

# Memorandum

To: CHAIR AND COMMISSIONERS  
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: September 26-27, 2012

Reference No.: 2.4a.  
Action Item

From: NORMA ORTEGA  
Chief Financial Officer

Prepared by: Mark Weaver  
Acting Chief  
Division of Right of Way and  
Land Surveys

Subject: **RESOLUTION OF NECESSITY - APPEARANCE**

## **RECOMMENDATION:**

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-20899 summarized on the following page. This Resolution is for a Design Build project in District 7 consisting of improvements to the Interstate 10/605 interchange in the city of Baldwin Park, county of Los Angeles.

## **ISSUE:**

Prior to initiating Eminent Domain proceedings to acquire needed right of way for a programmed project, the Commission must first adopt a Resolution, stipulating specific findings identified under Section 1245.230 of the Code of Civil Procedure, which are:

1. The public interest and necessity require the proposed project.
2. The proposed project is planned and located in a manner that will be most compatible with the greatest public good and the least private injury.
3. This property is necessary for the proposed project.
4. An offer to acquire the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property owner is contesting the Resolution and has requested a written appearance before the Commission. The property owner's objections to the Resolution have been submitted in writing to be made part of the official record of the Commission meeting, in lieu of a personal appearance before the Commission. The owner's objections are included as Attachment A. The Department's responses to the owner's objections are contained in Attachment B.

## **BACKGROUND:**

Discussions have taken place with the owner, who has been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which the owner may subsequently be entitled. Adoption of the Resolution will not interrupt the

Department's efforts to secure an equitable settlement. In accordance with statutory requirements, the owner has been advised that the Department is requesting the Resolution at the Commission's September 26-27, 2012 meeting. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-20899 - Marissa G. Garcia

07-LA-10-PM 31.3 - Parcel 79800-1, 2, 3, 01-01 - EA 245409.

Right of Way Certification Date: 05/17/11; Ready to List Date: 08/12/11 (Design Build - under construction). Freeway - interchange improvements. Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, a temporary easement for construction purposes, a permanent easement for public utility purposes to be conveyed to Southern California Edison Company, all of those certain improvements which straddle the right of way line with an easement to enter the remaining ownership to remove such improvements, and land in fee which is a remnant and would be of little market value. Located in the city of Baldwin Park at 12839 Via Van Cleave. APN 8564-008-041.

Attachments:

- Attachment A - Owners Written Objections dated August 16, 2012
- Attachment B - Department Response dated August 28, 2012
- Attachment C - Fact Sheet
- Exhibits A and B - Maps

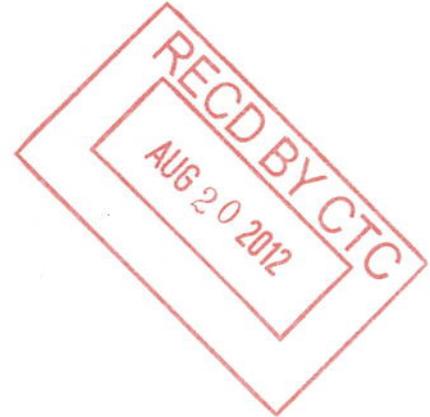
*to Right of Way 8-20-12, 1 copy to Stephen Meller*

LAW OFFICES OF ROBERT M. MILLER, APC

401 West "A" Street, Suite 1720  
San Diego, California 92101  
Telephone (619) 550-8839  
Facsimile (619)-239-4269  
[rmm@robertmillerlaw.com](mailto:rmm@robertmillerlaw.com)

◇ ◇ ◇

August 16, 2012



Executive Director  
California Transportation Commission  
P.O. Box 942873 Mail Station 52  
Sacramento, CA 94273-0001

Re: Objection to Resolution of Necessity  
07-LA-10-PM 31.3  
EA 245409  
Project #0700000431  
Parcel 79800-1, 2, 3, 01-01  
Marissa G. Garcia

Dear Executive Director:

I represent Marissa G. Garcia whose property may be acquired for a public project. We are advised that the California Transportation Commission intends to hold a public hearing on August 22-23, 2012 to consider passage of a Resolution of Necessity to condemn Ms. Garcia's property.

