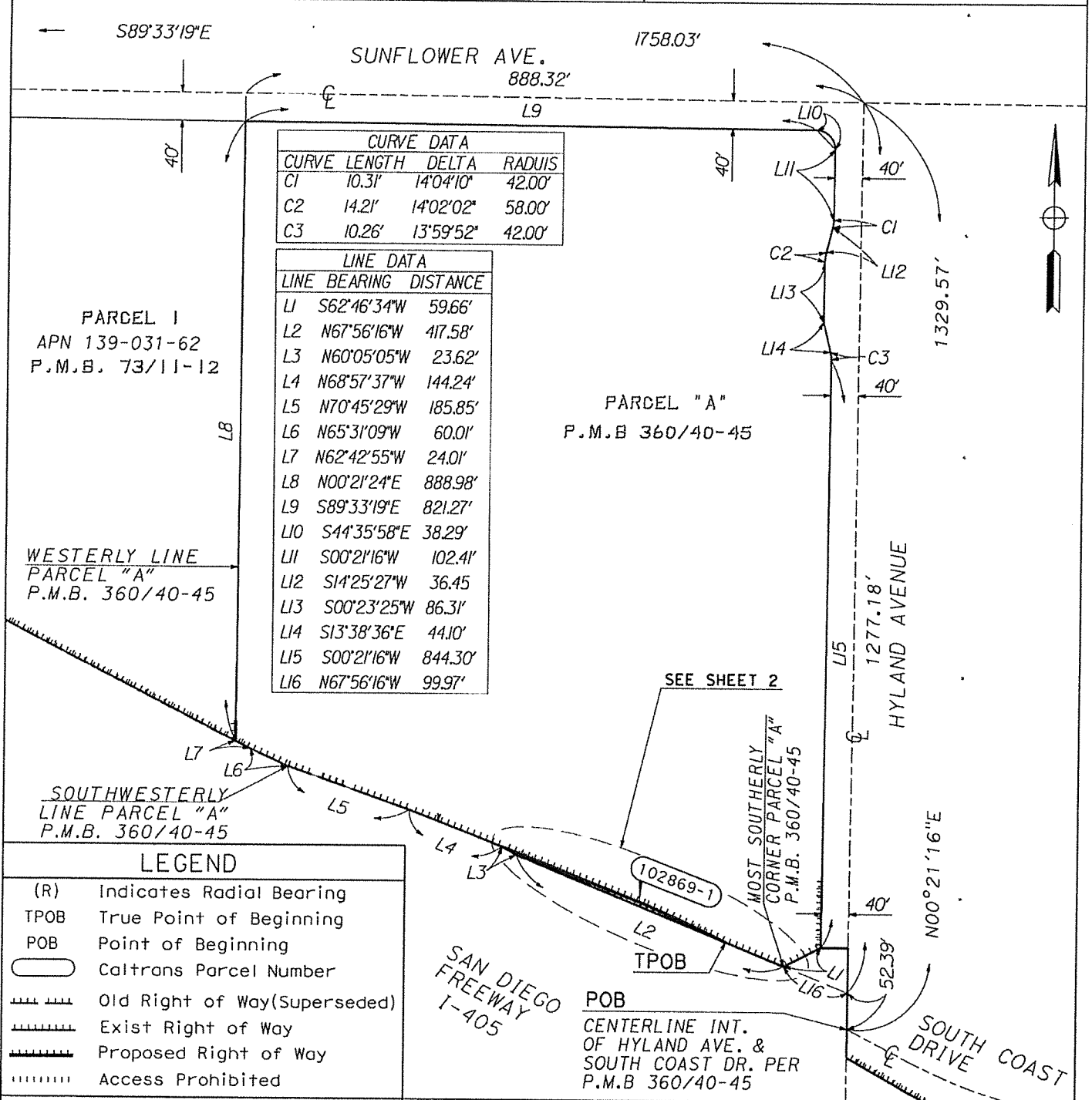
Date





# EXHIBIT A2

| PARCEL#  | TITLE | AREA    | APN        |
|----------|-------|---------|------------|
| 102869-1 | FEE   | 1395 SF | 139-032-11 |

