

## **MEMORANDUM**

**To:** CHAIR AND COMMISSIONERS  
CALIFORNIA TRANSPORTATION COMMISSION

**CTC Meeting:** March 19-20, 2026

**From:** STEVEN KECK, Chief Financial Officer

**Reference Number:** 2.4a., Action Item

**Prepared By:** René Fletcher, Chief  
Division of Right of Way and Land Surveys

**Subject:** **RESOLUTIONS OF NECESSITY - APPEARANCE**

### **ISSUE:**

Should the California Transportation Commission (Commission) adopt Resolutions of Necessity (Resolutions) C-22635, C-22636 and C-22637, for those parcels, whose Owners are contesting the declared findings of the California Department of Transportation (Department) under Section 1245.230 of the Code of Civil Procedure?

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 or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The property is necessary for the proposed project.
4. An offer to acquire the property in accordance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property Owners are contesting the Resolutions and have requested an appearance before the Commission. The primary concerns and objections expressed by the property Owners through their attorney are that the public interest and necessity do not require the proposed project, the proposed project is not planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and that the property sought to be acquired is not necessary for the project. The property Owners' objections and the Department's responses are contained in the Parcel Panel Reports (Attachments B, C, and D).

**RECOMMENDATION:**

The Department recommends that the Commission adopt Resolutions C-22635, C-22636, and C-22637 summarized on the following pages. These Resolutions are for a transportation project on State Route (SR) 74 in District 12, in Orange County.

**BACKGROUND:**

Discussions have taken place with the Owners, who have been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which they may subsequently be entitled. Adoption of these Resolutions will not interrupt the Department's efforts to secure an equitable settlement. In accordance with statutory requirements, the Owners have been advised that the Department is requesting these Resolutions at the Commission's March 19-20, 2026 meeting. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

Discussions have been ongoing between the property Owners and the Department to address and resolve the issues. Progress has been made, but in order to keep the project schedule, the Department is requesting that these appearances proceed to the March 19-20, 2026 Commission meeting. Legal possession will allow the construction activities on these parcels to commence, thereby avoiding and/or mitigating considerable right of way delay costs that will accrue if efforts to initiate the condemnation process are not taken immediately to secure legal possession of the subject properties.

C-22635 - Fernando A. Kellenberger, A Single Man and Diego Kellenberger, A Single Man and Fernando Kellenberger and Annette Changala, Husband and Wife, All as Joint Tenants  
12-Ora-74-Postmile (PM) 1.8 - Parcel 104334-1, 2 - Expenditure Authorization (EA) 086929.  
Right of Way Certification (RWC) Date: 04/21/26; Ready to List (RTL) Date: 04/30/26.  
Conventional highway - Widen from two lanes to four lanes. Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, and a temporary easement for construction purposes. Located in the city of San Juan Capistrano at 30752 Shadetree Lane. Assessor's Parcel Number (APN) 650-181-20.

C-22636 - Fernando Kellenberger and Annette Changala, as Trustees, or any successor Trustee, under that certain Declaration of Trust named Fernando Kellenberger and Annette Changala Living Trust, created by Fernando Kellenberger and Annette Changala, as Trustors, dated June 16, 2016  
12-Ora-74-PM 1.9 - Parcel 104335-1, 2 - EA 086929.  
RWC Date: 04/21/26; RTL Date: 04/30/26. Conventional highway - Widen from two lanes to four lanes. Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's

rights of access, and a temporary easement for construction purposes. Located in the city of San Juan Capistrano at 30702 Shadetree Lane. APN 650-181-19.

C-22637 - Margaret Bratton Brutocao and Roberto Giovanni Brutocao, Husband and Wife as joint tenants

12-Ora-74-PM 1.3 - Parcel 104337-1, 2, 3 - EA 086929.

RWC Date: 04/21/26; RTL Date: 04/30/26. Conventional highway - Widen from two lanes to four lanes. Authorizes condemnation of land in fee for a State highway and temporary easements for construction purposes. Located in the city of San Juan Capistrano at 28122 Ascot Lane. APNs 650-331-15, -16.

Attachments and Exhibits:

Attachment A - Project Information

Exhibit A - Project Maps

Attachment B - Parcel Panel Report

Exhibit B1 - Parcel Maps

Exhibit B2 - Resolution of Necessity C-22635

Exhibit B3 - Property Owner's letter to the Commission dated September 26, 2025

Attachment C - Parcel Panel Report

Exhibit C1 - Parcel Maps

Exhibit C2 - Resolution of Necessity C-22636

Exhibit C3 - Property Owner's letter to the Commission dated September 26, 2025

Attachment D - Parcel Panel Report

Exhibit D1 - Parcel Maps

Exhibit D2 - Resolution of Necessity C-22637

Exhibit D3 - Property Owner's letter to the Commission dated September 26, 2025

# Attachment A

## PROJECT INFORMATION

<b>PROJECT DATA</b>	12-Ora-74-PM 1.0/2.1 Project ID: 1210000051 (EA 086929)
<u>Location:</u>	In the city of San Juan Capistrano on Ortega Highway (SR 74) 1.10 miles, from 0.01 miles west of Calle Entradero to 0.12 miles west of San Juan Creek Bridge
<u>Limits:</u>	On SR 74 from Calle Entradero (PM 1.0) to Reata Road (PM 2.1)
<u>Cost:</u>	Construction cost estimate: \$50,100,000 (Capital) Right of way cost estimate: \$10,500,000 (Capital)
<u>Funding Source:</u>	State Transportation Improvement Program (STIP), Surface Transportation Surface Block Grant (STBG), Community Project Funding (CPF), Measure M2 Grant Funds (City of San Juan Capistrano), Local Gas Tax Funds (County of Orange) and State Highway Operation and Protection Program (SHOPP) Minor Funds
<u>Number of Lanes:</u>	Existing: SR 74 - Two lane conventional highway Proposed: SR 74 - Four lane conventional highway
<u>Proposed Major Features:</u>	Signalized intersection at Via Cordova/Hunt Club Drive and SR 74. Retaining Walls, Sound Walls, and Class II Bike Lanes
<u>Traffic:</u>	Existing (year 2018): 39,880 Annual Average Daily Traffic (AADT) Proposed (year 2045): 55,140 AADT

## **NEED FOR THE PROJECT**

The Department developed a Project Report (PR) dated November 30, 2009, and a supplemental PR dated May 8, 2020, for the project which is proposing improvements to a segment of SR 74 (Ortega Highway) in the city of San Juan Capistrano (City) to relieve traffic congestion, improve safety, and support long-term regional mobility. This portion of Ortega Highway currently narrows from four lanes to two, creating a traffic bottleneck that causes delays and affects emergency response and commuter reliability.

To address these issues, the project will widen the highway, upgrade intersections, and improve pedestrian and bicycle access. The reconstruction of infrastructure such as retaining walls, sidewalks, and sound walls is also included to meet current design and safety standards.

These improvements are necessary to ensure the safe and efficient movement of people and vehicles and are consistent with adopted transportation and land use plans. The project benefits the traveling public and the broader community by addressing current deficiencies and preparing for future growth. The project will incorporate Complete Streets features for pedestrians and bicyclists and reduce congestion within the project limits.

## **PROJECT PLANNING AND LOCATION**

A Project Study Report (PSR) was approved in 1997, and initial public engagement began in 2000. Due to public feedback, the Department prepared an Environmental Impact Report (EIR), which assessed no build, and two build alternatives. After a 45-day public review, the EIR was approved in 2009 and was addended in 2010. Build alternative 2 includes widening the north side of the highway while replacing the meandering sidewalk, and has been selected as the preferred alternative. Following the California Environmental Quality Act (CEQA) Certification, both the City and the Hunt Club Community Association (Hunt Club) filed a joint lawsuit in Orange County Superior Court challenging the EIR. On July 14, 2011, the City, the Hunt Club, and the Department reached a settlement. The lawsuit shall not prevent or restrain the Department from implementing the project as described in the certified EIR, as long as: (a) the Department's implementation of the project is in all respects consistent with the 2009 certified EIR and the 2010 Addendum; (b) the project implements all of the mitigation measures described in the certified EIR; and (c) the Department complies with and implements the terms, conditions, requirements, and restrictions of the settlement. A public hearing was held in 2019, during which the public provided comments on noise attenuation, sidewalks, visual impacts, and traffic signal needs. Pursuant to the settlement, an Environmental Assessment (EA) with Finding of No Significant Impact (FONSI) in compliance with National Environmental Policy Act (NEPA) was prepared in May 2020, which was circulated to the public for 45 days prior to being signed, confirming the project would not result in significant environmental impacts.

The proposed project has been carefully planned to serve the greatest public good by addressing long-standing traffic congestion on SR 74, improving roadway safety, reducing

delays, and enhancing multimodal access for pedestrians and cyclists. These improvements directly benefit local residents, regional commuters, emergency services, and the traveling public by creating a more reliable and efficient transportation corridor. To minimize project impacts on surrounding properties, the design retains the existing road alignment where feasible, incorporates retaining walls to reduce grading, while at the same time includes features such as sidewalks, bike lanes, and upgraded traffic signals to enhance community connectivity and safety.

By focusing on improvements within the existing corridor and selecting design solutions that reduce property impacts, the project reflects a clear intent to promote the public good while imposing the least possible burden on adjacent landowners.

This project is currently programmed in the 2024 STIP with a fiscal year delivery 2025-26. Funding sources include STIP, STBG, CPF, Measure M2 Grant Funds, Local Funds, and SHOPP Minor Funds. The current Right of Way capital cost estimate is \$10,500,000, and the Construction cost is estimated to be \$50,100,000. RWC is scheduled for April 21, 2026, with an RTL Date of April 30, 2026. Advertisement is tentatively set for July 7, 2026.

# Exhibit A

# Project Vicinity



**Project Vicinity**

# Project and Parcel Locations



# Attachment B

## PARCEL PANEL REPORT

Property Owner: Fernando A. Kellenberger, A Single Man and Diego Kellenberger, A Single Man and Fernando Kellenberger and Annette Changala, Husband and Wife, All as Joint Tenants

Parcel Location: 30752 Shadetree Lane, in the city of San Juan Capistrano  
APN: 650-181-20

Present Use: Single-Family Residential

Zoning: Residential/Agricultura (RA) District

Area of Property: 92,819 square feet (SF)

Area Required: Parcel 104334-1: 2,507 SF - Fee  
Parcel 104334-2: 5,687 SF - Temporary Construction Easement (TCE)

## PARCEL DESCRIPTION

The subject property is located in the city of San Juan Capistrano at 30752 Shadetree Lane, adjacent to SR 74. Identified as APN 650-181-20, this irregular shaped lot consists of 92,819 SF and is improved with a 2-story single-family residence. The southern property boundary abuts SR 74, and access to the site is provided at the north/northwest perimeter of property by Shadetree Lane. The property has level topography at street grade with rolling and steep downward slopes near the southern perimeter of the property towards SR 74. Miscellaneous site improvements include a paved backyard, outdoor BBQ, firepit and landscape such as irrigation, trees, and plants.

It should be noted that there is also an unpaved driveway and access point located along the east/southeastern corner of the subject property adjacent to the existing State right of way for SR 74. It appears this driveway is being used for ingress and egress to the subject property (as well as the adjacent parcel to the east). This driveway is not permitted nor legal. As of August 29, 1979, per Parcel Map PMB 137 / 40-22, all vehicular access rights have been released and relinquished from the subject property to SR 74. Thus, the Department has full access control in this area, thereby restricting abutting property Owners from entering or exiting onto SR 74. Despite shifting the proposed right of way north due to the highway widening, the Department will still maintain full access control. Therefore, access to and from the highway will continue to not be legally permitted, nor will it be physically possible due to the proposed retaining wall that is being built as part of the project.

## **NEED FOR THE SUBJECT PROPERTY**

The project requires 2,507 SF in fee from the Owners' property including abutter's rights of access to and from the adjacent highway. The fee acquisition area is needed to construct the roadway widening, construct a retaining wall, install a bioswale, and provide a bike lane. The project also requires a 5,687 SF TCE, which is adjacent to and north of the fee acquisition area, and is necessary to allow the contractor a sufficient work area and access to construct the roadway widening, retaining wall, bioswale, and bike lane. The proposed project improvements cannot be constructed without acquiring a portion of the Owners' property.

## **RESOLUTION OF NECESSITY REVIEW PANEL REPORT**

The Condemnation Review Panel (Panel) conducted an online Webex meeting on December 18, 2025. The Panel members included Jean-Marie Hunter, Panel Chair, Department Headquarters' (HQ) Division of Right of Way and Land Surveys; Scott Fridell, Department's San Diego Legal Division; Tina Lucas, Department HQ's Division of Design; and Mark Zgombic, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property Owners at the meeting were Owners Fernando Kellenberger, Annette Changala, and attorney Jack M. Rubin from Newmeyer & Dillion, LLP.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Department's Chief Engineer. The four criteria are as follows:

### **The public interest and necessity require the proposed project.**

The Department developed a PR dated November 30, 2009, and a supplemental PR dated May 8, 2020, for the project which proposes improvements to a segment of SR 74 (Ortega Highway) in the City to relieve traffic congestion, improve safety, and support long-term regional mobility. This portion of Ortega Highway currently narrows from four lanes to two, creating a traffic bottleneck that causes delays and affects emergency response and commuter reliability.

