



Board Report

File #: 2021-0655, File Type: Policy

Agenda Number: 31.

REGULAR BOARD MEETING FEBRUARY 24, 2022

**SUBJECT: METRO G LINE (ORANGE) BUS RAPID TRANSIT IMPROVEMENT PROJECT
RESOLUTION OF NECESSITY**

ACTION: APPROVE RECOMMENDATION

RECOMMENDATION

CONSIDER:

- A. HOLDING a public hearing on the proposed Resolution of Necessity.
- B. ADOPTING the Resolution of Necessity authorizing the commencement of an eminent domain action to acquire a Permanent Underground Utility Easement ("PUUE") and Temporary Construction Easement ("TCE") from the property located at 6104-6108 Sepulveda Boulevard, Van Nuys, CA 91411 with APNs of 2242-025-026 & 2242-025-027 (the "Property Interests") as identified in (Attachment A).

(REQUIRES 2/3 VOTE OF THE BOARD)

ISSUE

Acquisition of the Property Interests is required for the construction and operation of the Metro G Line (Orange) Bus Rapid Transit Improvements Project ("Project"). After testimony and evidence has been received from all interested parties at the hearing, Los Angeles County Metropolitan Transportation Authority ("LACMTA"), by a vote of two-thirds of its Board of Directors ("Board"), must make a determination as to whether to adopt the proposed Resolution of Necessity (Attachment B) to acquire the Property by eminent domain. Attached is evidence submitted by staff that supports adoption of the resolution and which sets forth the required findings (Attachment A).

BACKGROUND

The Property Interests consist of a PUUE and TCE. The PUUE is required for the installation of underground conduit. The underground conduit is necessary to connect the Los Angeles Department of Water and Power (LADWP) and LACMTA equipment located on an adjacent parcel to the planned elevated station at Sepulveda Boulevard. The area of the PUUE is located within a portion of the parking lot along the Sepulveda Boulevard frontage. The TCE is required to facilitate installation of the underground conduit infrastructure. The TCE surrounds the perimeter of the PUUE and grants

temporary access to the subject area within the Property Interests. The TCE will remain in place during the Project construction period and shall have a duration of thirteen (13) months.

A written offer of Just Compensation to purchase the Property Interests was presented to the Owner of Record ("Owner") of the Property on May 6, 2021, as required by California Government Code Section 7267.2. The Owner has not accepted the offer of Just Compensation made by LACMTA, and the parties have not at this time reached a negotiated settlement for the acquisition. Because the Property Interests are necessary for the construction and operation of the Project, staff recommends the acquisition of the Property Interests through eminent domain to obtain possession in order to maintain the Project's schedule.

In accordance with the provision of the California Eminent Domain law and Sections 30503, 30600, 130051.13, 130220.5 and 132610 of the California Public Utilities Code (which authorizes the public acquisition of private property by eminent domain), LACMTA has prepared and mailed notice of this hearing to the Owner informing them of the right to appear at this hearing and be heard on the following issues: (1) whether the public interest and necessity require the Project; (2) whether the Project is planned or located in the manner that will be most compatible with the greatest good and the least private injury; (3) whether the Property is necessary for the Project; (4) whether either the offer required by Section 7267.2 of the Government Code has been made to the Owner, or the offer has not been made because the Owner cannot be located with reasonable diligence; (5) that any environmental review of the Project, as may be necessary, pursuant to the California Environmental Quality Act (CEQA) has occurred and (6) whether LACMTA has given the notice(s) and followed the procedures that are a prerequisite to the exercise of the power of eminent domain.

There are no displacements as a result of the acquisition of the Property Interests.

DISCUSSION

Findings

The Property Interests are necessary for construction of the Project; therefore, staff recommends the acquisition of the Property Interests through eminent domain to maintain the Project schedule.