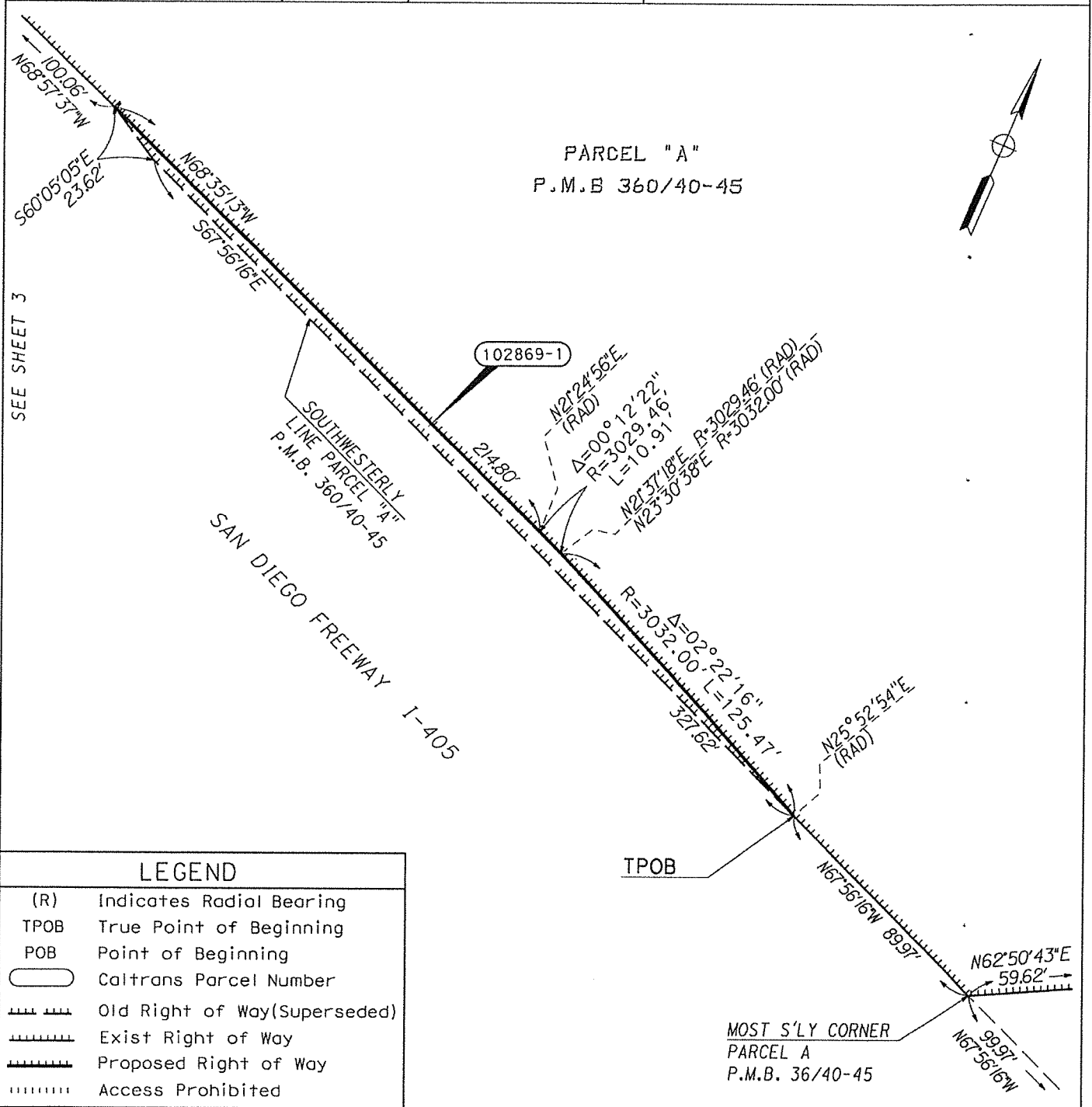


PREPARED BY:  
**PSOMAS**  
3 Hutton Centre Drive, Ste. 200  
Santa Ana, California 92707  
(714)751-7373/(714)545-8883 (Fax)