To address these issues, the project will widen the highway, upgrade intersections, and improve pedestrian and bicycle access. The reconstruction of infrastructure such as retaining walls, sidewalks, and sound walls is also included to meet current and minimum design and safety standards, where feasible.

These improvements are necessary to ensure the safe and efficient movement of people and vehicles and are consistent with adopted transportation and land use plans. The project benefits the traveling public and the broader community by addressing current deficiencies and preparing for future growth. The project will incorporate Complete Streets features for pedestrians and bicyclists and reduce congestion within the project limits.

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

A PSR was approved in 1997, and initial public engagement began in 2000. Due to public feedback, the Department prepared an EIR, which assessed no build, and two build alternatives. After a 45-day public review, the EIR was approved in 2009 and was addended in 2010. Build alternative 2 includes widening the north side of the highway while replacing the meandering sidewalk, and has been selected as the preferred alternative. Following the CEQA Certification, both the City and the Hunt Club filed a joint lawsuit in Orange County Superior Court challenging the EIR. On July 14, 2011, the City, the Hunt Club, and the Department reached a settlement. The lawsuit shall not prevent or restrain the Department from implementing the project as described in the certified EIR, as long as: (a) the Department's implementation of the project is in all respects consistent with the 2009 certified EIR and the 2010 Addendum; (b) the project implements all of the mitigation measures described in the certified EIR; and (c) the Department complies with and implements the terms, conditions, requirements, and restrictions of the settlement. A public hearing was then held in 2019, which the public provided comments on noise attenuation, sidewalks, visual impacts, and traffic signal needs. Pursuant to the settlement, an EA/FONSI in compliance with NEPA was prepared in May 2020, which was circulated to the public for 45 days prior to being signed, confirming the project would not result in significant environmental impacts.

The proposed project has been carefully planned to serve the greatest public good by addressing long-standing traffic congestion on SR 74, improving roadway safety, reducing delays, and enhancing multimodal access for pedestrians and cyclists. These improvements directly benefit local residents, regional commuters, emergency services, and the traveling public by creating a more reliable and efficient transportation corridor. To minimize project impacts on surrounding properties, the design retains the existing road alignment where feasible, incorporates retaining walls to reduce grading, while at the same time including features such as sidewalks, 5-foot bike lanes where feasible, and upgraded traffic signals to enhance community connectivity and safety.

By focusing on improvements within the existing corridor and selecting design solutions that reduce property impacts, the project reflects a clear intent to promote the public good while imposing the least possible burden on adjacent landowners.

**The property rights to be condemned are necessary for the proposed project.**

The subject property is located in the city of San Juan Capistrano at 30752 Shadetree Lane, adjacent to SR 74. This irregular shaped lot consists of 92,819 SF and is improved with a 2-story single-family residence. The southern property boundary abuts SR 74, and access to the site is provided at the north/northwest perimeter of property by Shadetree Lane. The property has level topography at street grade with rolling and steep downward slopes near the southern perimeter of the property towards SR 74. The project requires 2,507 SF in fee from the Owners' property including abutter's rights of access to and from the adjacent highway. The fee acquisition area is needed to construct the roadway widening, construct a retaining wall, install a bioswale, and

provide a bike lane. The project also requires a 5,687 SF TCE, which is adjacent to and north of the fee acquisition area, and is necessary to allow the contractor a sufficient work area and access to construct the roadway widening, retaining wall, bioswale, and bike lane. Upon completion of the work, minor grading within the TCE will take place for restoration purposes so the area can be returned to similar to the original condition with smoothing out of the slope to eliminate dips and peaks. The proposed project improvements cannot be constructed without acquiring a portion of the Owners' property.

**An offer to purchase in accordance with Government Code Section 7267.2 has been made to the owners of record.**

A staff appraisal that established just compensation was approved by District 12 Right of Way management on June 18, 2025. On July 3, 2025, the Agent met with the property Owners and their attorney and presented the First Written Offer (FWO) of just compensation.

The following is a description of the primary concerns and/or objections expressed by the Owners' attorney, followed by the Department's response:

**Owner Contends:**

They have had direct access to SR 74 from their property for years and therefore believe this access should be accommodated (and perpetuated), after the project is built, and inquired whether they will continue to have access to and from SR 74 after the proposed retaining wall is built along their property.

**Department's Response:**

Although the owners have been physically accessing their property directly from SR 74, this access is not permitted nor legal. As of August 29, 1979, per Parcel Map PMB 137 / 40-22, all vehicular access rights have been released and relinquished from the subject property to SR 74. Thus, the Department has full access control in this area, thereby restricting abutting property Owners from entering or exiting onto SR 74. Despite shifting the proposed right of way north due to the highway widening, the Department will still maintain full access control. Therefore, access to and from the highway will continue to not be legally permitted, nor will it be physically possible due to the proposed retaining wall that is being built as part of the project. However, the subject property will continue to have access to SR 74 from Shadetree Lane.

**Owner Contends:**

Is there an expectation that noise levels will increase at the location of subject property after the proposed project is built, and why does the south side SR 74 get a soundwall (noise barrier) and the north side of SR 74 adjacent to the subject property only gets a retaining wall?

**Department's Response:**

According to the project's latest Noise Study Report (2018), the noise levels may increase in the area of the subject property from 57.8 A-weighted decibel (dBA) to 61.5 dBA, which is still below the 67 dBA impact threshold level warranting noise mitigation via a soundwall. This same 2018

noise study confirmed that a sound wall is needed for south of SR 74. The properties located south of SR 74 are closer to the highway and the subject property located on the north side of SR 74 is farther up on the hill (away from the highway) so the noise levels will be reduced prior to the sound reaching the residence.

**Owner Contends:**

What if there is slope failure during construction?

**Department's Response:**

Slope failure during construction is not anticipated. Excavations will be addressed during construction and are the responsibility of the State's highway contractor as part of the contractor's means and methods. Excavation activities will be performed in accordance with applicable Occupational Safety and Health Administration (OSHA) and the Department requirements, with the most restrictive provisions governing. Department construction inspectors will be available during construction to observe and monitor excavation activities.

**Owner Contends:**

There could be potential issues with the retaining wall design and requested analysis on potential impacts on the property in the before and after condition, studies, and anything that can be done to reduce impact.

**Department's Response:**

Potential issues with the retaining wall design are not anticipated. Retaining walls are designed in accordance with American Association of State Highway and Transportation Officials - Load and Resistance Factor Design (AASHTO-LRFD) Bridge Design Specifications with California Amendments and applicable Department geotechnical design modules. Retaining wall foundations are evaluated for bearing resistance, anticipated settlements, and overall slope stability under permanent (post-construction) conditions. Construction-phase considerations will be addressed separately as part of the Department's contractor's means and methods. Absent the proposed retaining wall, right-of-way requirements of 52,312 SF or roughly 1.2 acres would have been needed for a permanent slope easement to construct a 3:1 slope on the subject property, as opposed to building the retaining wall. Therefore, the proposed retaining wall design results in a 49,805 SF, or roughly 1.14 acre reduction in permanent right of way needed to construct the project.

**Owner Contends:**

It was stated that the Foundation Report dated April 2025 identified some issues that will need to be monitored. What are the recommendations on the creep issues mentioned in the report and is there a plan in place to deal with that?

**Department’s Response:**

The project in the manner proposed does not anticipate any potential “creep” issues. The term “creep” referenced in the April 2025 Foundation Report applies specifically to the proposed vertical ground anchors associated with the retaining wall foundations. Measurements of any creep movement and compliance will be performed in accordance with the Department’s Standard Specifications {Sections 46-2.01D(2)(b)(ii) (Test Procedures) and 46-3.01D(3)(b)(ii) (Acceptance Criteria)}, as well as the projects special provisions for extended creep testing, to verify that the proposed retaining wall meets the specified creep performance requirements. Monitoring for creep will be performed in a manner intended to preserve the stability and integrity of the existing slope.

**DOCUMENTS REQUESTED:**

The following is a list of documents pertaining to the project and/or subject property that were requested by the Owners’ attorney, and provided by the Department.

- Project Plans (including draft plan sheets for Utilities, Construction Staging, and Traffic Handling plans)
- Geotechnical and Geological Studies, and Geotechnical Design and Materials Report dated July 9, 2007
- Noise Study Report dated December 2018, including Chapter 9 references
- Draft renderings of the proposed retaining wall
- Parcel Map PMB 137 / 40-22, dated August 29, 1979.
- 2018 Highway Design Manual
- April 2025 Foundation Report
- Section 14-8.02 Noise Control from 2025 Standard Specifications
- Section 14-11.04 Dust Control from 2025 Standard Specifications
- Section 46-2.01D(2)(b)(ii) (Test Procedures) from 2025 Standard Specifications
- Section 46-3.01D(3)(b)(ii) (Acceptance Criteria) from 2025 Standard Specifications

**DEPARTMENT CONTACTS**

The following is a summary of contacts made with the property Owners:

<b>Type of Contact</b>	<b>Number of Contacts</b>
Mailing of information	4
Emails/Texts	31/0
Telephone	5
In Person / Virtual Meetings	2/1

## **STATUTORY OFFER TO PURCHASE**

The Department has appraised the subject property and offered the full amount of the appraisal to the Owners of record as required by Government Code Section 7267.2. The property Owners have been notified that issues related to compensation are outside the purview of the Commission.

## PANEL RECOMMENDATION

The Panel concludes that the Department's project complies with Section 1245.230 of the Code of Civil Procedure in that:

- 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 least private injury.
- The property rights to be condemned are necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

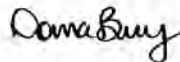
The Panel recommends submitting this Resolution of Necessity to the Commission.



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KAREN BASRA  
Chief (Acting), Office of Project Delivery  
HQ Division of Right of Way and Land Surveys  
Panel Chair

I concur with the Panel's recommendation:



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DONNA BERRY  
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW  
MEETING ON DECEMBER 18, 2025**







Jean-Marie Humber, HQ's Division of Right of Way and Land Surveys, Panel Chair  
Scott Fridell, San Diego Legal Division, Panel Member  
Tina Lucas, HQ's Division of Design, Panel Member  
Mark Zgombic, HQ's Division of Right of Way and Land Surveys, Panel Secretary

Matthew Cugini, Deputy District Director Project Delivery, District 12  
Adnan Maiah, Deputy District Director & Single Focal Point, Strategic Portfolio Management,  
District 12  
Joey Lee, Branch Chief, District 12 Design  
Niloufar Chitgar, Project Engineer, District 12 Design  
Quan Trinh, Project Engineer, District 12 Design  
Andrew Chough, Office Chief, District 12 Construction  
Rizwan Tanvir, Project Delivery Chief of Staff / Assistant Chief Engineer  
Jennifer Pham, Office Chief, Office of Right of Way and Right of Way Engineering, District 12  
Evangelina Washington, Senior Right of Way Agent, District 12 Right of Way  
Alicia Ng, Associate Right of Way Agent, District 12 Right of Way

Fernando Kellenberger, Property Owner  
Annette Changala, Property Owner  
Jack M. Rubin, Newmeyer & Dillion LLP, Attorney for the Property Owner

# Exhibit B1

# Kellenberger Parcel 104334 Acquisitions

- Project Location 
- Kellenberger Parcel 
- TCE 
- FEE 
- Exist. State R/W Line (Access Controlled) 
- Proposed State R/W Line (Access Controlled) 

Parcel 104334-2  
TCE – 5,687 SF  
(6.1% of Total Parcel Size)