I have just recently been consulted by Ms. Garcia and therefore request that consideration of this Resolution be postponed to give us additional time to analyze the matter. If the hearing does go forward as currently scheduled, Ms. Garcia hereby objects to the passage of this Resolution of Necessity. We lodge the following objections concerning the matters addressed in California Code of Civil Procedures Sections 1240.010, et seq.

The requirements of California Code of Civil Procedure Section 1240.030 have not been met, specifically:

- (A) the public interest and necessity do not require the project;
- (B) the project is not planned or located in a manner that will be most compatible with the greatest public good and least private injury; and
- (C) the property sought to be acquired is not necessary for the project.

Ms. Garcia has owned her home for ten years and does not want to be forced out, particularly in light of the fact that the compensation being offered is not sufficient to obtain substitute housing.

In addition, we object on the following grounds: prior to this scheduled hearing, the Commission has made a predetermination to proceed with the project, regardless of the record considered at the hearing; the offer to acquire did not include compensation for all property interests taken or damaged; the environmental processing was not accomplished according to law; and notice of this hearing was inadequate.

We do not intend to attend the public hearing but instead request that this objection be placed in the record in connection with this matter.

Very truly yours,

LAW OFFICES OF ROBERT M. MILLER, APC



Robert M. Miller  
Attorney at Law

cc: Andrew P. Nierenberg (via fax and mail)  
Marissa Garcia (via email)

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF RIGHT OF WAY**  
100 SOUTH MAIN STREET  
LOS ANGELES, CA 90012-3606  
PHONE (213) 897-1901  
FAX (213) 897-8902



*Flex your power!  
Be energy efficient!*

**VIA U.S. MAIL and ELECTRONIC MAIL**

August 28, 2012

Mr. Robert M. Miller  
LAW OFFICES OF ROBERT M. MILLER, APC  
401 West "A" Street, Suite 1720  
San Diego, CA 92101

WRITTEN APPEARANCE RESPONSE  
File: 07 – LA-10 – PM 31.3  
E.A.: 245409  
Parcel: 79800 -1, -2, -3, -01-01  
Grantor: Marissa G. Garcia

Dear Mr. Miller:

This letter is in response to your letter dated August 16, 2012 addressed to the Executive Director of the California Transportation Commission (the "Commission") for property located at 12839 Via Van Cleave, in the city of Baldwin Park (the "Property").

Your letter addressed specific concerns and objections to the Commission's proposed action on several grounds regarding the above referenced parcel and, as requested, your letter will be submitted to the Commission in lieu of a personal appearance and will be part of the official record presented to the Commission at its September 26-27th, 2012 meeting to be held in the San Francisco, California.

The following is the Department's response to the concerns and objections set forth in your letter to the Commission:

**1. Request to postpone the August 22-23 Commission meeting**

Your request to postpone the Commission meeting location has been accommodated and it is rescheduled for September 26-27, 2012 in San Francisco, CA. The exact date and location of the Commission meeting will be forwarded to you at a later date, as well as the approximate time as soon as it is available.

**Objection based on California Code of Civil Procedures §1240.010, et seq.**

Your three objections that the requirements of the California Code of Civil Procedure Section 1240.030 have not been met are addressed as follows:

**(A) The public interest and necessity require the project**

The proposed direct connector is needed to eliminate weaving conflicts for the W/B Route 10 to S/B 605 Connector and the S/B 605 to E/B 10 Connectors. In addition, it will reduce the queue for the W/B 10 outside lane. Accidents will be reduced and traffic operation improved.