|                |        |                 |          |           |       |      |        |
|----------------|--------|-----------------|----------|-----------|-------|------|--------|
| DATE: 06-09-15 |        | REV.1: 05-11-18 |          | EA: OF    |       | FA#: |        |
| DISTRICT       | COUNTY | ROUTE           | SHEET PM | SHEET NO. | TOTAL |      | SHEETS |
| 12             | ORANGE | 405             | 11.95    | 1         | ·     |      | 2      |

# EXHIBIT A2

| PARCEL#  | TITLE | AREA    | APN        |
|----------|-------|---------|------------|
| 102869-1 | FEE   | 1395 SF | 139-032-11 |

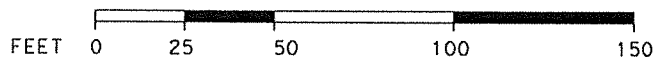


## NOTES

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

102869-1

FEE ACQUISITION



PREPARED BY:

**PSOMAS**

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

DATE: 02-09-16

REV.1: 05-11-18

EA: OF

FA#:

DISTRICT

COUNTY

ROUTE

SHEET PM

SHEET NO.

TOTAL SHEETS

12

ORANGE

405

11.95

2

2

# EXHIBIT “B”

# PSOMAS

## EXHIBIT 'B1'

### LEGAL DESCRIPTION

#### Caltrans Parcel No. 102869-2

#### Fee Acquisition

APN 139-032-11

In the City of Costa Mesa, County of Orange, State of California, being a portion of Parcel "A" per Parcel Map No. 2006-230 filed in Book 360, Pages 40 through 45 of Parcel Maps in the Office of the Recorder of said County, described as follows:

**Beginning** at the centerline intersection of Hyland Avenue and South Coast Drive as shown on said Parcel Map; thence North 00°21'16" East 52.39 feet along said centerline of Hyland Avenue to the southeasterly prolongation of the southwesterly line of said Parcel "A"; thence North 67°56'16" West 99.97 feet along said southeasterly prolongation to the most southerly corner of said Parcel "A"; thence continuing along the southwesterly line of said Parcel "A" the following three (3) courses:

1. North 67°56'16" West 417.58 feet; thence
2. North 60°05'05" West 23.62 feet; thence
3. North 68°57'37" West 100.06 feet to the **True Point of Beginning**; thence North 64°18'54" West 149.05 feet; thence North 63°48'58" West 176.24 feet to a point on the westerly line of said Parcel "A"; thence along said westerly line South 00°21'24" West 29.38 feet to the southwesterly line of said Parcel "A"; thence along said southwesterly line the following four (4) courses:

1. South 62°42'55" East 24.01 feet
2. South 65°31'09" East 60.01 feet
3. South 70°45'29" East 185.85 feet
4. South 68°57'37" East 44.18 feet to the **True Point of Beginning**.

Containing 5061 square feet.

# PSOMAS

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

4  
5 See Exhibit 'B2' attached hereto and made a part hereof.