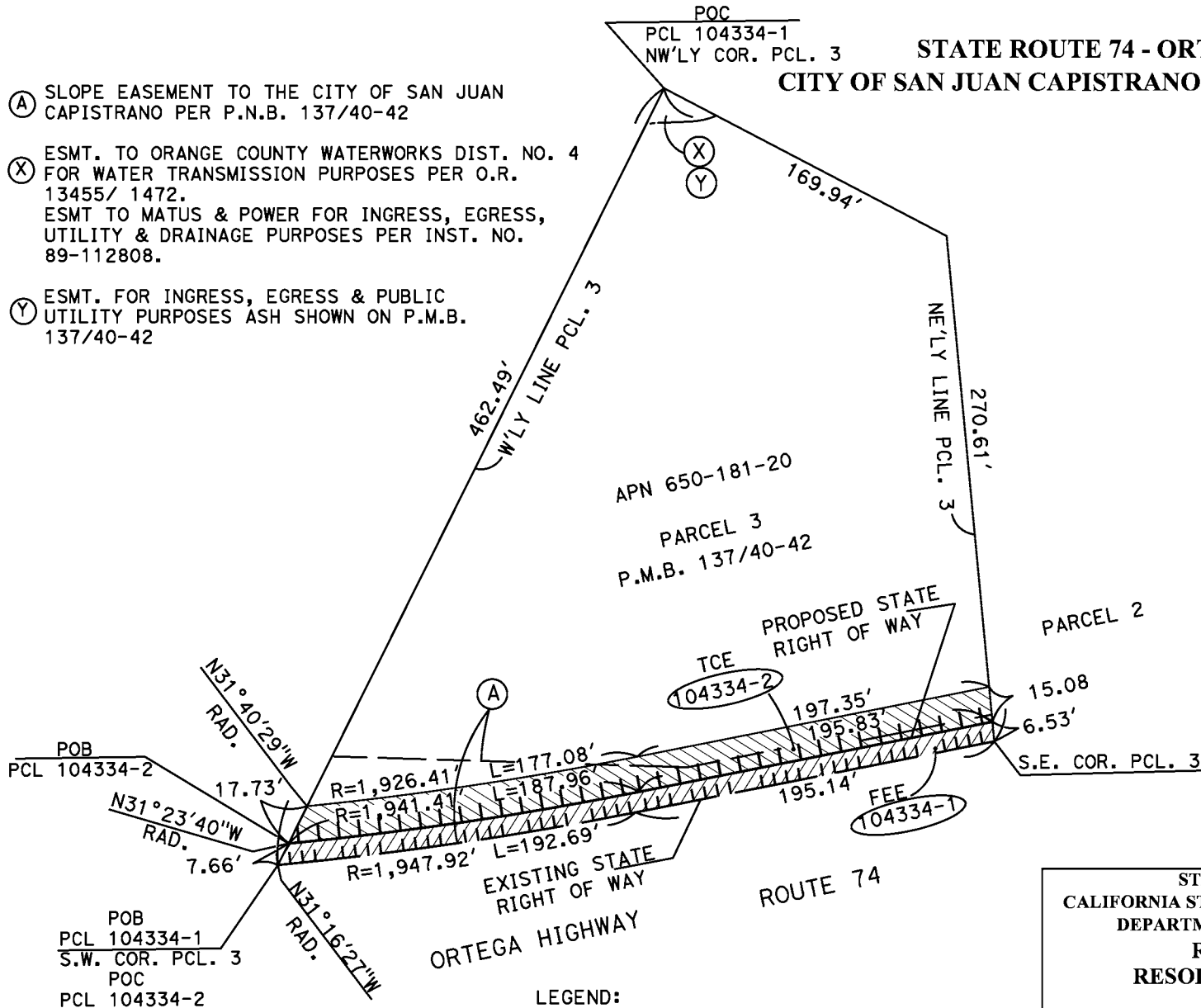
Parcel 104334  
Total Size  
92,819 SF

Parcel 104334-1  
FEE – 2,507 SF  
(2.7% of Total Parcel Size)



**STATE ROUTE 74 - ORTEGA HIGHWAY  
CITY OF SAN JUAN CAPISTRANO - COUNTY OF ORANGE**

- (A) SLOPE EASEMENT TO THE CITY OF SAN JUAN CAPISTRANO PER P.N.B. 137/40-42
- (X) ESMT. TO ORANGE COUNTY WATERWORKS DIST. NO. 4 FOR WATER TRANSMISSION PURPOSES PER O.R. 13455/ 1472.  
ESMT TO MATUS & POWER FOR INGRESS, EGRESS, UTILITY & DRAINAGE PURPOSES PER INST. NO. 89-112808.
- (Y) ESMT. FOR INGRESS, EGRESS & PUBLIC UTILITY PURPOSES ASH SHOWN ON P.M.B. 137/40-42



**LEGEND:**  
TCE TEMPORARY CONSTRUCTION EASEMENT  
POC POINT OF COMMENCEMENT  
POB POINT OF BEGINNING  
////// ACCESS PROHIBITED

STATE OF CALIFORNIA  
CALIFORNIA STATE TRANSPORTATION AGENCY  
DEPARTMENT OF TRANSPORTATION  
**RIGHT OF WAY  
RESOLUTION OF NECESSITY  
EXHIBIT "B"**  
**Parcels 104334-1 and 104334-2**

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
12	ORA	74	1.8	1	1

# Exhibit B2

1 **TRANSPORTATION COMMISSION**  
2 **RESOLUTION NO.**

3 **C-22635**

4 CALIFORNIA TRANSPORTATION COMMISSION  
5 RESOLUTION OF NECESSITY  
6 TO ACQUIRE CERTAIN REAL PROPERTY  
7 OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN  
8 HIGHWAY 12-Ora-74-PM 1.8 PARCEL 104334-1, 2

9 OWNER: Fernando A. Kellenberger, A Single Man and Diego Kellenberger, A Single Man  
10 and Fernando Kellenberger and Annette Changala, Husband and Wife, All as Joint Tenants

11 Resolved by the California Transportation Commission after notice (and hearing)  
12 pursuant to Code of Civil Procedure Section 1245.235 that it finds and determines and  
13 hereby declares that:

14 The hereinafter described real property is necessary for State Highway purposes  
15 and is to be acquired by eminent domain pursuant to Streets and Highways Code Section  
16 102; and Code of Civil Procedure Section 1240.510 in that the property being acquired is  
17 for a compatible use; and Code of Civil Procedure Section 1240.610 in that the property is  
18 required for a more necessary public use;

19 The public interest and necessity require the proposed public project, namely a State  
20 highway;

21 The proposed project is planned and located in the manner that will be most  
22 compatible with the greatest public good and the least private injury;

23 The property sought to be acquired and described by this resolution is necessary for  
24 the public project;

The offer required by Section 7267.2 of the Government Code has been made to the

**APPROVED AS TO FORM AND PROCEDURE**

**APPROVAL RECOMMENDED**

\_\_\_\_\_  
**Attorney, Department of Transportation**

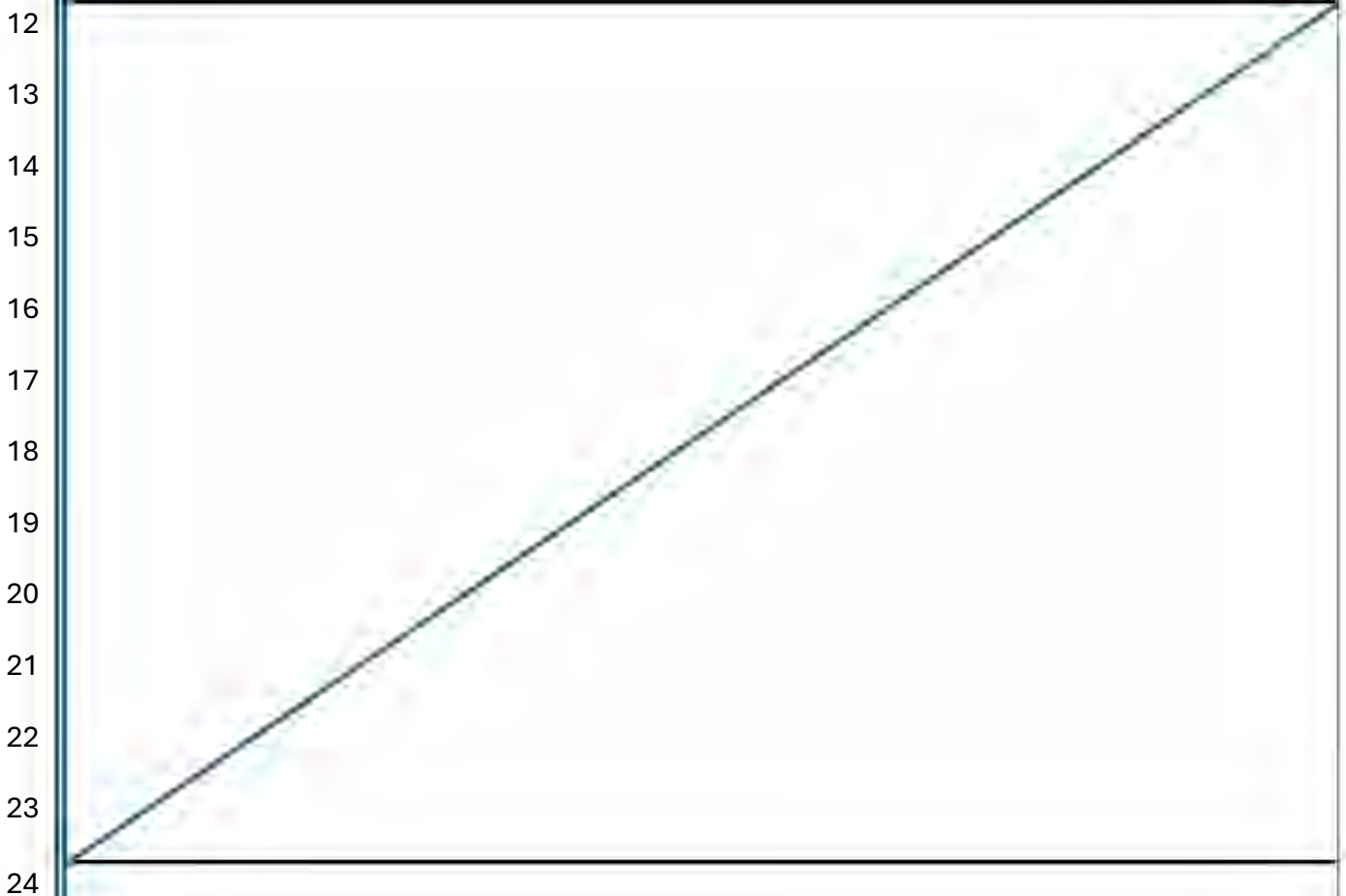
\_\_\_\_\_  
**DIVISION OF RIGHT OF WAY**

1 owner or owners of record; and be it further

2 RESOLVED by this Commission that the Department of Transportation be and said  
3 Department is hereby authorized and empowered;

4 To acquire, in the name of the People of the State of California, in fee simple  
5 absolute, unless a lesser estate is hereinafter expressly described, the said hereinafter  
6 described real property, or interests in real property, by condemnation proceeding or  
7 proceedings in accordance with the provisions of the Streets and Highways Code, Code of  
8 Civil Procedure and of the Constitution of California relating to eminent domain;

9 The real property or interests in real property, which the Department of  
10 Transportation is by this resolution authorized to acquire, is situated in the County of  
11 Orange, State of California, Highway 12-Ora-74 and described as follows:



**Exhibit "A"**  
**Legal Description**

**PARCEL 104334-1: FEE**

For State highway purposes, that portion of Parcel 3 of a Parcel Map, in the City of San Juan Capistrano, County of Orange, State of California as shown on a map filed in Book 137, Pages 40 through 42, inclusive of Parcel Maps, in the office of the County Recorder of said County described as follows:

**Commencing** at the Northwesterly corner of Parcel 3 shown on said parcel map as having a bearing of "North 00°42'08" East and a length of 518.02 feet", the bearing of said course being North 00°41'58" East for the purpose of this description, thence along the westerly line of said Parcel 3, South 00°41'58" West 462.49 feet to the southwest corner of said Parcel 3 and the **Point of Beginning**; said Point of Beginning also being on the northwesterly right-of-way of Ortega Highway shown on Sheet 12 of Record of Survey No. 2006-1029, recorded in Book 216, pages 8-33, inclusive of Record of Surveys, records of said Orange County, said Point of Beginning also being the beginning of a non-tangent curve concave northwesterly and having a radius of 1,947.92 feet, a radial line to said curve bears South 31°16'27" East; thence northeasterly 192.69 feet along the southeasterly line of said Parcel, the northwesterly right-of-way of said Ortega Highway and said curve through a central angle of 05°40'04"; thence North 53°03'30 East 195.14 feet to the to the southeast corner of said Parcel 3; thence leaving said southeasterly line and along the northeasterly line of said Parcel 3, North 31°08'28' West 6.53 feet; thence leaving said northeasterly line, South 53°03'30" West 195.83 feet to the beginning of a curve concave northwesterly and having a radius of 1,941.41 feet; thence southwesterly 187.96 feet through a central angle of 05°32'50" to the westerly line of said Parcel 3, said point being distant North 0°41'58" East 7.66 feet along said westerly line from the southwest corner of said Parcel 3; thence along said westerly line, South 00°41'58 West 7.66 feet to the Point of Beginning.

Lands abutting the highway shall have no right or easement of access thereto.

Unless otherwise noted, all bearings and distances are in terms of the California Coordinate System of 1983, Zone 6, based on the North American Datum of 1983 Epoch 1991.35 (O.C.S. GPS Adjustment). All distances are grid distances, divide grid distances by 0.99995716 to obtain ground distances.

**PARCEL 104334-2: Temporary Construction Easement**

An easement for temporary construction purposes in, on, over, and across that portion of Parcel 3 of a Parcel Map, in the City of San Juan Capistrano, County of Orange, State of California as shown on a map filed in Book 137, Pages 40 through 42, inclusive of Parcel Maps, in the office of the County Recorder of said County described as follows:

**Commencing** at the southwest corner of said Parcel 3; thence along the westerly of said Parcel 3, North 00°41'58" East 7.66 feet to the **Point of Beginning**: said point of beginning also being the beginning of a non-tangent curve concave northwesterly and having a radius of 1,941.41 feet, a radial line to said curve bears South 31°23'40" East; thence northeasterly 187.96 feet along said curve through a central angle of 05°32'50"; thence North 53°03'30 East 195.83 feet to the to the northeasterly line of said Parcel 3; thence along said northeasterly line, North 31°08'28' West 15.08 feet; thence leaving said northeasterly line, South 53°03"30" West 197.35 feet to the beginning of a curve concave northwesterly and having a radius of 1,926.41 feet; thence southwesterly 177.09 feet along said curve through a central angle of 05°16'01" to the westerly line of said Parcel 3, said point being distant North 00°41'58" East 25.39 feet along said westerly line from the southwest corner of said Parcel 3; thence along said westerly line, South 00°41'58 West 17.73 feet to the **Point of Beginning**.