Considerations

Attached is the Staff Report prepared by staff and legal counsel setting forth the required findings for acquiring the Property Interests through the use of eminent domain (Attachment A). After LACMTA's Board receives testimony and evidence from all interested parties, LACMTA must make a determination as to whether to acquire the Property Interests by eminent domain and adopt the proposed Resolution of Necessity (Attachment B). The Board must find and determine that based upon all the evidence and the existence of the above stated conditions, acquisition by eminent domain is necessary; and a two-thirds vote of all the members of its governing body is required to adopt the Resolution of Necessity.

DETERMINATION OF SAFETY IMPACT

The Board action will not have an impact on LACMTA's safety standards.

FINANCIAL IMPACT

The funding for the acquisition of the Property is included in the Fiscal Year 2022 (FY22) budget under Project 871405 Metro G Line (Orange) Bus Rapid Transit Improvement Project, Cost Center 8510, Account Number 53103 (Acquisition of Land) and Fund 6003.

Impact to Budget

The approved FY22 budget is designated for the Metro G Line (Orange) Bus Rapid Transit Improvement Project and does not have an impact to operations funding sources.

EQUITY PLATFORM

No other alternative locations for the Project provide greater public good with less private injury. There are no displacements resulting from the acquisition of these Property Interests. An offer for the Property was made in May 2021, based on an appraisal of fair market value. Fair market value is defined as "the **highest** price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available." Metro staff has been negotiating with the Owners since May 2021, but agreement has not yet been reached. Approving this action will allow staff to continue negotiations while maintaining the project schedule.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

Strategic Plan Consistency

The Board action is consistent with LACMTA Vision 2028 Goal #1: Provide high quality mobility options that enable people to spend less time traveling. Adoption of the Resolution of Necessity is a required step to acquire these Property Interests for the Metro G Line Bus Rapid Transit Improvement Project which will provide an additional mobility option.

ALTERNATIVES CONSIDERED

The Board could choose not to approve the recommendations. This is not recommended as it will hamper the Real Estate division's ability to respond quickly to the Project's needs resulting in significant delays and cost increases for the Project.

NEXT STEPS

If this action is approved by the Board, LACMTA's condemnation counsel will be instructed to take all steps necessary to commence legal proceedings in a court of competent jurisdiction to acquire the Property Interests by eminent domain and to conclude those proceedings either by settlement or jury trial. Counsel will also be directed to seek and obtain an Order of Prejudgment Possession in accordance with the provisions of the eminent domain law.

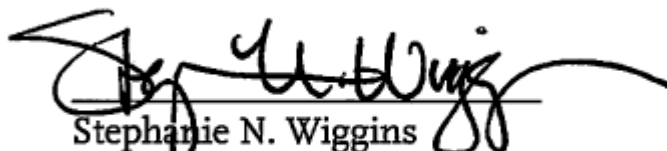
ATTACHMENTS

Attachment A - Staff Report

Attachment B - Resolution of Necessity

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Reviewed by: James de la Loza, Chief Planning Officer, (213) 922-2920



Stephanie N. Wiggins
Chief Executive Officer

STAFF REPORT REGARDING THE NECESSITY FOR THE ACQUISITION OF THE PROPERTY INTERESTS REQUIRED FOR THE METRO G LINE (Orange) BUS RAPID TRANSIT IMPROVEMENT PROJECT (“PROJECT”)

BACKGROUND

The Property Interests are required by the Los Angeles County Metropolitan Transportation Authority (“LACMTA”) for the construction and operation of the Project. The parcel address, record property owner, purpose of the acquisition, and nature of the property interests sought to be acquired for the Project are summarized as follows:

Assessor's Parcel Number	Parcel Address	Property Owner	Purpose of Acquisition	Property Interest(s) Sought
2242-025-026 2242-025-027	6104-6108 Sepulveda Blvd, Van Nuys, CA 91411	6104 Sepulveda Property, LLC, Charles Gumbiner Enterprises, LLC, USR Real Estate Holdings LLC	Construction and operation of the Metro G Line (Orange) Bus Rapid Transit Improvements Project	Permanent Underground Utility Easement (PUUE) and a 13-Month Temporary Construction Easement (TCE)

Property Requirements:

The following property requirements apply to the affected property listed in the above table:

Purpose of Acquisition: Construction and operation of the Metro G Line (Orange) Bus Rapid Transit Improvement Project.