(B) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury

This is the preferred alternative when compared with the other alternatives as described in the Project Report. Alternative 4 incorporates the same design features as Alternative 2 with the exception of a further southward alignment on the south side of I-10. A southern alignment was incorporated into the alternative design in order to maintain standard width shoulders on the E/B I-10 mainline. Under Alternatives 2 and 3, the bridge columns would create non-standard shoulder widths between the bridge columns and the outside lane shoulders on the E/B I-10 mainline. Alternative 4 would impact a similar land area to Alternative 3, however, a larger portion of Dalewood Street would need to be acquired and realigned to make space for two bridge columns that would be placed between the sound wall and Dalewood Street. The number of property acquisitions needed would remain the same as in Alternatives 2 and 3. The existing sound wall on the south side of I-10 would be reconstructed for a length of 4,900 feet from just west of Athol Avenue to just west of Baldwin Park Boulevard.

(C) The property sought to be acquired is necessary for the project.

Part of the property located at the west corner of Via Van Cleave and Dalewood Street is necessary for the project since a portion of the property is needed for the future sidewalk of Dalewood Street. The proposed right of way line will be up against the north wall of the residence on the Dalewood Street side, and the utility easement will encompass the northerly 5 feet of the dwelling structure. The relocated overhead power lines will overhang the dwelling by several feet. Due to the right of way line being up against the dwelling's wall and the power lines being over the dwelling in the after condition, the subject will be acquired in its entirety..

**2. The compensation being offered is not sufficient to obtain substitute housing**

The Commission does not address compensation issues. The State's Relocation Assistance Program, specifically relocation agent Bryan Tao has had numerous meetings with your client to discuss relocation options. As of the date of this letter, the grantor has not provided the relocation agent guidance in regard to providing adequate substitute housing.

**3. The Commission has made a predetermination to proceed with the project, regardless of the record considered at the hearing**

There is no "predetermined result" for the project. The Commission, which is responsible for adopting the Resolution of Necessity, is an independent public agency whose members are appointed by the Governor. The Commission neither rubber stamps or has a predetermined result when the Resolution of Necessity is presented.

**4. The offer to acquire did not include compensation for all property interest taken or damaged.**

Questions regarding the amount of compensation to be paid or the value of the property to be acquired are not part of the Commission meeting and the Commission will not consider such in determining whether a Resolution should be adopted. However, it should be noted, the purchase price for this type of property is for land and improvements and does include compensation for all property interests taken or damaged. The offer was made in compliance with Government Code 7267.2.

Mr. Robert M. Miller  
August 23, 2012  
Page 3

**5. The environmental process was not accomplished according to law**

The Environmental Impact Report was properly prepared in accordance with all applicable federal and state environmental laws and regulations.

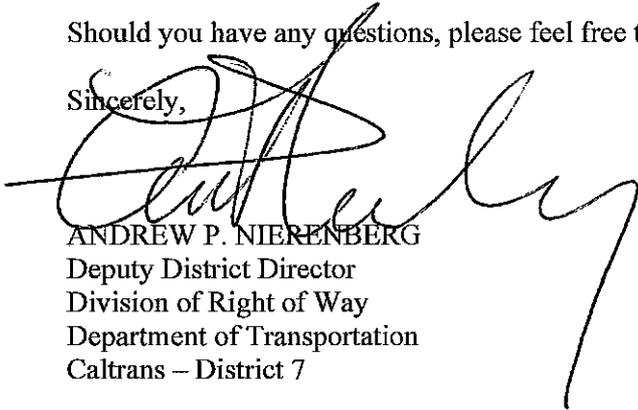
**6. The notice of hearing was inadequate.**

Adequate notice was provided. The original Notice of Intent was mailed to the Grantor June 8, 2012. A subsequent letter changing the meeting date from July 25-26, 2012 to August 22-23, 2012 was mailed July 12, 2012 to the Grantor which is pursuant to CCP.1245.235(a).

As previously stated, your letter dated August 16, 2012 objecting to the Resolution of Necessity will be submitted to the Commission at its aforementioned meeting.

Should you have any questions, please feel free to call William Howard at 213-897-3017.