Rights to the above described temporary easement shall cease and terminate on March 6, 2030. The rights may also be terminated prior to the above date by STATE upon notice to OWNER.

Unless otherwise noted, all bearing and distances are in terms of the California Coordinate System of 1983, Zone 6, based on the North American Datum of 1983 Epoch 1991.35 (O.C.S. GPS Adjustment). All distances are grid distances, divide distances by 0.99995716 to obtain ground distances.

# Exhibit B3



Newmeyer & Dillion LLP  
895 Dove Street  
Second Floor  
Newport Beach, CA 92660  
(949) 854-7000

September 26, 2025

Charles S. Krolikowski  
Charles.Krolikowski@ndlf.com

**VIA OVERNIGHT MAIL**



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

Re: Request to Appear and Object to Resolution of Necessity  
Project#1200000051, Parcel(s) 104334-1,-2, 104335-1, -2  
EA 086929, 12-Ora-74-PM 1.8, 12-Ora-74-PM 1.9

To Whom It May Concern:

This office represents Fernando Kellenberger, Annette Changala, Fernando A. Kellenberger, and Diego Kellenberger, as individuals and trustees under that certain Declaration of Trust named Fernando Kellenberger and Annette Changala Living Trust, dated June 16, 2016 (collectively "Owners"), owners of the real property and improvements located in the City of San Juan Capistrano, California, Parcel Numbers 104334-1, 2 and 104335-1, -2 ("Properties").

Please be advised that our office plans on appearing and objecting to the California Transportation Commission's October 16/17, 2025, hearing(s) to adopt Resolution(s) of Necessity ("Resolution") related to the Properties. The Owners object to the Resolution pursuant to Code of Civil Procedure sections 1245.210, et seq., including those specific requirements/elements set forth in Section 1245.230.

Further, the Owners intend to submit additional information related to their objections either before, or at the time of the Resolution hearing. Should you have any questions and/or require further information, please contact the undersigned.

Very truly yours,

Charles S. Krolikowski  
CSK:cag

# Attachment C

## PARCEL PANEL REPORT

<u>Property Owner:</u>	Fernando Kellenberger and Annette Changala, as Trustees, or any successor Trustee, under that certain Declaration of Trust named Fernando Kellenberger and Annette Changala Living Trust, created by Fernando Kellenberger and Annette Changala, as Trustors, dated June 16, 2016
<u>Parcel Location:</u>	30702 Shadetree Lane, in the city of San Juan Capistrano APN: 650-181-19
<u>Present Use:</u>	Single-Family Residential
<u>Zoning:</u>	Residential/Agricultura (RA) District
<u>Area of Property:</u>	99,687 SF
<u>Area Required:</u>	Parcel 104335-1: 1,712 SF - Fee Parcel 104335-2: 3,888 SF - TCE

## PARCEL DESCRIPTION

The subject property is located in the city of San Juan Capistrano at 30702 Shadetree Lane, adjacent to SR 74. Identified as APN 650-181-19, this irregular shaped lot consists of 99,687 SF and is improved with a 2-story single-family residence. The southern property boundary abuts SR 74, and access to the site is provided at the west perimeter of property by Shadetree Lane. The property has level topography at street grade with rolling and steep downward slopes near the southern perimeter of the property towards SR 74. Miscellaneous site improvements include a backyard patio, swimming pool, grotto, several miscellaneous buildings, chicken coop, shed and landscape improvements such as an irrigation system, trees, and plants.

It should be noted that there is also an unpaved driveway and access point located along the east/southeastern corner of the subject property adjacent to the existing State right of way for SR 74. It appears this driveway is being used for ingress and egress to the subject property (as well as the adjacent parcel to the west). This driveway is not permitted nor legal. As of August 29, 1979, per Parcel Map PMB 137 / 40-22, all vehicular access rights have been released and relinquished from the subject property to SR 74. Thus, the Department has full access control in this area, thereby restricting abutting property Owners from entering or exiting onto SR 74. Despite shifting the proposed right of way north due to the highway widening, the Department will still maintain full access control. Therefore, access to and from the highway will continue to not be legally permitted, nor will it be physically possible due to the proposed retaining wall that is being built as part of the project.

## **NEED FOR THE SUBJECT PROPERTY**

The project requires 1,712 SF in fee from the Owners' property including abutter's rights of access to and from the adjacent highway. The fee acquisition area is needed to construct the roadway widening, construct a retaining wall, install a bioswale, and provide a bike lane. The project also requires a 3,888 SF TCE, which is adjacent to and north of the fee acquisition area, and is necessary to allow the contractor a sufficient work area and access to construct the roadway widening, retaining wall, bioswale, and bike lane. The proposed project improvements cannot be constructed without acquiring a portion of the Owners' property.

## **RESOLUTION OF NECESSITY REVIEW PANEL REPORT**

The Condemnation Review Panel (Panel) conducted an online Webex meeting on December 18, 2025. The Panel members included Jean-Marie Hunter, Panel Chair, Department HQ's Division of Right of Way and Land Surveys; Scott Fridell, Department's San Diego Legal Division; Tina Lucas, Department HQ's Division of Design; and Mark Zgombic, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property Owners at the meeting were Owners Fernando Kellenberger, Annette Changala, and attorney Jack M. Rubin from Newmeyer & Dillion, LLP.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Department's Chief Engineer. The four criteria are as follows:

### **The public interest and necessity require the proposed project.**

The Department developed a PR dated November 30, 2009, and a supplemental PR dated May 8, 2020, for the project which proposes improvements to a segment of SR 74 (Ortega Highway) in the City to relieve traffic congestion, improve safety, and support long-term regional mobility. This portion of Ortega Highway currently narrows from four lanes to two, creating a traffic bottleneck that causes delays and affects emergency response and commuter reliability.

To address these issues, the project will widen the highway, upgrade intersections, and improve pedestrian and bicycle access. The reconstruction of infrastructure such as retaining walls, sidewalks, and sound walls is also included to meet current and minimum design and safety standards, where feasible.

These improvements are necessary to ensure the safe and efficient movement of people and vehicles and are consistent with adopted transportation and land use plans. The project benefits the traveling public and the broader community by addressing current deficiencies and preparing for future growth. The project will incorporate Complete Streets features for pedestrians and bicyclists and reduce congestion within the project limits.

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

A PSR was approved in 1997, and initial public engagement began in 2000. Due to public feedback, the Department prepared an EIR, which assessed no build, and two build alternatives. After a 45-day public review, the EIR was approved in 2009 and was addended in 2010. Build alternative 2 includes widening the north side of the highway while replacing the meandering sidewalk, and has been selected as the preferred alternative. Following the CEQA Certification, both the City and the Hunt Club filed a joint lawsuit in Orange County Superior Court challenging the EIR. On July 14, 2011, the City, the Hunt Club, and the Department reached a settlement. The lawsuit shall not prevent or restrain the Department from implementing the project as described in the certified EIR, as long as: (a) the Department's implementation of the project is in all respects consistent with the 2009 certified EIR and the 2010 Addendum; (b) the project implements all of the mitigation measures described in the certified EIR; and (c) the Department complies with and implements the terms, conditions, requirements, and restrictions of the settlement. A public hearing was then held in 2019, which the public provided comments on noise attenuation, sidewalks, visual impacts, and traffic signal needs. Pursuant to the settlement, an EA/FONSI in compliance with NEPA was prepared in May 2020, which was circulated to the public for 45 days prior to being signed, confirming the project would not result in significant environmental impacts.

The proposed project has been carefully planned to serve the greatest public good by addressing long-standing traffic congestion on SR 74, improving roadway safety, reducing delays, and enhancing multimodal access for pedestrians and cyclists. These improvements directly benefit local residents, regional commuters, emergency services, and the traveling public by creating a more reliable and efficient transportation corridor. To minimize project impacts on surrounding properties, the design retains the existing road alignment where feasible, incorporates retaining walls to reduce grading, while at the same time includes features such as sidewalks, 5-foot bike lanes where feasible, and upgraded traffic signals to enhance community connectivity and safety.

By focusing on improvements within the existing corridor and selecting design solutions that reduce property impacts, the project reflects a clear intent to promote the public good while imposing the least possible burden on adjacent landowners.

**The property rights to be condemned are necessary for the proposed project.**

The subject property is located in the city of San Juan Capistrano at 30702 Shadetree Lane, adjacent to SR 74. This irregular shaped lot consists of 99,687 SF and is improved with a 2-story single-family residence. The southern property boundary abuts SR 74, and access to the site is provided at the west perimeter of property by Shadetree Lane. The property has level topography at street grade with rolling and steep downward slopes near the southern perimeter of the property towards SR 74. The project requires 1,712 SF in fee from the Owners' property including abutter's rights of access to and from the adjacent highway. The fee acquisition area is needed to construct the roadway widening, construct a retaining wall, install a bioswale, and

provide a bike lane. The project also requires a 3,888 SF TCE, which is adjacent to and north of the fee acquisition area, and is necessary to allow the contractor a sufficient work area and access to construct the roadway widening, retaining wall, bioswale, and bike lane. Upon completion of the work, minor grading within the TCE will take place for restoration purposes so the area can be returned to similar to the original condition with smoothing out of the slope to eliminate dips and peaks. The proposed project improvements cannot be constructed without acquiring a portion of the Owners' property.

**An offer to purchase in accordance with Government Code Section 7267.2 has been made to the owners of record.**

A staff appraisal that established just compensation was approved by District 12 Right of Way management on May 30, 2025. On July 3, 2025, the Agent met with the property Owners and their attorney and presented the FWO of just compensation.

The following is a description of the primary concerns and/or objections expressed by the Owners' attorney, followed by the Department's response:

**Owner Contends:**

They have had direct access to SR 74 from their property for years and therefore believe this access should be accommodated (and perpetuated), after the project is built, and inquired whether they will continue to have access to and from SR 74 after the proposed retaining wall is built along their property.

**Department's Response:**

Although the Owners have been physically accessing their property directly from SR 74, this access is not permitted nor legal. As of August 29, 1979, per Parcel Map PMB 137 / 40-22, all vehicular access rights have been released and relinquished from the subject property to SR 74. Thus, the Department has full access control in this area, thereby restricting abutting property Owners from entering or exiting onto SR 74. Despite shifting the proposed right of way north due to the highway widening, the Department will still maintain full access control. Therefore, access to and from the highway will continue to not be legally permitted, nor will it be physically possible due to the proposed retaining wall that is being built as part of the project. However, the subject property will continue to have access to SR 74 from Shadetree Lane.

**Owner Contends:**

Is there an expectation that noise levels will increase at the location of subject property after the proposed project is built, and why does the south side SR 74 get a soundwall (noise barrier) and the north side of SR 74 adjacent to the subject property only gets a retaining wall?

**Department's Response:**

According to the project's latest Noise Study Report (2018), the noise levels may increase in the area of the subject property from 57.8 dBA to 61.5 dBA, which is still below the 67 dBA impact threshold level warranting noise mitigation via a soundwall. This same 2018 noise study

confirmed that a sound wall is needed for south of SR 74. The properties located south of SR 74 are closer to the highway and the subject property located on the north side of SR 74 is farther up on the hill (away from the highway) so the noise levels will be reduced prior to the sound reaching the residence.

**Owner Contends:**

What if there is slope failure during construction?

**Department's Response:**

Slope failure during construction is not anticipated. Excavations will be addressed during construction and are the responsibility of the State's highway contractor as part of the contractor's means and methods. Excavation activities will be performed in accordance with applicable OSHA and Department requirements, with the most restrictive provisions governing. Department construction inspectors will be available during construction to observe and monitor excavation activities.

**Owner Contends:**

There could be potential issues with the retaining wall design and requested analysis on potential impacts on the property in the before and after condition, studies, and anything that can be done to reduce impact.

**Department's Response:**

Potential issues with the retaining wall design are not anticipated. Retaining walls are designed in accordance with AASHTO-LRFD Bridge Design Specifications with California Amendments and applicable Department geotechnical design modules. Retaining wall foundations are evaluated for bearing resistance, anticipated settlements, and overall slope stability under permanent (post-construction) conditions. Construction-phase considerations will be addressed separately as part of the Department's contractor's means and methods. Absent the proposed retaining wall, right-of-way requirements of 63,305 SF or roughly 1.45 acres would have been needed for a permanent slope easement to construct a 3:1 slope on the subject property, as opposed to building the retaining wall. Therefore, the proposed retaining wall design results in a 61,593 SF, or roughly 1.41 acre reduction in permanent right of way needed to construct the project.

**Owner Contends:**

It was stated that the Foundation Report dated April 2025 identified some issues that will need to be monitored. What are the recommendations on the creep issues mentioned in the report and is there a plan in place to deal with that?