Property Interests Sought: The PUUE is necessary to connect Los Angeles Department of Water and Power (LADWP) and LACMTA equipment located on adjacent parcel to the planned elevated station at Sepulveda Boulevard. The area of the PUUE is located within a portion of the parking lot along the Sepulveda Boulevard frontage. The TCE is required to facilitate installation of LACMTA underground conduit. The TCE surrounds the perimeter of the PUUE and grants temporary access to the subject area within the Property. The TCE will remain in place during the Project construction period and shall have a duration of thirteen (13) months. The PUUE and TCE are collectively referred to as the Property Interests.

A written offer was delivered to the Property Owners by letter dated May 6, 2021, for acquisition of the Property Interests. The Property Owners have not accepted the offer of just compensation.

A. The public interest and necessity require the Project.

The need for the Project is generated by the findings and recommendations resulting from the Technical Study and a concept for improving the G Line (Orange) Bus Rapid Transit (BRT) in accordance with Measure M.

The public interest and necessity require the Project because the Project will:

1. Improve operational safety, operation speeds, ridership and capacity;
2. Benefit the surrounding community by decreasing travel time, improving air quality, enhancing access to the corridor and promoting transit-oriented communities;
3. Support value for money throughout design and construction and cost certainty throughout construction;
4. Ready the corridor for conversion to light rail transit in the future;
5. Ensure connectivity and accommodate two other intended intersecting transit projects (the East San Fernando Valley and Sepulveda Pass Transit Corridors);
6. Support fulfillment of LACMTA's L.A. County Traffic Improvement Plan, as authorized under Measure M.

It is recommended that based on the above evidence, the Board find and determine that the public interest and necessity require the Project.

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

A Technical Study was authorized by the Board in January 2016. The core goals of the project are to improve operating speeds/reduce bus travel times to move customers more efficiently and safely through the corridor. Improvements studied included grade separations, minor street closures, better transit signal priority technology, electronic bus connectivity to facilitate bus platooning and a four-quadrant gating system. Six alternatives were packaged together out of numerous individual potential improvements. In April 2017, the Board approved the recommended alternative that included a single-grade separation structure spanning from Van Nuys to Sepulveda Boulevards and three intersecting streets in between with the relocation of existing stations to elevated stations and installation of four quadrant gates at all other intersections. After further conceptual design, updating preliminary cost estimates and coordination with City of Los Angeles Department of Transportation, in July of 2018 the Board approved an updated project description that modified the grade separated structure from one single grade separation

spanning from Van Nuys to Sepulveda Boulevards to two standalone aerial grade separated busway and station structures at Van Nuys and Sepulveda Boulevards.

The Project will cause private injury, however, no other alternative locations for the Project provide greater public good with less private injury. Therefore, the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

It is recommended that, based upon the foregoing, the Board find and determine that the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

C. The Property is necessary for the Project.

The Property Interests are required for construction and operation of the Project. A new LADWP service and LACMTA equipment will be required to provide sufficient power to the new elevated Metro G Line Sepulveda Station. The underground conduit is necessary to connect Los Angeles Department of Water and Power (LADWP) and LACMTA equipment located on an adjacent parcel to the planned elevated station at Sepulveda Boulevard. The area of the PUUE is located within a portion of the parking lot along the Sepulveda Boulevard frontage. The 13-month TCE is required to facilitate the installation of the underground conduit and will provide temporary access to the subject areas within the Property. There are no suitable locations within the Metro ROW to locate the underground conduit, therefore, the infrastructure is required to be located on the Property.

Staff recommends that the Board find that the acquisition of the Property Interests is necessary for the Project.

D. Offers were made in compliance with Government Code Section 7267.2.

California Code of Civil Procedure Section 1245.230 requires that a Resolution of Necessity contain a declaration that the governing body has found and determined that either the offer required by Section 7267.2 of the California Government Code has been made to the Owner, or the offer has not been made because the Owner cannot be located with reasonable diligence.