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

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

11 Peter J. Fitzpatrick

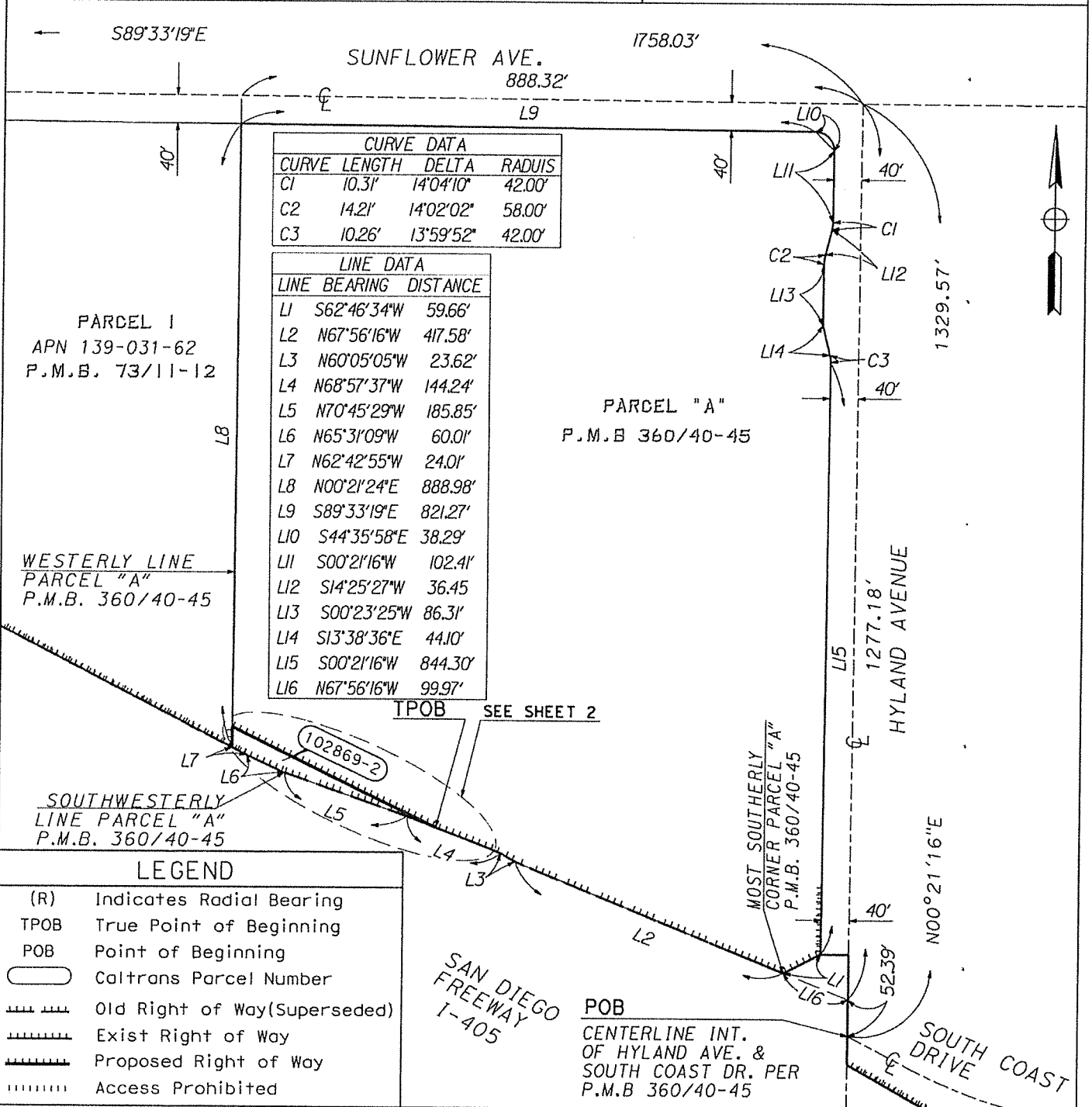
12  
13 Peter J. Fitzpatrick, PLS 6777

14  
15 May 11, 2018  
16 Date



# EXHIBIT B2

| PARCEL#  | TITLE | AREA    | APN        |
|----------|-------|---------|------------|
| 102869-2 | FEE   | 5061 SF | 139-032-11 |