**Department's Response:**

The project in the manner proposed does not anticipate any potential "creep" issues. The term "creep" referenced in the April 2025 Foundation Report applies specifically to the proposed vertical ground anchors associated with the retaining wall foundations. Measurements of any

creep movement and compliance will be performed in accordance with the Department's Standard Specifications {Sections 46-2.01D(2)(b)(ii) (Test Procedures) and 46-3.01D(3)(b)(ii) (Acceptance Criteria)}, as well as the projects special provisions for extended creep testing, to verify that the proposed retaining wall meets the specified creep performance requirements. Monitoring for creep will be performed in a manner intended to preserve the stability and integrity of the existing slope.

**DOCUMENTS REQUESTED:**

The following is a list of documents pertaining to the project and/or subject property that were requested by the Owners' attorney, and provided by the Department.

- Project Plans (including draft plan sheets for Utilities, Construction Staging, and Traffic Handling plans)
- Geotechnical and Geological Studies, and Geotechnical Design and Materials Report dated July 9, 2007
- Noise Study Report dated December 2018, including Chapter 9 references
- Draft renderings of the proposed retaining wall
- Parcel Map PMB 137 / 40-22, dated August 29, 1979.
- 2018 Highway Design Manual
- April 2025 Foundation Report
- Section 14-8.02 Noise Control from 2025 Standard Specifications
- Section 14-11.04 Dust Control from 2025 Standard Specifications
- Section 46-2.01D(2)(b)(ii) (Test Procedures) from 2025 Standard Specifications
- Section 46-3.01D(3)(b)(ii) (Acceptance Criteria) from 2025 Standard Specifications

**DEPARTMENT CONTACTS**

The following is a summary of contacts made with the property Owners:

Type of Contact	Number of Contacts
Mailing of information	4
Emails/Texts	34/0
Telephone	6
In Person / Virtual Meetings	2/1

## **STATUTORY OFFER TO PURCHASE**

The Department has appraised the subject property and offered the full amount of the appraisal to the Owners of record as required by Government Code Section 7267.2. The property Owners have been notified that issues related to compensation are outside the purview of the Commission.

## PANEL RECOMMENDATION

The Panel concludes that the Department's project complies with Section 1245.230 of the Code of Civil Procedure in that:

- 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 least private injury.
- The property rights to be condemned are necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

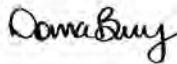
The Panel recommends submitting this Resolution of Necessity to the Commission.



---

KAREN BASRA  
Chief (Acting), Office of Project Delivery  
HQ Division of Right of Way and Land Surveys  
Panel Chair

I concur with the Panel's recommendation:



---

DONNA BERRY  
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW  
MEETING ON DECEMBER 18, 2025**







Jean-Marie Humber, HQ's Division of Right of Way and Land Surveys, Panel Chair  
Scott Fridell, San Diego Legal Division, Panel Member  
Tina Lucas, HQ's Division of Design, Panel Member  
Mark Zgombic, HQ's Division of Right of Way and Land Surveys, Panel Secretary

Matthew Cugini, Deputy District Director Project Delivery, District 12  
Adnan Maiah, Deputy District Director & Single Focal Point, Strategic Portfolio Management,  
District 12  
Joey Lee, Branch Chief, District 12 Design  
Niloufar Chitgar, Project Engineer, District 12 Design  
Quan Trinh, Project Engineer, District 12 Design  
Andrew Chough, Office Chief, District 12 Construction  
Rizwan Tanvir, Project Delivery Chief of Staff / Assistant Chief Engineer  
Jennifer Pham, Office Chief, Office of Right of Way and Right of Way Engineering, District 12  
Evangelina Washington, Senior Right of Way Agent, District 12 Right of Way  
Alicia Ng, Associate Right of Way Agent, District 12 Right of Way

Fernando Kellenberger, Property Owner  
Annette Changala, Property Owner  
Jack M. Rubin, Newmeyer & Dillion LLP, Attorney for the Property Owner

# Exhibit C1

# Kellenberger Parcel 104335 Acquisitions

- Project Location 
- Kellenberger Parcel 
- TCE 
- FEE 
- Exist. State R/W Line (Access Controlled) 
- Proposed State R/W Line (Access Controlled) 

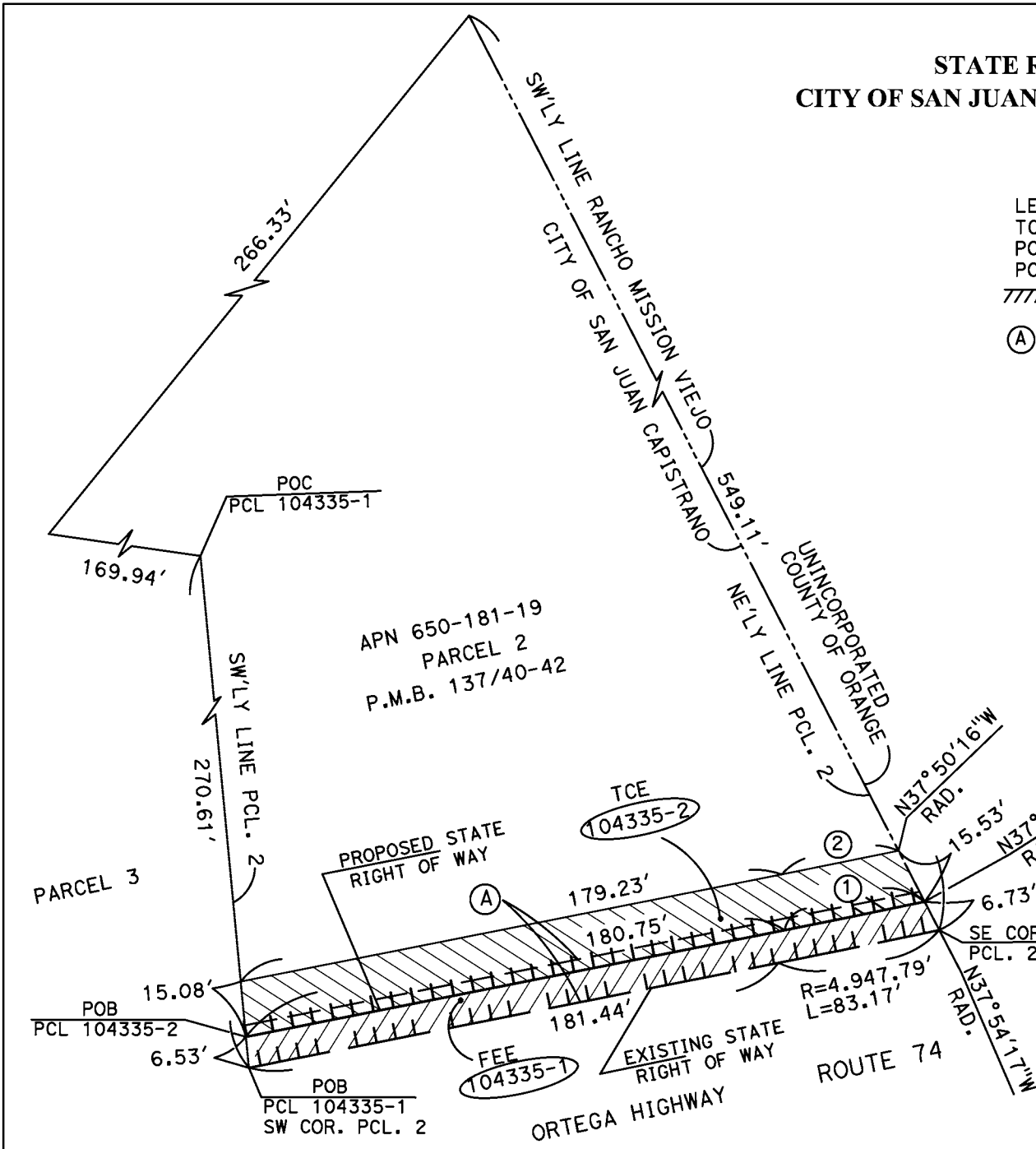
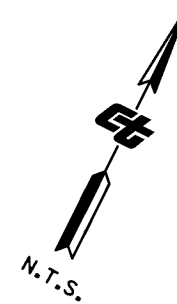


**STATE ROUTE 74 - ORTEGA HIGHWAY  
CITY OF SAN JUAN CAPISTRANO - COUNTY OF ORANGE**

**LEGEND:**

- TCE TEMPORARY CONSTRUCTION EASEMENT
- POC POINT OF COMMENCEMENT
- POB POINT OF BEGINNING
- ////// ACCESS PROHIBITED

Ⓐ SLOPE EASEMENT TO THE CITY OF SAN JUAN CAPISTRANO PER P.M.B. 137/40-42



- ① R=4,941.29'  
L=81.34'
- ② R=4,926.29'  
L=77.05'

STATE OF CALIFORNIA  
CALIFORNIA STATE TRANSPORTATION AGENCY  
DEPARTMENT OF TRANSPORTATION  
**RIGHT OF WAY  
RESOLUTION OF NECESSITY  
EXHIBIT "B"**  
Parcels 104335-1 and 104335-2

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET	PM	SHEET NO.	TOTAL SHEETS
12	ORA	74	1.9		1	1

# Exhibit C2

1 **TRANSPORTATION COMMISSION**  
2 **RESOLUTION NO.**

3 **C-22636**

4 CALIFORNIA TRANSPORTATION COMMISSION  
5 RESOLUTION OF NECESSITY  
6 TO ACQUIRE CERTAIN REAL PROPERTY  
7 OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN  
8 HIGHWAY 12-Ora-74-PM 1.9 PARCEL 104335-1, 2

9 OWNER: Fernando Kellenberger and Annette Changala, as Trustees, or any successor  
10 Trustee, under that certain Declaration of Trust named Fernando Kellenberger and Annette  
11 Changala Living Trust, created by Fernando Kellenberger and Annette Changala, as  
12 Trutors, dated June 16, 2016

13 Resolved by the California Transportation Commission after notice (and hearing)  
14 pursuant to Code of Civil Procedure Section 1245.235 that it finds and determines and  
15 hereby declares that:

16 The hereinafter described real property is necessary for State Highway purposes  
17 and is to be acquired by eminent domain pursuant to Streets and Highways Code Section  
18 102; and Code of Civil Procedure Section 1240.510 in that the property being acquired is  
19 for a compatible use; and Code of Civil Procedure Section 1240.610 in that the property is  
20 required for a more necessary public use;

21 The public interest and necessity require the proposed public project, namely a State  
22 highway;

23 The proposed project is planned and 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 and described by this resolution is necessary for  
the public project;

The offer required by Section 7267.2 of the Government Code has been made to the

**APPROVED AS TO FORM AND PROCEDURE**

**APPROVAL RECOMMENDED**

\_\_\_\_\_  
**Attorney, Department of Transportation**

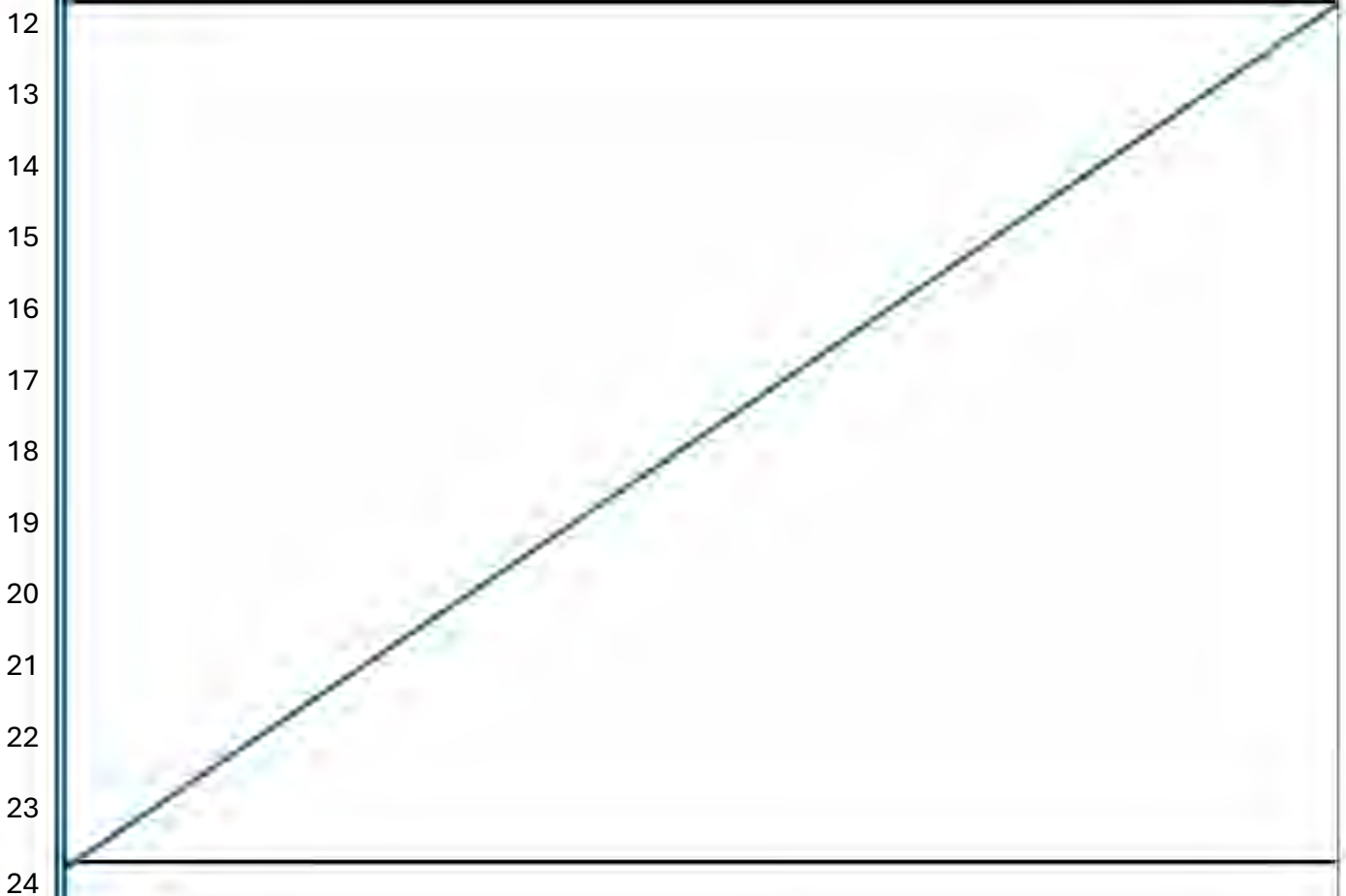
\_\_\_\_\_  
**DIVISION OF RIGHT OF WAY**