California Government Code Section 7267.2 requires that an offer be made to the Owner in an amount which the agency believes to be just compensation. The amount must not be less than the agency's approved appraisal of the fair market value of the property. In addition, the agency is required to provide the Owner with a written statement of, and summary of the basis for, the amount it established as just compensation.

Staff has taken the following actions as required by California law for the acquisition of the Property:

1. Obtained an independent appraisal to determine the fair market value of the

Property Interests, which included consideration existing use of the Property, highest and best use of the Property, and impact to the remainder;

2. Reviewed and approved the appraisal, and established the amount it believes to be just compensation;
3. Determined the Owner(s) of the Property by examining the county assessor's record and a preliminary title report;
4. Made a written offer to the Owner(s) for the full amount of just compensation - which was not less than the approved appraised value; and
5. Provided the Owner(s) with a written statement of, and summary of the basis for, the amount established as just compensation with respect to the foregoing offer.

It is recommended that based on the above Evidence, the Board find and determine that the offer required by Section 7267.2 of the California Government Code has been made to the Owner.

E. LACMTA has fulfilled the necessary statutory prerequisites.

LACMTA is authorized to acquire property by eminent domain for the purposes contemplated by the Project under Public Utilities Code §§ 30503, 30600, 130051.13, and 130220.5; Code of Civil Procedure §§ 1230.010-1273.050; and Article I, § 19 of the California Constitution.

F. LACMTA has complied with the California Environmental Quality Act.

In July 2018, the Board approved a determination that the Project is Statutorily Exempt, pursuant to CEQA Guidelines Section 15275(a) (Public Resources Code Section 21080(b)(11)) and is consistent with the intent of the legislature to facilitate “passenger and commuter services” improvements to HOV lanes already in use. In July 2018, the Board authorized the filing of a CEQA Notice of Exemption (NOE) for the Project with the Los Angeles County Clerk.

Accordingly, LACMTA has fulfilled the necessary statutory prerequisites to acquire the Property by eminent domain.

CONCLUSION

Staff recommends that the Board approve the Resolution of Necessity.

**RESOLUTION OF THE
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
DECLARING CERTAIN REAL PROPERTY INTERESTS NECESSARY FOR PUBLIC
PURPOSES AND AUTHORIZING THE ACQUISITION THEREOF THROUGH THE
EXERCISE OF EMINENT DOMAIN
METRO G LINE (ORANGE) BUS RAPID TRANSIT IMPROVEMENTS PROJECT,
("PROJECT")**

THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY BOARD OF DIRECTORS ("BOARD") HEREBY FINDS, DETERMINES, AND RESOLVES AS FOLLOWS:

Section 1.

THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY ("LACMTA") is a public entity organized and existing pursuant to Chapter 2 of Division 12 of the California Public Utilities Code (commencing with Section 130050).

Section 2.

The property interests described hereinafter are to be taken for public use, namely, for public transportation purposes and all uses necessary, incidental or convenient thereto, and for all public purposes pursuant to the authority conferred upon the Board to acquire property by eminent domain by California Public Utilities Code Sections 30000-33027, inclusive, and particularly Section 30503 and 30600, Sections 130000-132650, inclusive, and particularly Sections 130051.13 and 130220.5, Code of Civil Procedure Sections 1230.010-1273.050, inclusive, and particularly Sections 1240.510 and 1240.610, and Article I, Section 19 of the California Constitution.

Section 3.

The property interests consist of the acquisition of a Permanent Underground Utility Easement ("PUUE") and a 13-month Temporary Construction Easement ("TCE"), as described more specifically in the legal descriptions Exhibits "A-1" and "A-2", respectively, and depicted in the plat maps Exhibit "B-1" and "B-2", respectively, (hereinafter, the "Property Interests"). The PUUE is required for installation of LACMTA underground conduit. The area of the PUUE is located within a portion of the parking lot along the Sepulveda Boulevard frontage. The 13-month TCE is required to facilitate installation of the LACMTA underground conduit. The TCE surrounds the perimeter of the PUE and grants temporary access to the subject area within the Property. The TCE will remain in place during the Project construction period and shall have a duration of thirteen (13) months.