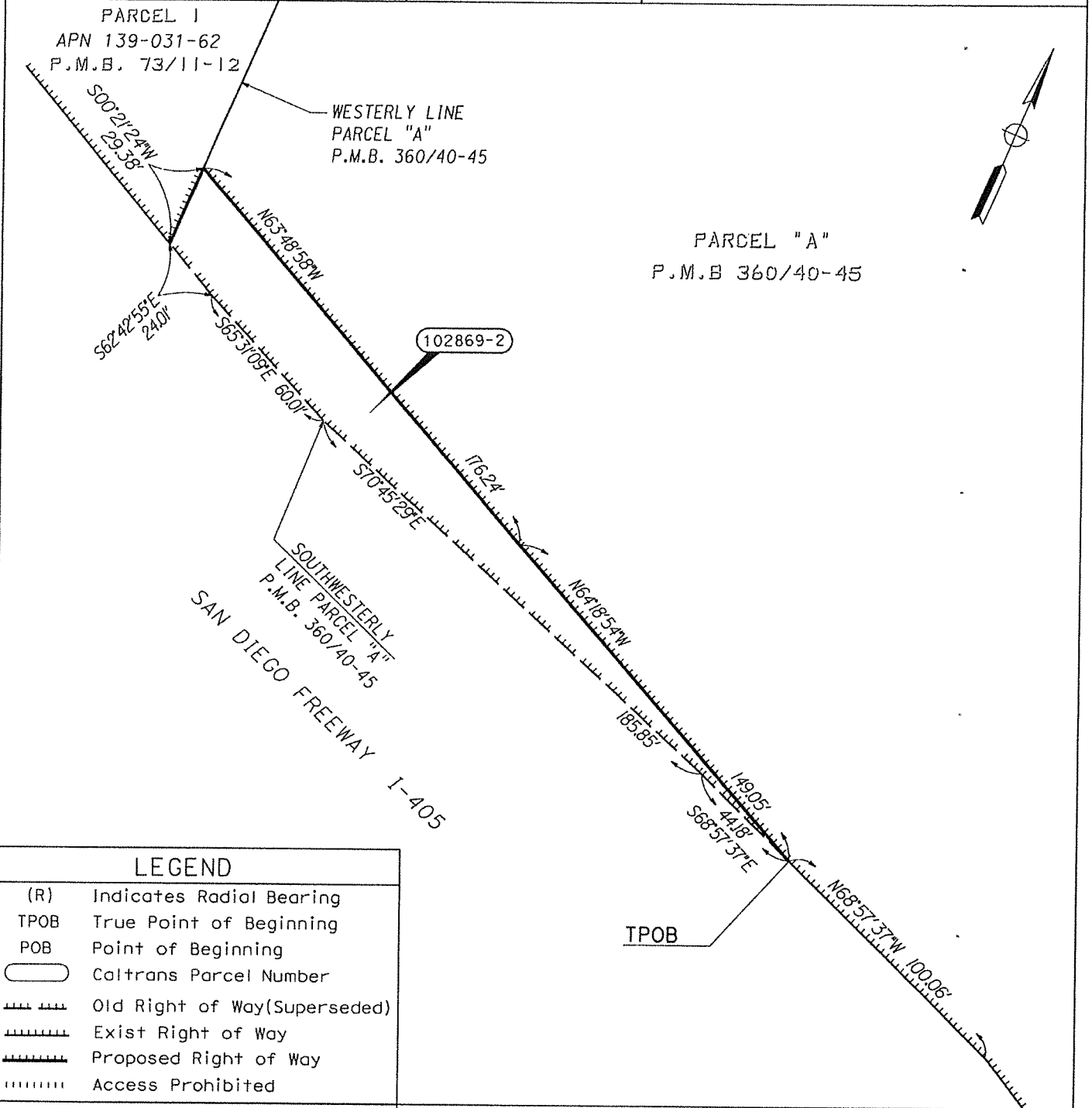


PREPARED BY:  
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|                |        |                 |          |           |              |      |  |
|----------------|--------|-----------------|----------|-----------|--------------|------|--|
| DATE: 06-09-15 |        | REV.1: 05-11-18 |          | EA: OF    |              | FA#: |  |
| DISTRICT       | COUNTY | ROUTE           | SHEET PM | SHEET NO. | TOTAL SHEETS |      |  |
| 12             | ORANGE | 405             | 11.95    | 1         | 2            |      |  |