1 owner or owners of record; and be it further

2 RESOLVED by this Commission that the Department of Transportation be and said  
3 Department is hereby authorized and empowered;

4 To acquire, in the name of the People of the State of California, in fee simple  
5 absolute, unless a lesser estate is hereinafter expressly described, the said hereinafter  
6 described real property, or interests in real property, by condemnation proceeding or  
7 proceedings in accordance with the provisions of the Streets and Highways Code, Code of  
8 Civil Procedure and of the Constitution of California relating to eminent domain;

9 The real property or interests in real property, which the Department of  
10 Transportation is by this resolution authorized to acquire, is situated in the County of  
11 Orange, State of California, Highway 12-Ora-74 and described as follows:



**Exhibit "A"**  
**Legal Description**

**PARCEL 104335-1: FEE**

For State highway purposes, that portion Parcel 2 of a Parcel Map, in the City of San Juan Capistrano, County of Orange, State of California as shown on a map filed in Book 137, Pages 40 through 42, inclusive, of Parcel Maps, in the office of the County Recorder of said County described as follows:

**Commencing** at the Northwesterly terminus of that certain course on the southwesterly line of said Parcel 2, shown on said parcel map as having a bearing of "North 31°09'07" West and a length of 270.54 feet", the bearing of said course being North 31°08'28" West for the purpose of this description, thence along the southwesterly line of said Parcel 2, South 31°08'28" West 270.61 feet to the southwest corner of said Parcel 2 and the **Point of Beginning**, said Point of Beginning being on and the northwesterly right-of-way of Ortega Highway shown on Sheet 12 of Record of Survey No. 2006-1029, recorded in Book 216, pages 8 through 33, inclusive, of Record of Surveys, records of said Orange County, thence along the southeasterly line of said Parcel 2 and the northwesterly right-of-way of Ortega Highway, North 53°03'30 East 181.44 feet to the beginning of a curve concave northwesterly and having a radius of 4,947.79 feet; thence northeasterly 83.17 feet along said curve through a central angle of 00°57'47" to the southeast corner of said Parcel 2; thence leaving said southeasterly line and along the northeasterly line of said Parcel 2, North 52°57'24' West 6.73 feet to the beginning of a non-tangent curve concave northwesterly and having a radius of 4,941.29 feet; a radial line to said curve bears South 37°53'05" East; thence southwesterly 81.34 feet along said curve through a central angle of 00°56'35"; thence South 53°03'30" West 180.75 feet to the southwesterly line of said Parcel 2, said point being distant North 31°08'28: West 6.53 feet from the southwest corner of said Parcel 2; thence along said southwesterly line, South 31°08'28" East 6.53 feet to the **Point of Beginning**.

Lands abutting the highway shall have no right or easement of access thereto.

Unless otherwise noted, all bearing and distances are in terms of the California Coordinate System of 1983, Zone 6, based on the North American Datum of 1983 Epoch 1991.35 (O.C.S. GPS Adjustment). All distances are grid distances, divide distances by 0.99995716 to obtain ground distances.

**PARCEL 104335-2: Temporary Construction Easement**

An easement for temporary construction purposes in, on, over, and across that portion Parcel 2 of a Parcel Map, in the City of San Juan Capistrano, County of Orange, State of California as shown on a map filed in Book 137, Pages 40 through 42, inclusive, of Parcel Maps, in the office of the County Recorder of said County described as follows:

**Commencing** the southwest corner of said Parcel 2; thence along the southwesterly line of said Parcel 2, North 31°08'28" West 6.53 feet to the **Point of Beginning**; thence leaving said southwesterly line, North 53°03'30" East 180.75 feet to the beginning of a curve concave northwesterly and having a radius of 4,941.29 feet; thence northeasterly 81.34 feet along said curve through a central angle of 00°56'35" to the northeasterly line of said Parcel 2, thence along said northeasterly line, North 52°57'24" West 15.53 feet to the beginning of a non-tangent curve concave northwesterly and having a radius of 4,926.29 feet; a radial line to said curve bears South 37°50'16" East; thence southwesterly 77.05 feet along said curve through a central angle of 00°53'46"; thence South 53°03'30" West 179.23 feet to the southwesterly line of said Parcel 2, said point being distant North 31°08'28" West 21.61 feet from the southwest corner of said Parcel 2; thence along said southwesterly line, South 31°08'28" East 15.08 feet to the **Point of Beginning**.

Rights to the above described temporary easement shall cease and terminate on March 6, 2030. The rights may also be terminated prior to the above date by STATE upon notice to OWNER.

Unless otherwise noted, all bearing and distances are in terms of the California Coordinate System of 1983, Zone 6, based on the North American Datum of 1983 Epoch 1991.35 (O.C.S. GPS Adjustment). All distances are grid distances, divide distances by 0.99995716 to obtain ground distances.

# Exhibit C3



Newmeyer & Dillion LLP  
895 Dove Street  
Second Floor  
Newport Beach, CA 92660  
(949) 854-7000

September 26, 2025

Charles S. Krolikowski  
Charles.Krolikowski@ndlf.com

**VIA OVERNIGHT MAIL**



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

Re: Request to Appear and Object to Resolution of Necessity  
Project#1200000051, Parcel(s) 104334-1,-2, 104335-1, -2  
EA 086929, 12-Ora-74-PM 1.8, 12-Ora-74-PM 1.9

To Whom It May Concern:

This office represents Fernando Kellenberger, Annette Changala, Fernando A. Kellenberger, and Diego Kellenberger, as individuals and trustees under that certain Declaration of Trust named Fernando Kellenberger and Annette Changala Living Trust, dated June 16, 2016 (collectively "Owners"), owners of the real property and improvements located in the City of San Juan Capistrano, California, Parcel Numbers 104334-1, 2 and 104335-1, -2 ("Properties").

Please be advised that our office plans on appearing and objecting to the California Transportation Commission's October 16/17, 2025, hearing(s) to adopt Resolution(s) of Necessity ("Resolution") related to the Properties. The Owners object to the Resolution pursuant to Code of Civil Procedure sections 1245.210, et seq., including those specific requirements/elements set forth in Section 1245.230.

Further, the Owners intend to submit additional information related to their objections either before, or at the time of the Resolution hearing. Should you have any questions and/or require further information, please contact the undersigned.

Very truly yours,

Charles S. Krolikowski  
CSK:cag

# Attachment D

## PARCEL PANEL REPORT

<u>Property Owner:</u>	Margaret Bratton Brutocao and Roberto Giovanni Brutocao, husband and wife as joint tenants
<u>Parcel Location:</u>	28122 Ascot Lane, in the city of San Juan Capistrano APNs: 650-331-15, -16
<u>Present Use:</u>	Single-Family Residential
<u>Zoning:</u>	Single-Family-40,000 District
<u>Area of Property:</u>	48,631 SF
<u>Area Required:</u>	Parcel 104337-1: 260 SF - Fee Parcel 104337-2: 687 SF - TCE Parcel 104337-3: 50 SF - TCE

## PARCEL DESCRIPTION

The subject property is located in the city of San Juan Capistrano at 28122 Ascot Lane, adjacent to SR 74. Identified as APNs 650-331-15, -16, this irregular shaped lot consists of 48,631 SF and is improved with a 2-story single-family residence, situated at the northeast corner of SR 74 and Hunt Club Drive. The property has a paved private driveway and miscellaneous residential landscaping within a private residential community (The Hunt Club Community Association). In addition to the residential building and its exterior landscape improvements, along the subject property's southern and western perimeter are portions of an equestrian trail, landscaped sloped areas, an island median, a guardhouse/gate arm, an entrance monument brick and rock wall, a small area of landscape with grass and shrubs, and portions of private streets such as Ascot Lane and Hunt Club Drive (driveway entrance/exit gate).

## NEED FOR THE SUBJECT PROPERTY

The project requires 260 square feet in fee from the Owner's property for the footprint and installation of a traffic signal pole at the intersection of SR 74 and Hunt Club Drive. The project requires a 687 SF TCE to reconstruct the driveway entrance to match and align the proposed curb and gutter roadway improvement along the SR 74 frontage. The project also requires a 50 SF TCE, which will be used as an additional work area to facilitate the installation of the proposed traffic signal and reconstruction of the curb and gutter, curb ramp, and sidewalk area. The proposed project improvements cannot be constructed without acquiring a portion of the Owner's property.

## **RESOLUTION OF NECESSITY REVIEW PANEL REPORT**

The Condemnation Review Panel (Panel) conducted an online Webex meeting on December 18, 2025. The Panel members included Jean-Marie Hunter, Panel Chair, Department HQ's Division of Right of Way and Land Surveys; Scott Fridell, Department's San Diego Legal Division; Pyo Hong, Department HQ's Division of Design; and Mark Zgombic, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property Owners at the meeting was attorney Jack M. Rubin from Newmeyer & Dillion, LLP.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Department's Chief Engineer. The four criteria are as follows:

### **The public interest and necessity require the proposed project.**

The Department developed a PR dated November 30, 2009, and a supplemental PR dated May 8, 2020, for the project which proposes improvements to a segment of SR 74 (Ortega Highway) in the City to relieve traffic congestion, improve safety, and support long-term regional mobility. This portion of Ortega Highway currently narrows from four lanes to two, creating a traffic bottleneck that causes delays and affects emergency response and commuter reliability.

To address these issues, the project will widen the highway, upgrade intersections, and improve pedestrian and bicycle access. The reconstruction of infrastructure such as retaining walls, sidewalks, and sound walls is also included to meet current and minimum design and safety standards, where feasible.

These improvements are necessary to ensure the safe and efficient movement of people and vehicles and are consistent with adopted transportation and land use plans. The project benefits the traveling public and the broader community by addressing current deficiencies and preparing for future growth. The project will incorporate Complete Streets features for pedestrians and bicyclists and reduce congestion within the project limits.

### **The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.**

A PSR was approved in 1997, and initial public engagement began in 2000. Due to public feedback, the Department prepared an EIR, which assessed no build, and two build alternatives. After a 45-day public review, the EIR was approved in 2009 and was addended in 2010. Build alternative 2 includes widening the north side of the highway while replacing the meandering sidewalk, and has been selected as the preferred alternative. Following the CEQA Certification, both the City and the Hunt Club filed a joint lawsuit in Orange County Superior Court challenging the EIR. On July 14, 2011, the City, the Hunt Club, and the Department reached a settlement. The lawsuit shall not prevent or restrain the Department from implementing the project as described in the certified EIR, as long as: (a) the Department's implementation of the project is in

all respects consistent with the 2009 certified EIR and the 2010 Addendum; (b) the project implements all of the mitigation measures described in the certified EIR; and (c) the Department complies with and implements the terms, conditions, requirements, and restrictions of the settlement. A public hearing was then held in 2019, which the public provided comments on noise attenuation, sidewalks, visual impacts, and traffic signal needs. Pursuant to the settlement, an EA/FONSI in compliance with NEPA was prepared in May 2020, which was circulated to the public for 45 days prior to being signed, confirming the project would not result in significant environmental impacts.

The proposed project has been carefully planned to serve the greatest public good by addressing long-standing traffic congestion on SR 74, improving roadway safety, reducing delays, and enhancing multimodal access for pedestrians and cyclists. These improvements directly benefit local residents, regional commuters, emergency services, and the traveling public by creating a more reliable and efficient transportation corridor. To minimize project impacts on surrounding properties, the design retains the existing road alignment where feasible, incorporates retaining walls to reduce grading, while at the same time includes features such as sidewalks, 5-foot bike lanes where feasible, and upgraded traffic signals to enhance community connectivity and safety.

By focusing on improvements within the existing corridor and selecting design solutions that reduce property impacts, the project reflects a clear intent to promote the public good while imposing the least possible burden on adjacent landowners.