Section 4.

(a.) The acquisition of the above-described Property Interests is necessary for the development, construction, operation, and maintenance of the Metro G Line (Orange) Bus Rapid Transit Improvement Project ("Project");

(b.) In July 2018, the Board approved a determination that the Project is Statutorily Exempt, pursuant to CEQA Guidelines Section 15275(a) (Public Resources Code Section 21080(b)(11)) and is consistent with the intent of the legislature to facilitate "passenger and commuter services" improvements to HOV lanes already in use. In July 2018, the Board authorized the filing of a CEQA Notice of Exemption (NOE) for the Project with the Los Angeles County Clerk

(c.) Accordingly, LACMTA has fulfilled the necessary statutory prerequisites to acquire the Property by eminent domain

Section 5.

The Board hereby declares that it has found and determined 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 the least private injury;

(c.) The Property sought to be acquired, which has been described herein, is necessary for the proposed Project;

(d.) The offer required by Section 7267.2 of the Government Code has been made to the Owner; and said offer was transmitted together with the accompanying statement of, and summary of the basis for, the amount established as just compensation, which offers and accompanying statements/summaries were in a form and contained all of the factual disclosures provided by Government Code Section 7267.2(a).

Section 6.

Pursuant to Sections 1240.510 and 1240.610 of the Code of Civil Procedure, to the extent that the Property is already devoted to a public use, the use to which the Property is to be put is a more necessary public use than the use to which the Property 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 Property is already devoted.

Section 7.

That notice of intention to adopt this resolution was given by first class mail to each person whose Property is to be acquired by eminent domain in accordance with Section 1245.235 of the Code of Civil Procedure and a hearing was conducted by the Board on the matters contained herein and each person whose property is to be acquired by eminent domain was given an opportunity to be heard.

Section 8.

Legal Counsel is hereby authorized and directed to take all steps necessary to commence legal proceedings, in a court of competent jurisdiction, to acquire the Property Interests described above by eminent domain. Counsel is also authorized and directed to seek and obtain an Order for Prejudgment Possession of said Property in accordance with the provisions of the eminent domain law and is directed that the total sum of probable just compensation be deposited with the State Treasurer or the Clerk of the Superior Court. Counsel may enter into stipulated Orders for Prejudgment Possession and/or Possession and Use Agreements, where such agreements constitute the functional equivalent of an Order for Prejudgment Possession. Counsel is further authorized to correct any errors or to make or agree to any non-material changes to the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transactions required to acquire the Property, and, with the concurrence and approval of LACMTA Staff, to make minor adjustments to the scope and descriptions of easements or other Property to be acquired in order to ameliorate any claims for severance damages.

Counsel is further authorized to compromise and settle such eminent domain proceedings, if such settlement can be reached, and in that event, to take all necessary actions to complete the acquisition, including stipulations as to judgment and other matters, and causing all payments to be made. If settlement cannot be reached, Counsel is authorized to proceed to resolve the proceedings by means of jury trial. Counsel is further authorized to associate with, at its election, a private law firm for the preparation and prosecution of said proceedings.

I, COLLETTE LANGSTON, Board Clerk of the Los Angeles County Metropolitan Transportation Authority, do hereby certify that the foregoing Resolution was duly and regularly adopted by a vote of two-thirds of all the members of the Board of the Metropolitan Transportation Authority at a meeting held on the 27th day of January 2022.