# EXHIBIT B2

| PARCEL#  | TITLE | AREA    | APN        |
|----------|-------|---------|------------|
| 102869-2 | FEE   | 5061 SF | 139-032-11 |



|  |   |        |       |          |           |              |
|--|---|--------|-------|----------|-----------|--------------|
| <b>PSOMAS</b><br>3 Hutton Centre Drive, Ste. 200<br>Santa Ana, California 92707<br>(714)751-7373/(714)545-8883 (Fax) | PREPARED BY: DATE: 02-09-16 REV.1: 05-11-18 EA: OF FA#: |        |       |          |           |              |
|  | DISTRICT  | COUNTY | ROUTE | SHEET PM | SHEET NO. | TOTAL SHEETS |
|  | 12  | ORANGE | 405   | 11.95    | 2         | 2            |

# EXHIBIT “C”



**TEMPORARY CONSTRUCTION EASEMENT  
ATTACHMENT TO LEGAL DESCRIPTION**

**Assessor Parcel No.: 139-032-11**

**Caltrans Parcel No.: 102869-3**

This temporary construction easement shall be in, on, over, under, and across that certain real property described in Exhibit "C1" and depicted in Exhibit "C2" 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 (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 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 public right of way.
- Two South Coast Collection signs ("Stark Carpet" and "Pirch") at the west end and center of the property will be moved by the property owner to an area outside of the Fee area but within the TCE area prior to January 3, 2019. Compensation has been paid to the property owner for the moving of these signs.
- Except as to those improvements identified below as being protected in place, 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.
- The following improvements within the TCE area will be protected in place:
  - South Coast Collection sign ("OC Mix") at east end of property near I-405 on ramp.
  - The South Coast Collection signs ("Stark Carpet" and "Pirch") at the west end and center of the property near the I-405 on ramp shall be protected in

place after they are moved by the property owner to the TCE area as contemplated above.

- All Manholes within the TCE limits shall be protected in place or moved within their respective easements 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.

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. 102869-3

Temporary Construction Easement

APN 139-032-11

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1. South 63°48'57" East 180.80 feet
2. South 64°18'52" East 189.25 feet
3. South 69°25'10" East 224.29 feet

# PSOMAS

1 4. North 20°34'50" East 6.31 feet

2 5. South 67°56'16" East 294.49 feet to the southwesterly line of said Parcel "A";

3 thence along said southwesterly line South 62°46'34" West 27.71 feet to the

4 **True Point of Beginning.**

5  
6 Containing 10656 square feet.

7  
8 See Exhibit 'C2' attached hereto and made a part hereof.

9  
10 The distances shown herein are grid distances. Ground distances may be obtained by  
11 dividing grid distances by the combination factor of 0.99997837.

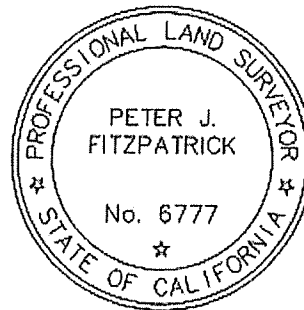
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14 This legal description was prepared by me or under my direction.