**The property rights to be condemned are necessary for the proposed project.**

The subject property is located in the city of San Juan Capistrano at 28122 Ascot Lane, at the northeast corner of SR 74 and Hunt Club Drive. The property consists of 48,631 SF and is improved with a 2-story single-family residence. The partial acquisition areas are within the Hunt Club Community Association's areas designated as "Community Facilities," more specifically the irrigated landscaping (lawns, shrubs/bushes, ground cover/plants, irrigation system), brick pavers, outdoor flood lights, and portions of the sidewalk and curb ramps. The project requires 260 SF in fee from the Owner's property for the footprint and installation of a traffic signal pole at the intersection of SR 74 and Hunt Club Drive. The project requires a 687 SF TCE to reconstruct the driveway entrance to match and align the proposed curb and gutter roadway improvement along the SR 74 frontage. The project also requires a 50 sf TCE, which will be used as an additional work area to facilitate the installation of the proposed traffic signal and reconstruction of the curb and gutter, curb ramp, and sidewalk area. The proposed project improvements cannot be constructed without acquiring a portion of the Owners' property.

**An offer to purchase in accordance with Government Code Section 7267.2 has been made to the owners of record.**

A staff appraisal that established just compensation was approved by District 12 Right of Way management on February 26, 2025. At the request of the property Owners, the FWO of just

compensation was sent via email on March 27, 2025 and courtesy hardcopy via certified mail.

The following is a description of the primary concerns and/or objections expressed by the Owners' attorney, followed by the Department's response:

**Owner Contends:**

Were noise receptors placed on the street? Or at the subject property location as indicated in the Noise Study Report?

**Department's Response:**

A physical noise receptor was not placed on the subject property. A noise receptor (R-114) was modeled in the Traffic Noise Model (TNM) to represent a location within the backyard of the subject property for the purposes of the noise study. This modeled location represents an exterior area of frequent human use that would benefit from a reduced noise level. As no physical measurements were taken at the subject property, its noise level was predicted, and the receptor was classified as a non-measurement location. The 2018 Noise Study Report (Chapters 5 through 7) describes the evaluation of predicted exterior traffic noise levels at this receptor and at other land uses associated with the proposed project. The analysis follows the Department's Traffic Noise Analysis Protocol (April 2020) and the Technical Noise Supplement to the Traffic Noise Analysis Protocol (TeNS, September 2013).

**Owner Contends:**

On which days of the week and at what times of day was the noise study conducted? Did the Noise Study Report account for weekend public use?

**Department's Response:**

Field investigation for the noise study was conducted on June 26 and 27, 2018 (Tuesday and Wednesday) at varying times of day ranging from 9:00 AM on (June 26) and 11:00 AM on (June 27). Due to project limits, weekend field investigations were not conducted. Department standard field investigations are conducted on weekdays when traffic volumes are higher and free-flow conditions are present, generally just before or after peak commuting periods. The TeNS (Technical Noise Supplement) was used as a reference in completing the noise study.

**Owner Contends:**

What will be the height of the soundwalls located on the south side of SR 74 and what type of materials will be used in the soundwalls to absorb noise?

**Department's Response:**

The soundwalls on the south side of State Route 74 will have a maximum height of 16 feet consisting of approximately 10 to 11 feet of cinder block wall with 4 to 5 feet of translucent sound-attenuating panels. The Noise Study Report and Noise Abatement Decision Report indicated that subject property location is currently at 60.5 dBA and in the after condition projected to be 63.9 dBA. The pre and post construction noise levels at the subject property

location do not reach the 67 dBA threshold required to implement noise mitigation under the Noise Barrier Protocol.

**Owner Contends:**

Could you clarify why reflective noise was not evaluated in the Noise Study Report, and indicate which guidelines or regulations support this approach?

**Department's Response:**

Reflective noise resulting from multiple barrier (parallel barrier) conditions were evaluated as part of the Noise Study Report. However, at the subject property, parallel barrier conditions do not exist and therefore do not apply. With respect to reflective noise from a single barrier, the Federal Highway Administration's Traffic Noise Model (FHWA-TNM) does not currently have the capability to calculate or analyze reflected noise under a single-barrier condition. In accordance with the Department's Traffic Noise Protocol, the Department is required to use FHWA-TNM to conduct traffic noise analyses and predictions.

**Owner Contends:**

There will be increased noise in the after condition (after the project is built) especially the reflective noise. Why wasn't a soundwall installed on the north side of SR 74 adjacent to the subject property?

**Department's Response:**

Noise Study Reports prepared in 2008 and 2018 confirm the need for soundwalls only on the south side of SR 74. The residential noise threshold for soundwall consideration is 67 dBA. The subject property does not meet the threshold to qualify for a soundwall. The Noise Study Report and Noise Abatement Decision Report indicated that subject property location is currently at 60.5 dBA and is projected to be 63.9 dBA after the project is built.

**DOCUMENTS REQUESTED:**

The following is a list of documents pertaining to the project and/or subject property that were requested by the Owner's attorney, and provided by the Department.

Project Plans (including draft plan sheets for Utilities, Construction Staging, and Traffic Handling plans)

Noise Study Report dated December 2018, including Chapter 9 references

Noise Abatement Decision Report (April 2019)

Final Technical Noise Impact Analysis Report Addendum July 2008

Caltrans Traffic Noise Analysis Protocol (April 2020)

Technical Noise Supplement to the Traffic Noise Analysis Protocol (TeNS, September 2013)

2018 Highway Design Manual

Section 14-8.02 Noise Control from 2025 Standard Specifications

Section 14-11.04 Dust Control from 2025 Standard Specifications

**DEPARTMENT CONTACTS**

The following is a summary of contacts made with the property Owner:

<b>Type of Contact</b>	<b>Number of Contacts</b>
Mailing of information	6
Emails/Texts	51/0
Telephone	9
In Person / Virtual Meetings	2/2

**STATUTORY OFFER TO PURCHASE**

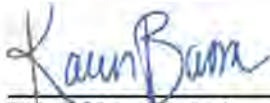
The Department has appraised the subject property and offered the full amount of the appraisal to the Owner of record as required by Government Code Section 7267.2. The property Owner has been notified that issues related to compensation are outside the purview of the Commission.

## PANEL RECOMMENDATION

The Panel concludes that the Department's project complies with Section 1245.230 of the Code of Civil Procedure in that:

- 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 least private injury.
- The property rights to be condemned are necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

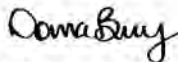
The Panel recommends submitting this Resolution of Necessity to the Commission.



---

KAREN BASRA  
Chief (Acting), Office of Project Delivery  
HQ Division of Right of Way and Land Surveys  
Panel Chair

I concur with the Panel's recommendation:



---

DONNA BERRY  
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW  
MEETING ON DECEMBER 18, 2025**

Jean-Marie Humber, HQ's Division of Right of Way and Land Surveys, Panel Chair  
Scott Fridell, San Diego Legal Division, Panel Member  
Pyo Hong, HQ's Division of Design, Panel Member  
Mark Zgombic, HQ's Division of Right of Way and Land Surveys, Panel Secretary

Matthew Cugini, Deputy District Director Project Delivery, District 12  
Adnan Maiah, Deputy District Director & Single Focal Point, Strategic Portfolio Management,  
District 12

Joey Lee, Branch Chief, District 12 Design

Niloufar Chitgar, Project Engineer, District 12 Design

Quan Trinh, Project Engineer, District 12 Design

Andrew Chough, Office Chief, District 12 Construction

Rizwan Tanvir, Project Delivery Chief of Staff / Assistant Chief Engineer

Jennifer Pham, Office Chief, Office of Right of Way and Right of Way Engineering, District 12

Evangelina Washington, Senior Right of Way Agent, District 12 Right of Way

Lilli Peterson, Associate Right of Way Agent, District 12 Right of Way

Jack M. Rubin, Newmeyer & Dillion LLP, Attorney for the Property Owner

# Exhibit D1

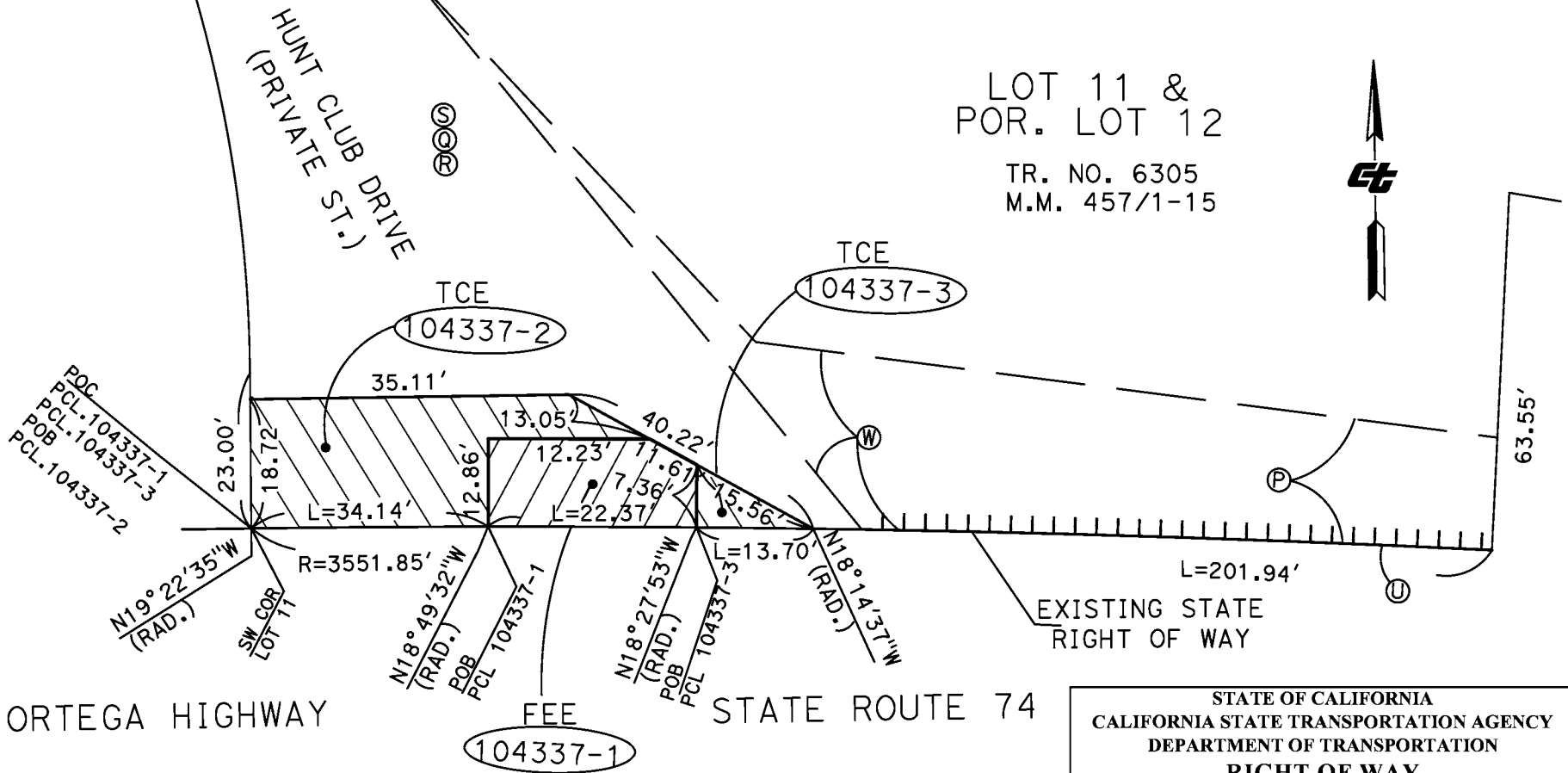
# Brutocao Parcel 104337 Acquisitions

- Project Location
- Brutocao Parcel
- TCE
- FEE
- Exist. State R/W Line (Access Controlled)



**STATE ROUTE 74 - ORTEGA HIGHWAY  
CITY OF SAN JUAN CAPISTRANO - COUNTY OF ORANGE**

LOT 11 &  
POR. LOT 12  
TR. NO. 6305  
M.M. 457/1-15



ORTEGA HIGHWAY

STATE ROUTE 74

- LEGEND:**
- TCE TEMPORARY CONSTRUCTION EASEMENT
  - POC POINT OF COMMENCEMENT
  - POB POINT OF BEGINNING
  - ////// EXISTING STATE RIGHT OF WAY
  - ACCESS PROHIBITED
  - PROPOSED STATE RIGHT OF WAY
  - ACCESS PROHIBITED

EASEMENT NOTES:  
SEE SHEET 2

STATE OF CALIFORNIA  
CALIFORNIA STATE TRANSPORTATION AGENCY  
DEPARTMENT OF TRANSPORTATION  
**RIGHT OF WAY  
RESOLUTION OF NECESSITY**  
**EXHIBIT "B"**  
Parcels 104337-1, 104337-2 & 104337-3

