



Board Report

File #: 2016-0908, **File Type:** Policy

Agenda Number: 47.

**REGULAR BOARD MEETING
DECEMBER 1, 2016**

SUBJECT: METRO BLUE LINE PEDESTRIAN SWING GATES PROJECT

ACTION: ADOPT RESOLUTION OF NECESSITY TO ACQUIRE A FEE INTEREST IN A PORTION OF THE PROPERTY LOCATED AT 1657 NADEAU STREET (APN 6021-018-020)

RECOMMENDATION

CONSIDER:

- A. HOLDING a public hearing on the proposed Resolution of Necessity; and
- B. ADOPTING a **Resolution of Necessity authorizing the commencement of an eminent domain action to acquire a Fee Interest to 91 square feet of the private property located at 1657 Nadeau Street, Los Angeles (APN 6021-018-020).** This acquisition is for the Metro Blue Line Pedestrian Swing Gates Project.

(REQUIRES TWO-THIRDS VOTE)

BACKGROUND

Acquisition of a portion of Parcel No. 6021-018-020 (Property - See Attachment A) is required for the construction of the Metro Blue Line Pedestrian Swing Gate Project (Project). A written offer was presented to the owner of record, Fox Holdings, LLC (Owner) as is required by California Government Code Section 7267.2. To date, staff has been unable to reach an agreement with the Owner due to an unrelated legal case pending against the Owner. The property interest is necessary for construction of the Project; therefore, staff recommends the acquisition through eminent domain to maintain the Project schedule.

In accordance with the provisions of the California Eminent Domain Law and Sections 30503, 13022.5, and 132610 of the Public Utilities Code (which authorize the public acquisition of private property by eminent domain) the Los Angeles Metropolitan Transportation Authority (Metro) has prepared and mailed a notice of this hearing to the Owner informing him of his right to appear at this hearing and be heard on the following issues: (1) whether the public interest and necessity require the Project; (2) whether the Project is planned or located in the manner that will be most compatible with the greatest good and the least private injury; (3) whether the Property is necessary for the project; (4) whether either the offer required by Section 7267.2 of the Government Code has been made to the Owner, or the offer has not been made because the Owner cannot be located with reasonable diligence; and (5) that any environmental review of the Project, as may be necessary, pursuant to the

California Environmental Quality Act (CEQA), has occurred.

Attached is the staff report setting forth the required findings for acquiring the Property through the use of eminent domain (Attachment B). After receiving all of the testimony and other evidence from all interested parties, the Metro Board must make a determination as to whether to adopt the proposed Resolution of Necessity (Attachment C) to acquire the Property by eminent domain. In order to adopt the Resolution, the Metro Board must find and determine, based upon all the evidence before it and by a two-thirds vote of all the members of its governing body, that the conditions stated above exist.

DETERMINATION OF SAFETY IMPACT

This Board action will not have an impact on Metro's safety standards.

FINANCIAL IMPACT

The funding for the acquisition of the Property is included in the Board-approved FY 17 budget under Proposition C 25% cash and Proposition C 25% bond for the Metro Blue Pedestrian Swing Gate Project in Cost Center 211005, and Account Number 8510 (Acquisition of Land).

Impact to Budget

The source of the funds for this action is from Props C 25% Cash and/or Bonds funds. These funds are eligible to be used for transit capital improvement to the existing right-of-way. No other sources of funds were considered for this project. This action will not impact on-going operating expenses.