Sincerely,



ANDREW P. NIENBERG  
Deputy District Director  
Division of Right of Way  
Department of Transportation  
Caltrans – District 7

cc: via email: Mark A. Zgombic, HQ Right of Way

## Resolution of Necessity Appearance Fact Sheet

**PROJECT DATA** 07-LA-10/605-PM 20.2/20.6 - 31.1/32.3  
Expenditure Authorization 245409

Location: Southbound Interstate 605 (I-605) to eastbound Interstate 10 (I-10) in Los Angeles County in the city of Baldwin Park

Limits: From 0.4 miles south of the I-10/I-605 Separation to 0.8 miles east of the I-10/I-605 Separation

Cost: Programmed construction cost: \$55,500,000.00  
Current right of way cost estimate: \$10,500,000.00

Funding Source: State Highway Operation and Protection Program

Number of Lanes: Existing: four mixed-flow lanes plus one high occupancy vehicle (HOV) lane in each direction  
Proposed: four mixed-flow lanes plus one HOV lane in each direction plus a new fly-over connector lane

Proposed Major Features: Construct fly-over direct connector from southbound I-605 to eastbound I-10 to eliminate weaving conflicts and improve operation for the westbound I-10 to southbound I-605 traffic

Traffic: Existing (year 2011): 108,000 Annual Daily Traffic (ADT)  
Proposed (year 2035): 148,000 ADT

**PARCEL DATA**

Property Owner: Marissa G. Garcia

Parcel Location: 12839 Via Van Cleave, Baldwin Park  
Assessor's Parcel Number 8564-008-041

Present Use: Single Family Residence - Zoned R1

Area of Property: 3,503 Square Feet (SF)

Area Required: Parcel 79800-1 - 795 SF - Fee  
Parcel 79800-2 - 495 SF - Utility Easement  
Parcel 79800-3 - 102 SF - Temporary Construction Easement  
Parcel 79800-01-01 - 2,708 SF - Excess Land

# CITY OF BALDWIN PARK COUNTY OF LOS ANGELES

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.

## STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION PROJECT PLANS FOR CONSTRUCTION ON STATE HIGHWAY

IN LOS ANGELES COUNTY  
IN BALDWIN PARK  
AT ROUTE 10/605 SEPARATION

TO BE SUPPLEMENTED BY STANDARD PLANS DATED MAY 2006

Begin Work  
ROUTE 605 1110+00.00

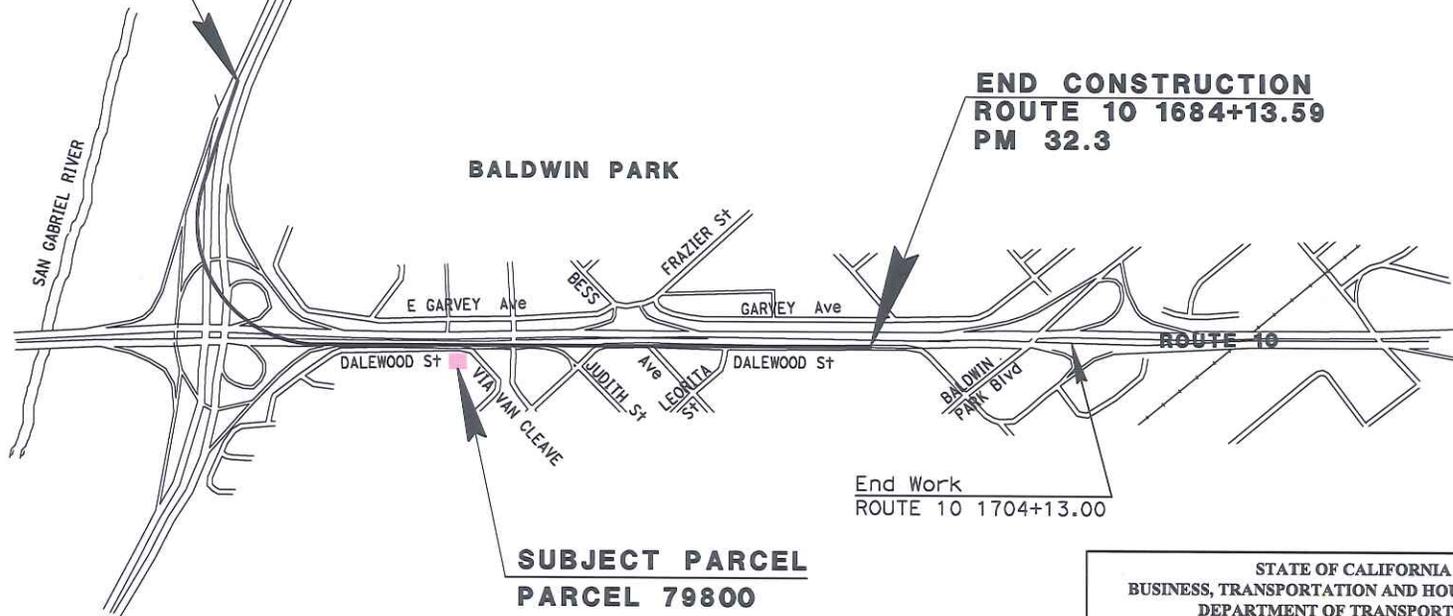


**BEGIN CONSTRUCTION**  
ROUTE 605 1086+74.81  
PM R20.6

**END CONSTRUCTION**  
ROUTE 10 1684+13.59  
PM 32.3

EL MONTE

BALDWIN PARK



End Work  
ROUTE 10 1704+13.00

**SUBJECT PARCEL**  
**PARCEL 79800**

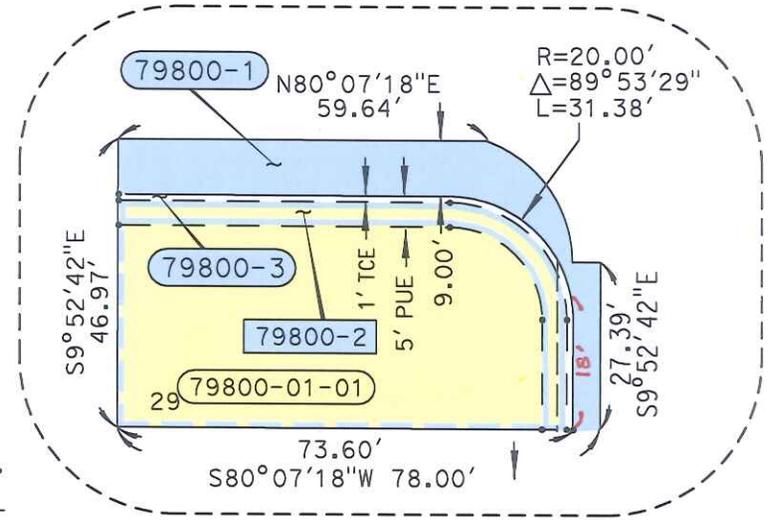
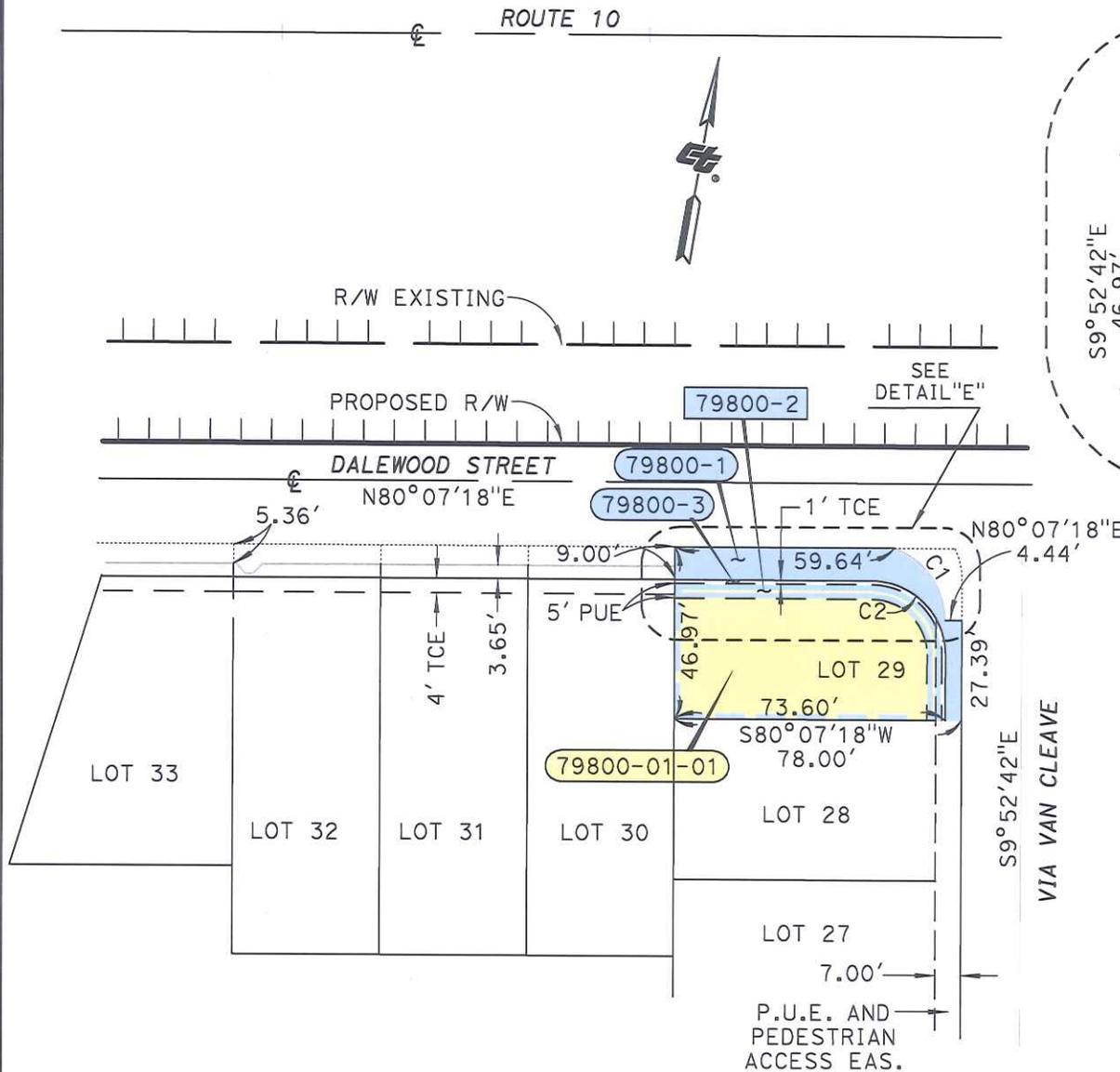
STATE OF CALIFORNIA  
BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
DEPARTMENT OF TRANSPORTATION  
**RIGHT OF WAY  
RESOLUTION OF NECESSITY**  
**EXHIBIT A**  
NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
7	LA	10	31.3	1	1

# CITY OF BALDWIN PARK COUNTY OF LOS ANGELES

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TRACT MAP NO. 53452  
MB 1273 / 75-77



**DETAIL "E"**  
NO SCALE

CURVE DATA TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	20.73'	70°49'33"	25.63'
C2	20.00'	89°53'29"	31.38'

STATE OF CALIFORNIA  
BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
DEPARTMENT OF TRANSPORTATION

**RIGHT OF WAY  
RESOLUTION OF NECESSITY**

**EXHIBIT B**

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
7	LA	10	31.3	1	1

Exhibit B