15 Peter J. Fitzpatrick

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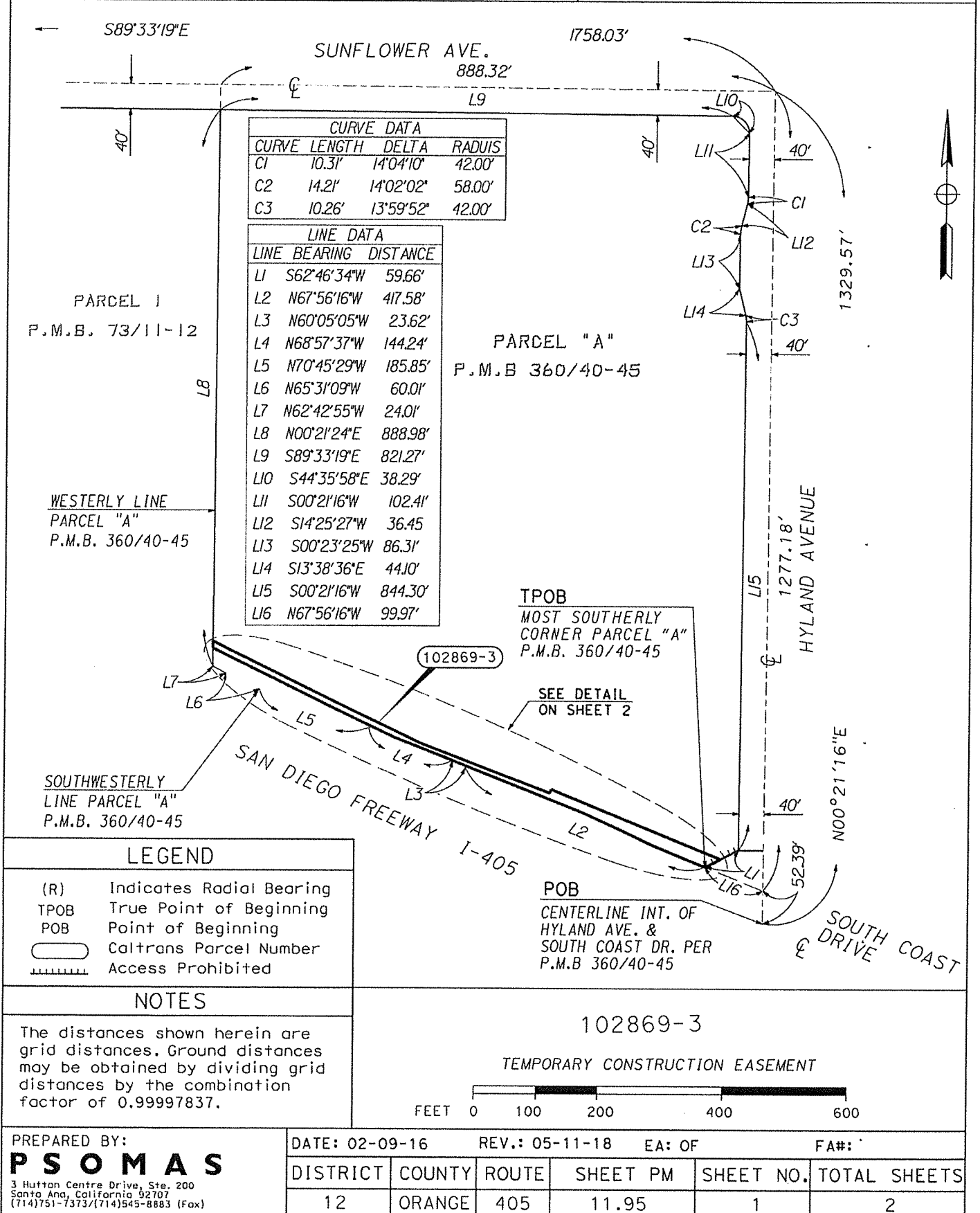
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19 May 11, 2018