COLLETTE LANGSTON
LACMTA Board Clerk

Date: _____

ATTACHMENTS

Exhibit A-1 and A-2 – Legal Description

LEGAL DESCRIPTION

EXHIBIT A

LEGAL DESCRIPTION

PERMENANT UNDERGROUND UTILITY EASEMENT

APN# 2242-025-026

That certain parcel of land situated in the City of Los Angeles, County of Los Angeles, State of California, being that portion of parcel A of Parcel Map L.A. No. 2015-0842, recorded September 24, 2015 in book 383, pages 95 and 96 of Parcel Maps, of official records of said Los Angeles County, being more particularly described as follows:

BEGINNING at the northwest corner of said parcel A, thence along the northerly line of said parcel, South 89°53'00" East (North 89°53'48" East, per PM No. 2015-0842), a distance of 11.00 feet to the **TRUE POINT OF BEGINNING** ; thence continuing along said line South 89°53'00" East, a distance of 4.00 feet; thence leaving said line South 00°13'27" West, a distance of 20.00 feet to the southerly line of said parcel; thence along said line, North 89°53'00" West (North 89°53'48" East, per PM), a distance of 4.00 feet; thence leaving said line, North 00°13'27" East, a distance of 20.00 to the **TRUE POINT OF BEGINNING**.

Containing 80.0 square feet, more or less.

Subject to easements, covenants, conditions, restrictions, reservations, rights, rights-of-way, and other matters of record, if any.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

