

RESOLUTION NO. 2018-063

A RESOLUTION OF THE ORANGE COUNTY TRANSPORTATION AUTHORITY FINDING AND DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION BY EMINENT DOMAIN OF AN INTEREST IN CERTAIN REAL PROPERTY FOR PUBLIC USE AND AUTHORIZING AND DIRECTING CONDEMNATION OF A PORTION OF ASSESSOR PARCEL NO. 169-162-03.

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, a portion of the real property located at 17966 Brookhurst Street, in the City of Fountain Valley, California (the “Subject Property”) is required for the Project. The specific portion of the Subject Property required for the Project includes a temporary construction easement interest as legally described and depicted in Exhibit “A” hereto (the “Property Interest”); 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 Interest; 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 Interest. 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 Fountain Valley 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 Interest.

Section 5. Description of Property Interest. The property interest sought to be acquired is more particularly described and depicted in Exhibit "A" 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 Interest sought to be acquired is 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 temporary construction easement interest in the real property described and depicted in Exhibits "A" 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 Interest 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 Interest 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. 2018-063 by the following votes:

AYES:

NOES:

ABSENT:

LAURENA WEINERT
CLERK OF THE BOARD

EXHIBIT “A”

**TEMPORARY CONSTRUCTION EASEMENT
ATTACHMENT TO LEGAL DESCRIPTION**

APN: 169-162-03

CPN: 102945-1

This temporary construction easement shall be in, on, over, under, and across that certain real property described in Exhibit "A1" and depicted in Exhibit "A2" attached hereto, subject to the rights and restrictions 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 restrictions 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 twelve (12) 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 restrictions set forth below. OCTA's use and occupancy of the TCE during the remaining thirty-six (36) months of the TCE period will be non-exclusive.

Rights and 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.
- Reasonable pedestrian and vehicular access, including access to all gas pumps, shall be maintained at all times.
- Except as to those improvements identified below as being protected in place or relocated, improvements within the TCE area will be removed as needed by OCTA to allow for construction activities. With the exception of pavement, curb and gutter, all improvements so removed shall be included in the compensation paid by OCTA for this TCE.
- The following improvements within the TCE area shall be protected in place during construction:
 - Two Shell gas price signs within the TCE limits.
- 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 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, including the replacement of pavement, curb, and gutter.

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

COAST SURVEYING, INC.

EXHIBIT 'A1'

LEGAL DESCRIPTION

Caltrans Parcel No. 102945

Temporary Construction Easement

APN 169-162-03

In the City of Fountain Valley, County of Orange, State of California, being a portion of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 29, Township 5 South, Range 10 West, in the Rancho Las Bolsas, as shown on a map recorded in Book 51, Page 12 of Miscellaneous Maps, and as further described in a Grant Deed recorded as Instrument 20010115048 of Official Records, all in the office of the County Recorder of said County, described as follows:

Commencing at the southwest corner of said Section 29, being the centerline intersection of Brookhurst Street and Talbert Avenue, as shown on a map filed in Book 116, Pages 31 through 32 of Parcel Maps in the office of the County Recorder of said County; thence along the centerline of said Talbert Avenue South 89°31'35" East 245.00 feet to a line 245.00 feet easterly of and parallel with said centerline of Brookhurst Street; thence leaving said centerline along said parallel line North 00°19'17" East 70.00 feet to the southeast corner of the parcel described in said Grant Deed and the **True Point of Beginning**; thence along the southerly, southwesterly and westerly lines of said Grant Deed the following three (3) courses:

1. North 89°31'35" West 150.00 feet;
2. North 44°36'09" West 42.48 feet;
3. North 00°19'17" East 7.08 feet;

Thence leaving the westerly line of said Grant Deed South 44°36'09" East 45.43 feet; thence South 89°31'35" East 42.85 feet; thence North 00°17'36" East 14.61 feet; thence South 89°42'24" East 50.53 feet; thence South 00°17'36" West 14.77 feet; thence South 89°31'35" East 54.55 feet to the easterly line of said Grant Deed;

COAST SURVEYING, INC.