20 Date



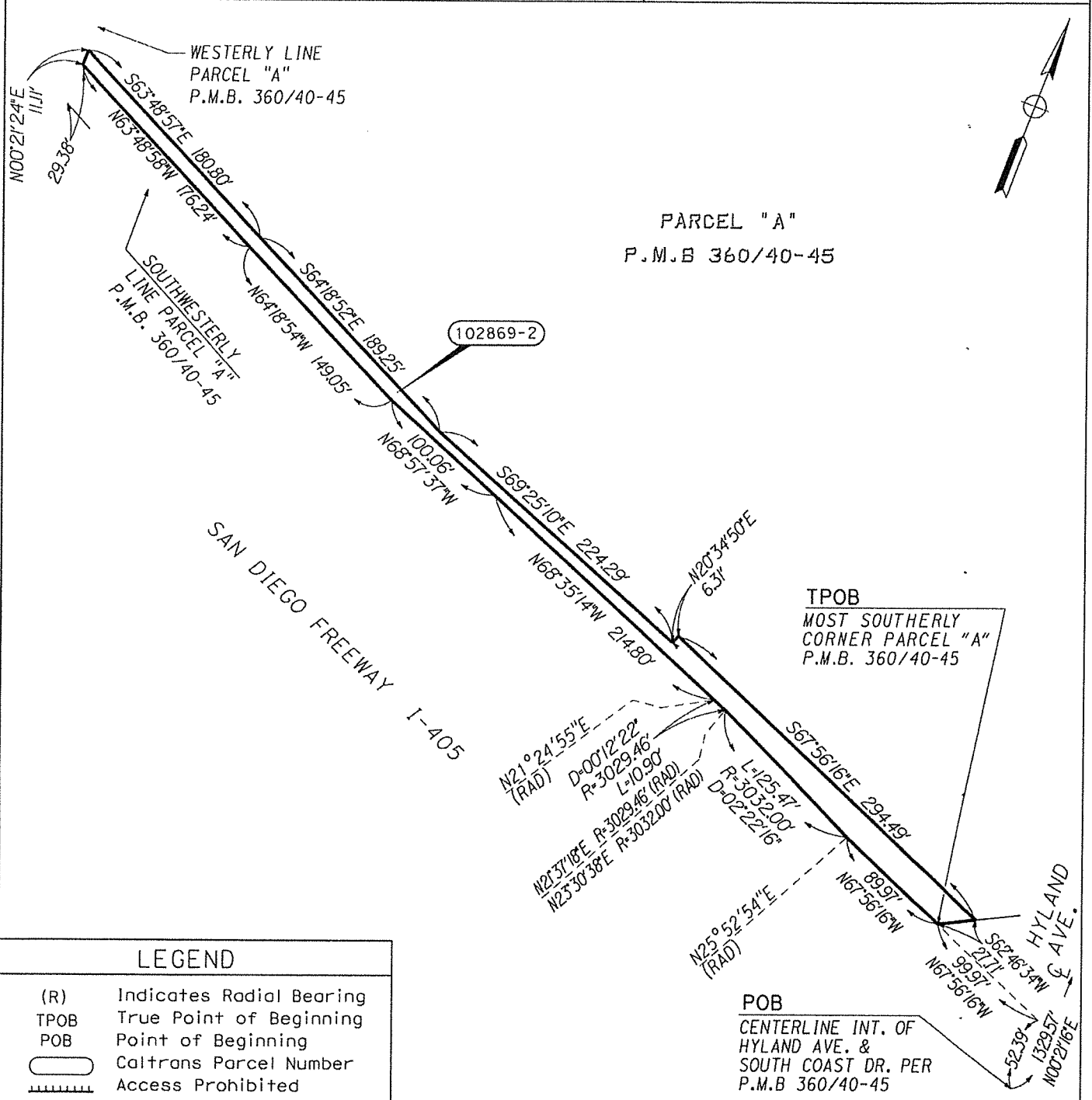
# EXHIBIT C2

| PARCEL#  | TITLE | AREA     | APN        |
|----------|-------|----------|------------|
| 102869-3 | TCE   | 10656 SF | 139-032-11 |



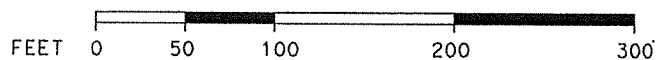
# EXHIBIT C2

| PARCEL#  | TITLE | AREA     | APN        |
|----------|-------|----------|------------|
| 102869-3 | TCE   | 10656 SF | 139-032-11 |



102869-3

TEMPORARY CONSTRUCTION EASEMENT.



|  |   |        |       |          |           |              |
|--|---|--------|-------|----------|-----------|--------------|
| PREPARED BY:<br><b>PSOMAS</b><br>3 Hutton Centre Drive, Ste. 200<br>Santa Ana, California 92707<br>(714)751-7373/(714)545-8883 (Fax) | DATE: 02-09-16 REV.: 05-11-18 EA: OF FA#: |        |       |          |           |              |
|  | DISTRICT                                  | COUNTY | ROUTE | SHEET PM | SHEET NO. | TOTAL SHEETS |
|  | 12  | ORANGE | 405   | 11.95    | 2         | 2            |