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



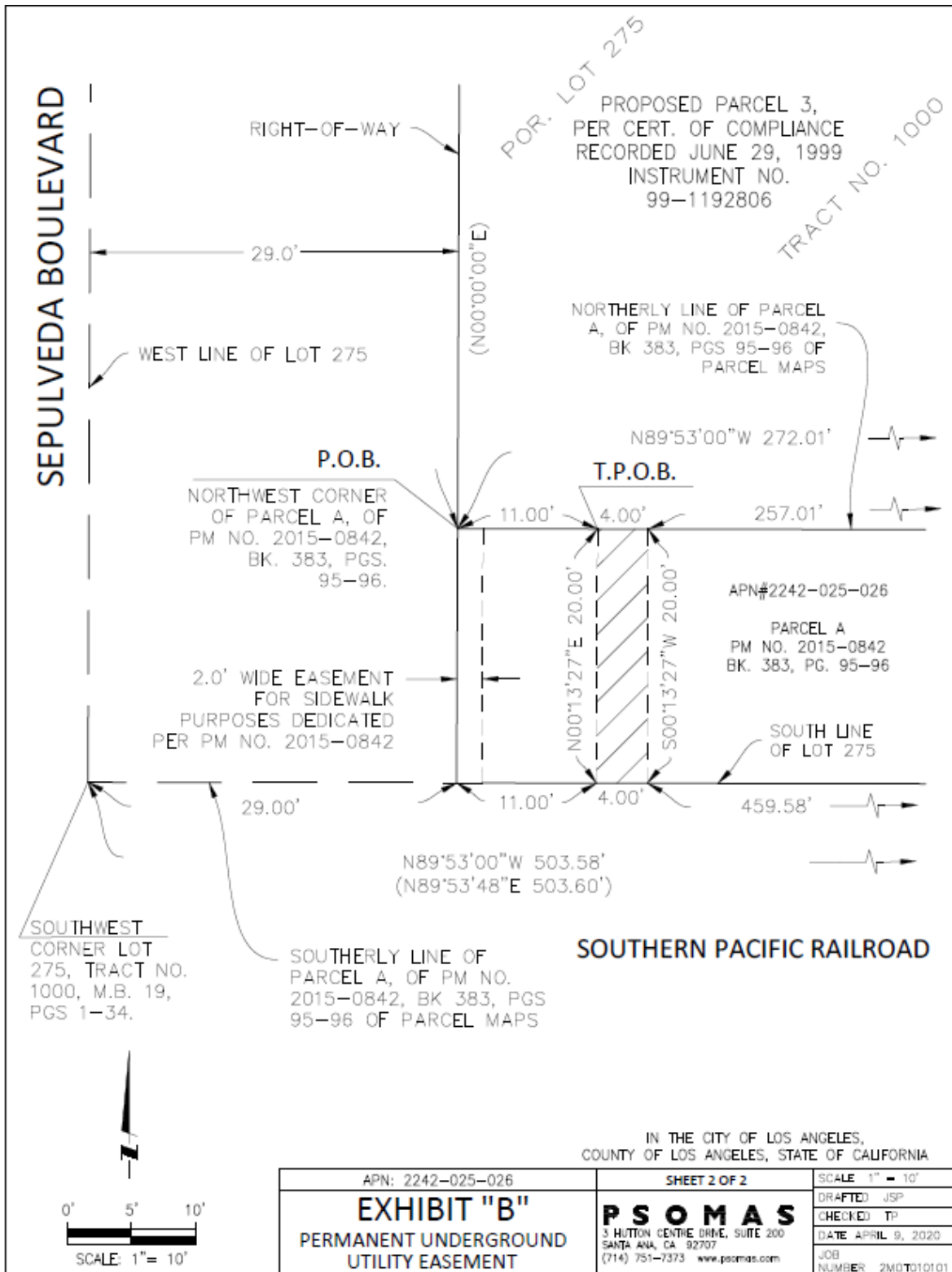
Thomas P. Pilarski, PLS 8732

04-09-20

Date



PLAT MAP



LEGAL DESCRIPTION

EXHIBIT A
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT
APN# 2242-025-026

That certain parcel of land situated in the City of Los Angeles, County of Los Angeles, State of California, being that portion of parcel A of Parcel Map L.A. No. 2015-0842, recorded September 24, 2015 in book 383, pages 95 and 96 of Parcel Maps, of official records of said Los Angeles County, being more particularly described as follows:

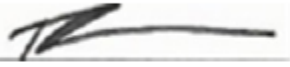
BEGINNING at the northwest corner of said parcel A, thence along the northerly line of said parcel, South 89°53'00" East (North 89°53'48" East, per PM No. 2015-0842), a distance of 32.00 feet; thence leaving said line South 00°13'27" West, a distance of 2.00; thence, North 89°53'00" West a distance of 12.00 feet; thence South 00°13'27" West, a distance of 18.00 feet to the southerly line of said parcel; thence along said line, North 89°53'00" West (North 89°53'48" East, per said PM), a distance of 14.00 feet; thence leaving said line, North 00°13'27" East, a distance of 18.00 feet; thence North 89°53'00" West, a distance of 6.00 feet westerly line of said parcel A; thence along said line North 00°13'27" East, a distance of 2.00 feet to the **POINT OF BEGINNING**.

Containing 315.9 square feet, more or less.

Subject to easements, covenants, conditions, restrictions, reservations, rights, rights-of-way, and other matters of record, if any.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