1 thence along said easterly line South 00°19'17" West 5.00 feet to the said southeasterly
2 corner of said Grant Deed and the **True Point of Beginning**.

3
4 Containing 1707 square feet.

5
6
7 See Exhibit 'A2' attached hereto and made a part hereof.

8
9
10
11 The distances shown herein are grid distances. Ground distances may be obtained by
12 dividing grid distances by the combination factor of 0.99997837.

13
14 Prepared under the direction of

15
16 Gwen-Vera del Castillo

17
18 Gwen-Vera del Castillo, PLS 5108

1-8-2018

Date

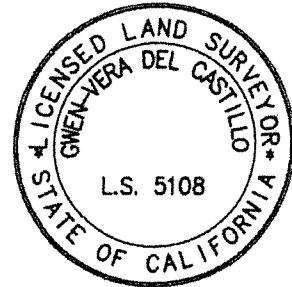
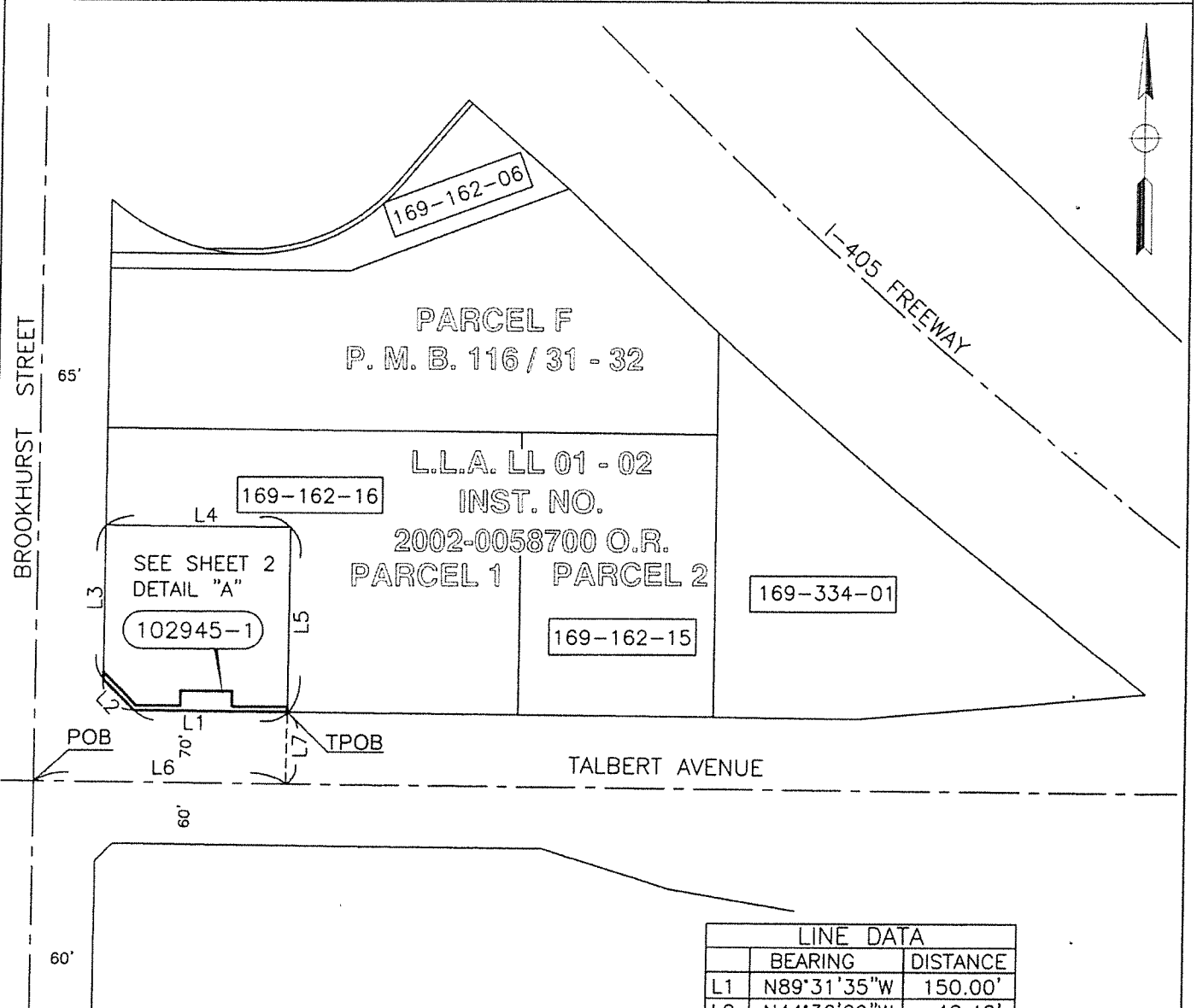