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
12	ORA	74	1.3	1	2

# Exhibit D2

1 **TRANSPORTATION COMMISSION**  
2 **RESOLUTION NO.**

3 **C-22637**

4 CALIFORNIA TRANSPORTATION COMMISSION  
5 RESOLUTION OF NECESSITY  
6 TO ACQUIRE CERTAIN REAL PROPERTY  
7 OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN  
8 HIGHWAY 12-Ora-74-PM 1.3 PARCEL 104337-1, 2, 3  
9 OWNER: Margaret Bratton Brutocao and Roberto Giovanni Brutocao, husband and wife as  
10 joint tenants

11 Resolved by the California Transportation Commission after notice (and hearing)  
12 pursuant to Code of Civil Procedure Section 1245.235 that it finds and determines and  
13 hereby declares that:

14 The hereinafter described real property is necessary for State Highway purposes  
15 and is to be acquired by eminent domain pursuant to Streets and Highways Code Section  
16 102; and Code of Civil Procedure Section 1240.510 in that the property being acquired is  
17 for a compatible use; and Code of Civil Procedure Section 1240.610 in that the property is  
18 required for a more necessary public use;

19 The public interest and necessity require the proposed public project, namely a State  
20 highway;

21 The proposed project is planned and located in the manner that will be most  
22 compatible with the greatest public good and the least private injury;

23 The property sought to be acquired and described by this resolution is necessary for  
24 the public project;

The offer required by Section 7267.2 of the Government Code has been made to the

**APPROVED AS TO FORM AND PROCEDURE**

**APPROVAL RECOMMENDED**

\_\_\_\_\_  
**Attorney, Department of Transportation**

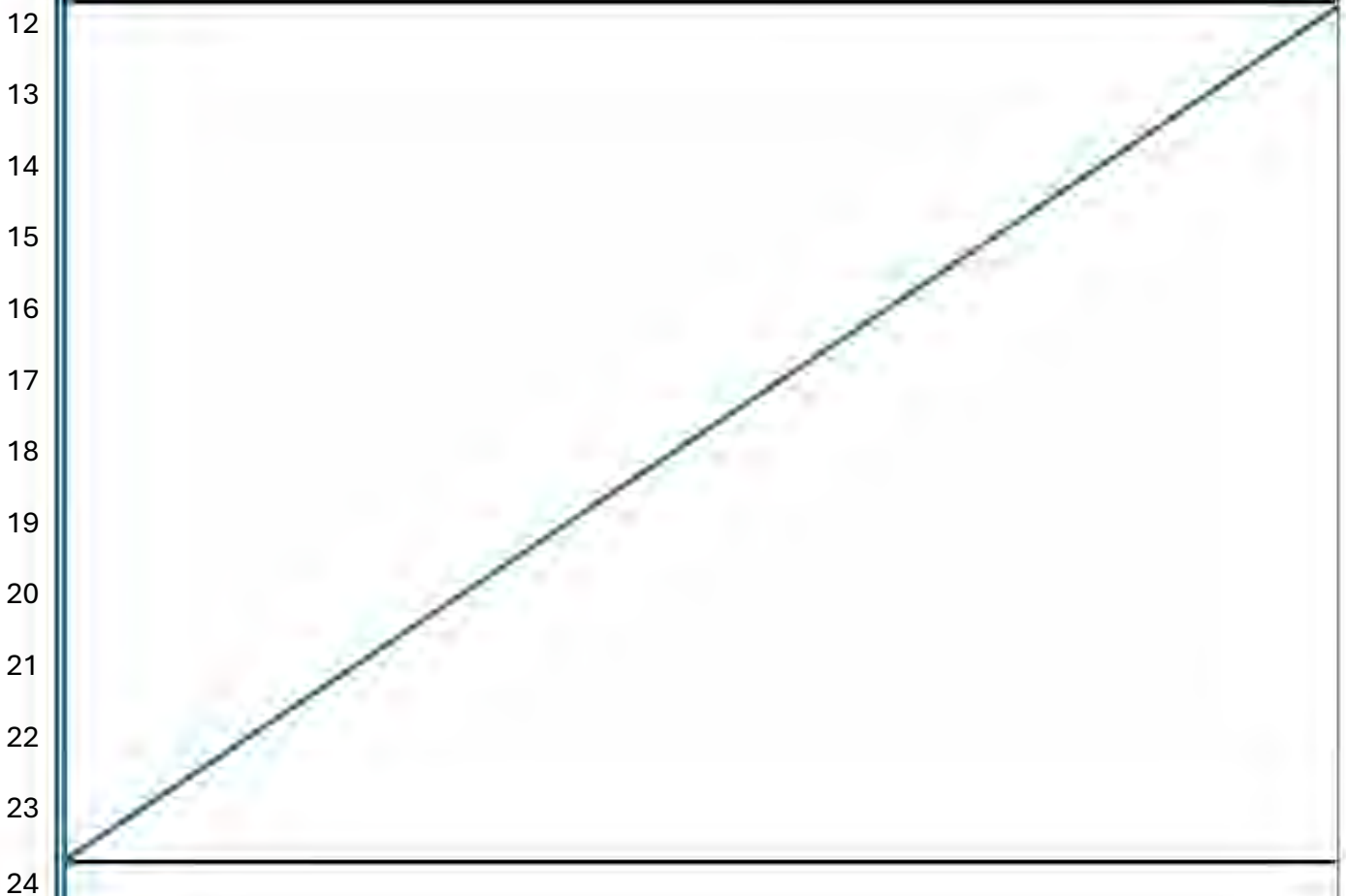
\_\_\_\_\_  
**DIVISION OF RIGHT OF WAY**

1 owner or owners of record; and be it further

2 RESOLVED by this Commission that the Department of Transportation be and said  
3 Department is hereby authorized and empowered;

4 To acquire, in the name of the People of the State of California, in fee simple  
5 absolute, unless a lesser estate is hereinafter expressly described, the said hereinafter  
6 described real property, or interests in real property, by condemnation proceeding or  
7 proceedings in accordance with the provisions of the Streets and Highways Code, Code of  
8 Civil Procedure and of the Constitution of California relating to eminent domain;

9 The real property or interests in real property, which the Department of  
10 Transportation is by this resolution authorized to acquire, is situated in the County of  
11 Orange, State of California, Highway 12-Ora-74 and described as follows:



**Exhibit "A"**  
**Legal Description**

**PARCEL 104337-1: FEE**

For State highway purposes, that portion of Lot 11 of Tract No. 6305, in the City of San Juan Capistrano, County of Orange, State of California as shown on a map recorded in Book 457, Pages 1 through 15, inclusive of Miscellaneous Maps, in the office of the County Recorder of said County described as follows:

**Commencing** at Southwest corner of said Lot 11 shown on said map as being the southeasterly terminus of a line having a bearing of North 20°13'18" West and a length of 23.00 feet, the bearing of said course being North 19°22'35" West for the purpose of this description, said Southwest corner being on the northerly right-of-way of Ortega Highway and the southerly line of said Lot 11 as shown on Sheet 9 of Record of Survey 2006-1029, filed in Book 216, pages 8 through 33 inclusive of Records of Surveys, in the office of the County Recorder of said County, said point also being a non-tangent curve concave southerly and having a radius of 3,551.85 feet; a radial line to said curve bears North 19°22'35" West; thence easterly 34.14 feet along the northerly right-of-way of Ortega Highway and southerly line of said Lot 11 through a central angle of 0°33'03" to the **Point of Beginning**: a radial line to said Point of Beginning bears North 18°49'32" West; thence continuing easterly 22.37 feet along said curve and northerly line of said Ortega Highway through a central angle of 0°21'39"; thence leaving said northerly line; North 18°27'52" West 7.36 feet; thence North 80° 08'13" West 11.61 feet; thence South 71°10'28" West 12.23 feet; thence South 18°49'32" East 12.86 feet to the **Point of Beginning**.

Unless otherwise noted, all bearings and distances are in terms of the California Coordinate System of 1983, Zone 6, based on the North American Datum of 1983 Epoch 1991.35 (O.C.S. GPS Adjustment). All distances are grid distances, divide grid distances by 0.99995716 to obtain ground distances.

**PARCEL 104337-2:** Temporary Construction Easement

An easement for temporary construction purposes in, on, over, and across that portion of Lot 11 of Tract No. 6305, in the City of San Juan Capistrano, County of Orange, State of California as shown on a map recorded in Book 457, Pages 1 through 15, inclusive of Miscellaneous Maps, in the office of the County Recorder of said County described as follows:

**Beginning** at Southwest corner of said Lot 11 shown on said map as being the southeasterly terminus of a line having a bearing of North 20°13'18" West and a length of 23.00 feet, the bearing of said course being North 19°22'35" West for the purpose of this description, said Southwest corner being on the northerly right-of-way of Ortega Highway and the southerly line of said Lot 11 as shown on Sheet 9 of Record of Survey 2006-1029, filed in Book 216, pages 8 through 33 inclusive of Records of Surveys, in the office of the County Recorder of said County, said point also being a non-tangent curve concave southerly and having a radius of 3,551.85 feet; a radial line to said curve bears North 19°22'35" West; thence easterly 34.14 feet along the northerly right-of-way of Ortega Highway and southerly line of said Lot 11 through a central angle of 0°33'03"; thence leaving said southerly line, North 18°49'32" West 12.86 feet; thence North 71°10'28" East 12.23 feet; thence North 80°08'13" West 13.05 feet; thence South 70°14'41" West 35.11 feet; thence South 19°22'35" East 18.72 feet to the **Point of Beginning**.

Rights to the above described temporary easement shall cease and terminate on March 6, 2030. The rights may also be terminated prior to the above date by STATE upon notice to OWNER.

Unless otherwise noted, all bearing and distances are in terms of the California Coordinate System of 1983, Zone 6, based on the North American Datum of 1983 Epoch 1991.35 (O.C.S. GPS Adjustment). All distances are grid distances, divide distances by 0.99995716 to obtain ground distances.

### **PARCEL 104337-3: Temporary Construction Easement**

An easement for temporary construction purposes in, on, over, and across that portion of Lot 11 of Tract No. 6305, in the City of San Juan Capistrano, County of Orange, State of California as shown on a map recorded in Book 457, Pages 1 through 15, inclusive of Miscellaneous Maps, in the office of the County Recorder of said County described as follows

**Commencing** at Southwest corner of said Lot 11 shown on said map as being the southeasterly terminus of a line having a bearing of North 20°13'18" West and a length of 23.00 feet, the bearing of said course being North 19°22'35" West for the purpose of this description, said Southwest corner being on the northerly right-of-way of Ortega Highway and the southerly line of said Lot 11 as shown on Sheet 9 of Record of Survey 2006-1029, filed in Book 216, pages 8 through 33 inclusive of Records of Surveys, in the office of the County Recorder of said County, said point also being a

non-tangent curve concave southerly and having a radius of 3,551.85 feet; a radial line to said curve bears North 19°22'35 West; thence easterly 56.51 feet along the northerly right-of-way of Ortega Highway and southerly line of said Lot 11 through a central angle of 0°54'42" to the **Point of Beginning**: a radial line to said curve and Point of Beginning bears North 18°27'53" West; thence leaving said southerly line, North 18°27'52" West 7.36 feet; thence South 80°08'13" East 15.56 feet to the northerly right-of-way of Ortega Highway and the southerly line of said Lot 11, said point being on a non-tangent curve concave southerly and having a radius of 3,551.85 feet; a radial line to said curve bears North 18°14'37" West; thence westerly 13.70 feet along the northerly right-of-way of Ortega Highway and southerly line of said Lot 11 through a central angle of 0°13'16" to the **Point of Beginning**.

Rights to the above described temporary easement shall cease and terminate on March 6, 2030. The rights may also be terminated prior to the above date by STATE upon notice to OWNER.

Unless otherwise noted, all bearing and distances are in terms of the California Coordinate System of 1983, Zone 6, based on the North American Datum of 1983 Epoch 1991.35 (O.C.S. GPS Adjustment). All distances are grid distances, divide distances by 0.99995716 to obtain ground distances.

# Exhibit D3



Newmeyer & Dillion LLP  
895 Dove Street  
Second Floor  
Newport Beach, CA 92660  
(949) 854-7000

September 26, 2025

Charles S. Krolikowski  
Charles.Krolikowski@ndlf.com

**VIA OVERNIGHT MAIL**

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



Re: Request to Appear and Object to Resolution of Necessity  
Project#1200000051, Parcel 104337-1, -2, -3  
EA 086929, 12-Ora-74-PM 1.3

To Whom It May Concern:

This office represents Margaret Bratton Brutocao and Robert Giovanni Brutocao (collectively "Owners"), owners of the real property and improvements located in the City of San Juan Capistrano, California, Parcel Numbers 104337-1, -2, -3 ("Properties").

Please be advised that our office plans on appearing and objecting to the California Transportation Commission's October 16/17, 2025, hearing(s) to adopt Resolution(s) of Necessity ("Resolution") related to the Properties. The Owners object to the Resolution pursuant to Code of Civil Procedure sections 1245.210, et seq., including those specific requirements/elements set forth in Section 1245.230.

Further, the Owners intend to submit additional information related to their objections either before, or at the time of the Resolution hearing. Should you have any questions and/or require further information, please contact the undersigned.

Very truly yours,

Charles S. Krolikowski

CSK:cag