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



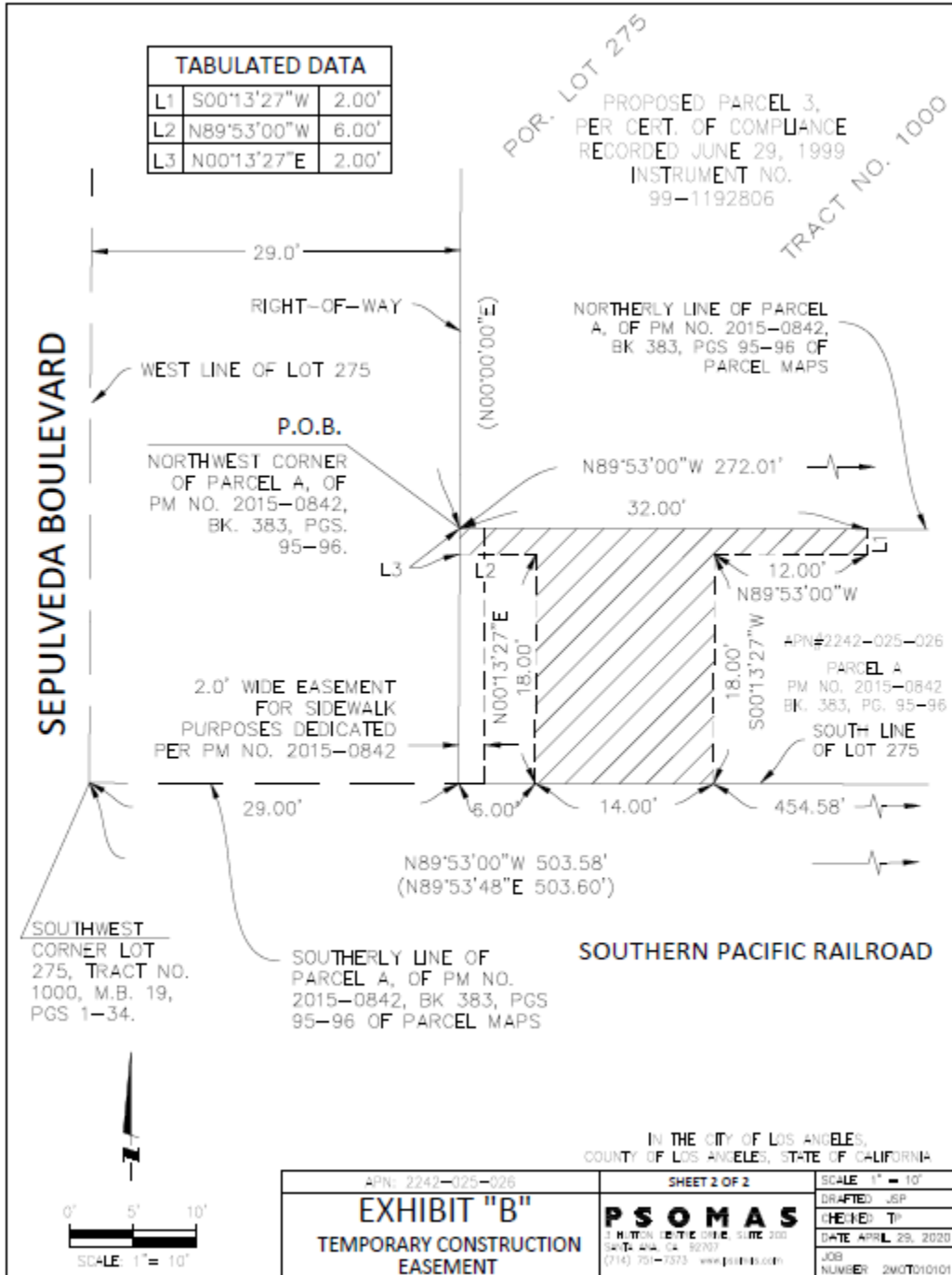
Thomas P. Pilarski, PLS 8732

04-29-20

Date



PLAT MAP



Hearing to Adopt Resolution of Necessity

Metro G Line (Orange) Bus Rapid Transit

Improvement Project

Board Meeting: February 24, 2022

File # 2021-0655

Hearing to Adopt Resolution of Necessity Metro G Line (Orange) Bus Rapid Transit Improvement Project

Project:

- This project will upgrade the existing line with grade separations on major streets, better signal priority technology, electronic bus connectivity and a four-quadrant gating system for a faster trip in the San Fernando Valley.

Property Impacts:

- **Temporary Construction Easement (TCE):** A 13-month TCE is required for access to install power equipment.
- **Permanent Underground Utility Easement (PUUE)** is required for the permanent underground power equipment to support the elevated station at Sepulveda Boulevard.
- No structures are impacted.
- Project impacts will not create a displacement.

Property Location:

- 6104-6108 Sepulveda Boulevard, Van Nuys, CA 91411
- APN: 2242-025-026 and 2242-025-027

Hearing to Adopt Resolution of Necessity Metro G Line (Orange) Bus Rapid Transit Improvement Project

Staff recommends the Board make the below findings and adopt the Resolution of Necessity:

- The public interest and necessity require the proposed Project;
- The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- The Property sought to be acquired, which has been described herein, is necessary for the proposed Project;
- The offer required by Section 7267.2 of the Government Code has been made to the Owner; and
- Whether the statutory requirements necessary to acquire the property or property interest by eminent domain have been complied with by LACMTA.