EXHIBIT A2

| PARCEL# | TITLE | AREA | APN |
|----------|-------|----------|------------|
| 102945-1 | TCE | 1,707 SF | 169-162-03 |



| LINE DATA | | |
|-----------|-------------|----------|
| | BEARING | DISTANCE |
| L1 | N89°31'35"W | 150.00' |
| L2 | N44°36'09"W | 42.48' |
| L3 | N00°19'17"E | 150.00' |
| L4 | S89°31'35"E | 180.00' |
| L5 | S00°19'17"W | 180.00' |
| L6 | S89°31'35"E | 245.00' |
| L7 | N00°19'17"E | 70.00' |

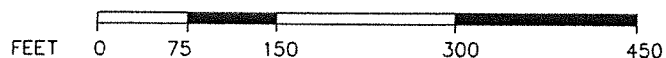
LEGEND

- (R) Indicates Radial Bearing
- TPOB True Point of Beginning
- POB Point of Beginning
- Caltrans Parcel Number
- 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

TEMPORARY CONSTRUCTION EASEMENT

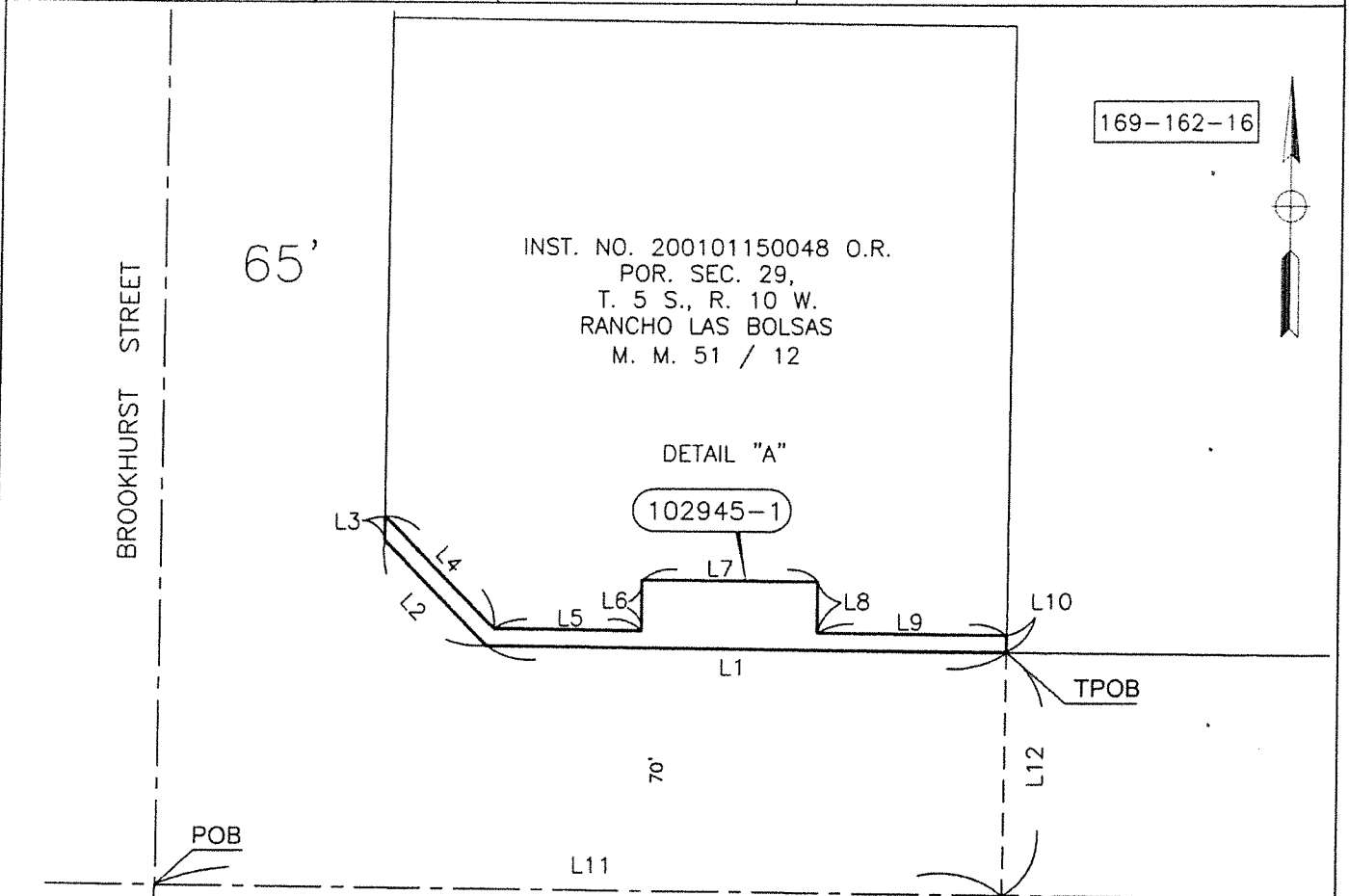


PREPARED BY
COAST SURVEYING
15031 PARKWAY LOOP, SUITE B
TUSTIN, CA 92780-6527
(714)918-6266

| | | | | | | | |
|---------------|--------|-------|----------|-----------|--------------|------------|--|
| DATE: 1-08-18 | | REV.: | | EA: _____ | | FA#: _____ | |
| DISTRICT | COUNTY | ROUTE | SHEET PM | SHEET NO. | TOTAL SHEETS | | |
| 12 | ORA | 405 | 13.63 | 1 | 2 | | |

EXHIBIT A2

| PARCEL# | TITLE | AREA | APN |
|----------|-------|----------|------------|
| 102945-1 | TCE | 1,707 SF | 169-162-03 |



169-162-16

INST. NO. 200101150048 O.R.
POR. SEC. 29,
T. 5 S., R. 10 W.
RANCHO LAS BOLSAS
M. M. 51 / 12

DETAIL "A"

102945-1

TPOB

POB

L11

TALBERT AVENUE

LINE DATA

| | BEARING | DISTANCE |
|-----|-------------|----------|
| L1 | N89°31'35"W | 150.00' |
| L2 | N44°36'09"W | 42.48' |
| L3 | N00°19'17"E | 7.08' |
| L4 | S44°36'09"E | 45.43' |
| L5 | S89°31'35"E | 42.85' |
| L6 | N00°17'36"E | 14.61' |
| L7 | S89°42'24"E | 50.53' |
| L8 | S00°17'36"W | 14.77' |
| L9 | S89°31'35"E | 54.55' |
| L10 | S00°19'17"W | -5.00' |
| L11 | S89°31'35"E | 245.00' |
| L12 | N00°19'17"E | 70.00' |

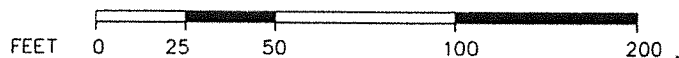
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TEMPORARY CONSTRUCTION EASEMENT



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| | | | | | | | |
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