NEXT STEPS

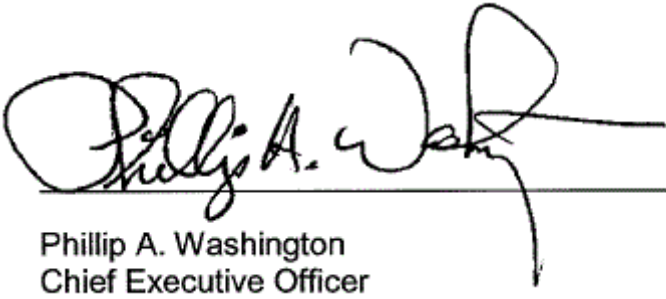
If this action is approved by the Board, Metro's condemnation counsel will be instructed to take all steps necessary to commence legal proceedings in a court of competent jurisdiction to acquire the Property interest by eminent domain. Counsel will also be directed to seek and obtain an Order of Prejudgment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

ATTACHMENTS

Attachment A - Property Information
Attachment B - Staff Report
Attachment C - Resolution of Necessity

Prepared by: Carol A. Chiodo, Director of Real Property Management & Development, (213) 922-2404
Cal Hollis, SEO, Countywide Planning & Development, (213) 922-7319

Reviewed by: Therese W. McMillan, Chief Planning Officer, (213) 922-7077



Phillip A. Washington
Chief Executive Officer

EXHIBIT "A"

LEGAL DESCRIPTIONS
NADEAU STREET/GRAHAM AVENUE

PARCEL NDE NW PVT:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 13 WEST, SAN BERNARDINO MERIDIAN ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED TERRITORY OF COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF NADEAU STREET, SAID POINT BEING IN THE SOUTHWEST CORNER OF SOUTHERN PACIFIC RAIL ROAD COMPANY RIGHT-OF-WAY (FORMERLY UNION PACIFIC RAIL ROAD), AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 152, PAGES 14 TO 26, INCLUSIVE OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID NORTHERLY LINE, N89°35'17"W 10.08 FEET; THENCE LEAVING SAID NORTHERLY LINE, N00°01'55"E 9.09 FEET; THENCE S89°35'17"E 9.01 FEET; THENCE S38°31'57"E 1.71 FEET TO THE WESTERLY LINE OF SAID SOUTHERN PACIFIC RAIL ROAD COMPANY; THENCE ALONG SAID WESTERLY LINE, S00°02'52"E 7.76 FEET TO THE POINT OF BEGINNING.

CONTAINS: 91 SQUARE FEET, MORE OR LESS.

NOTE:

THIS LEGAL DESCRIPTION WAS NOT PREPARED FOR ANY PURPOSE THAT WOULD BE IN VIOLATION OF THE STATE OF CALIFORNIA SUBDIVISION MAP ACT OR LOCAL ORDINANCES OF THE GOVERNING BODY HAVING JURISDICTION.

PREPARED BY:

Stephanie A. Wagner
STEPHANIE A. WAGNER, P.L.S.: 5752

June 12, 2015
DATE:



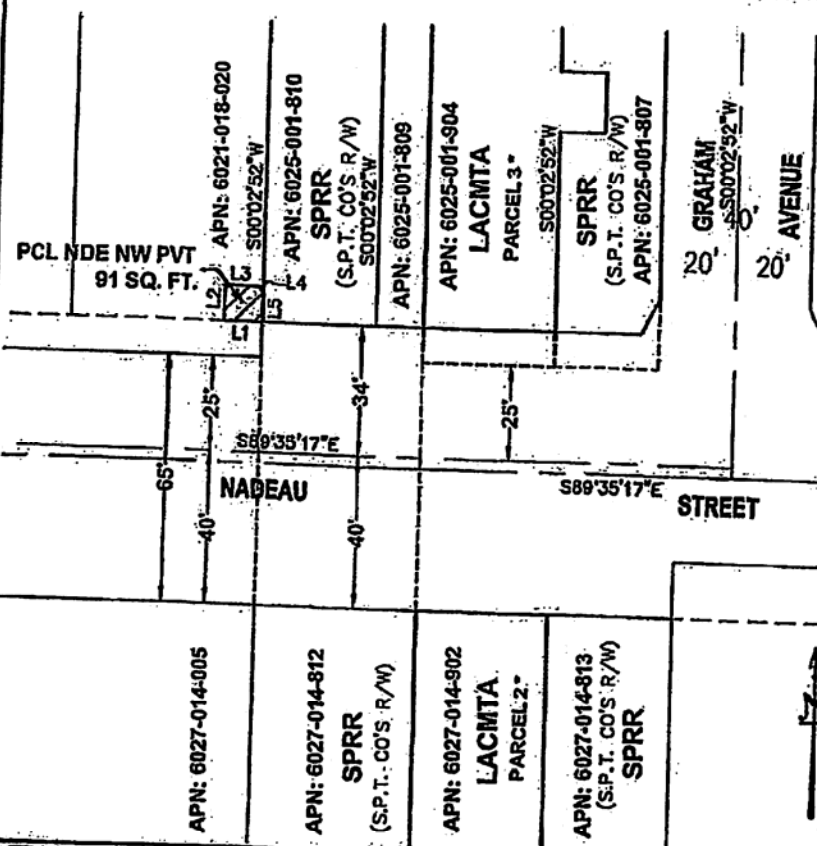
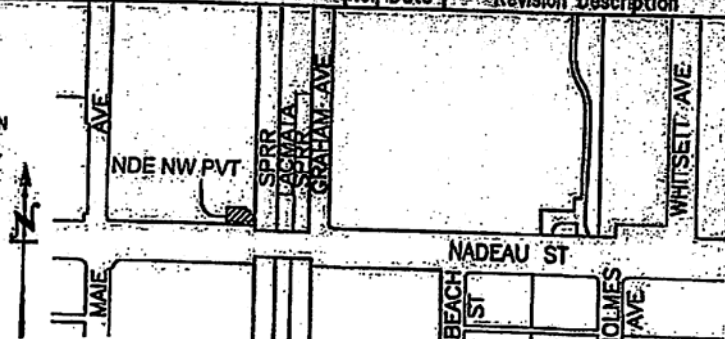
EXHIBIT "B"

Grantor: FOX HOLDING, LLC
 Description: POR NE 1/4 OF SEC 28, T2S, R13W, S.B.M. IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF LOS ANGELES

THE BASIS OF BEARINGS IS PER CCS, ZONE 5, NAD 83 (EPOCH 2010), AS DETERMINED LOCALLY BY NGS STATIONS DY1716 AND DY9286.

Assessor's Ref: 6021-018-020 ROW Ref: No. Date Revision Description

* - RECORD OF SURVEY, R.S. 152/14-28.
LEGEND:
 LACMTA - LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
 SPRR - SOUTHERN PACIFIC RAILROAD COMPANY S.P.T.CO. - SOUTHERN PACIFIC TRANSPORTATION COMPANY (PREDECESSOR TO UPRR)
 PCL - PARCEL
 NW - NORTHWEST
 POB - POINT OF BEGINNING



LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°35'17"W	10.08'
L2	N00°01'55"E	9.08'
L3	S89°35'17"E	9.01'
L4	S39°31'57"E	1.71'
L5	S00°02'52"W	7.76'



M Metro
 APPROVED BY: PROJECT MANAGER
 PREPARED BY: STEPHANIE WAGNER
 DATE: 06/12/2015
 CHECKED BY: Stephanie Wagner
 LS: 5752

METRO BLUE LINE PEDESTRIAN GATE INSTALLATION
 NADEAU STREET / GRAHAM AVENUE
 UNINCORPORATED TERRITORY OF THE COUNTY OF LOS ANGELES

DATE: 06/12/2015
 SCALE: 1" = 50'
 REV. No. DATE:
 REV. No. DATE:
 PARCEL No. NDE NW PVT

ATTACHMENT B

STAFF REPORT REGARDING THE NECESSITY FOR THE ACQUISITION OF A PORTION OF 1657 NADEAU STREET, LOS ANGELES FOR THE METRO BLUE LINE PEDESTRIAN SWING GATE PROJECT

BACKGROUND

Fee simple interest in a portion of private property located at 1657 Nadeau Street, Los Angeles (“Property”) required for the construction and operation of the Metro Blue Line Pedestrian Swing Gate Project (“Project”). The address, record owner, physical description, and nature of the property interest to be acquired for the Project are summarized as follows:

Assessor’s Parcel Number	Parcel Address	Property Owner	Purpose of Acquisition	Property Interest(s) Sought	Metro Parcel Number
6021-018-020	A 91 sq. ft. portion of 1657 Nadeau Street, Los Angeles	Fox Holdings, LLC	Metro Blue Line Pedestrian Swing Gate Project	Fee Simple	Nadeau-NW

A written offer for the Property was presented to the Owner and, due to the fact that the Owner is currently involved in an unrelated lawsuit, staff has been unable to reach an agreement with the owner of the property. The Owner has not accepted the offer made by the Los Angeles County Metropolitan Transportation Authority (“Metro”); consequently, a negotiated agreement has not been reached.

A. The public interest and necessity require the Project.

The public interest and necessity require the Project for the following specific reasons:

1. The population and employment densities in the Blue Line Transit Corridor (“Corridor”) are extremely high and very transit-dependent and are much higher than Los Angeles County as a whole. The Corridor has a high concentration of low-income, minority, transit-dependent residents. More than 49 percent of all Corridor households are designated as low income. In addition, 16 percent of all Corridor households do not have access to an automobile, compared to 8 percent in the County’s urbanized area. Forecasts show a growing transit-dependent population, with a projected 55 percent increase in Corridor residents that rely on, or will rely on the area’s transit system.
2. Implementation of the Project will result in a reduction in motor and personal accidents and loss of lives. The Project will provide significant safety for low-income, elderly and transit-dependent persons living in the Corridor area.
3. It is recommended that based on the above evidence, the Board find and determine

that the public interest and necessity require the Project.

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

On May 14, 2015, a Draft Initial Study/ Mitigated Negative Declaration (“IS/MND”) was circulated and reviewed by interested and concerned parties, including private citizens, community groups, the business community, elected officials and public agencies. This pedestrian gate is located at the northwest corner of Nadeau Street and Union Pacific Railroad (“UPRR”) Right of Way. The area surrounding the proposed pedestrian gate is composed primarily of commercial and single family residential land uses. The nearest residential land use is approximately 100 feet from the center of the proposed construction activity. The dominant noise source at this location is the traffic traveling on Nadeau Street and the light rail and freight trains traveling on the nearby tracks. The Corridor has some of the highest population and employment density in the Southern California region, as well as the highest proportion of transit ridership. No significant expansion of existing freeway and street networks is planned to accommodate this growth. This project addresses the need of the local residents, as expressed in community meetings.

The Property under consideration as part of this Resolution will cause the least private injury and will not cause displacement or relocation of owners and users of private property. Moreover, no other alternative locations for the Project provide greater public good with less private injury. Therefore, the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

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

C. The Property is Necessary for the Project.

The Property consists of a 91 square foot portion of 1657 Nadeau Street and is located at the northwest corner of Nadeau Street and the UPRR Right of Way. The area surrounding the proposed pedestrian gate is composed primarily of commercial and single-family residential land uses. The installation of the pedestrian safety gates increase pedestrian safety with the addition of pedestrian-oriented crossing arms, bells and flashing lights that are activated along with the grade crossing warning systems. The barriers create queuing zones separated from the track areas and also reduce jaywalking.

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

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

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

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

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

1. Obtained an appraisal to determine the fair market value of the Property, which included consideration of any immovable fixtures and equipment as appropriate;
2. Reviewed and approved the appraisal, and established the amount it believes to be just compensation;
3. Determined the owner(s) of the Property by examining the county assessor's record and the title report;
4. Made a written offer to the Owner for the full amount of just compensation - which was not less than the approved appraised value; and
5. Provided the Owner with a written statement of, and summary of the basis for, the amount established as just compensation with respect to the foregoing offer.

E. CEQA/NEPA Compliance

The environmental impacts of the Project were evaluated in IS/MND. The IS/MND was circulated and reviewed by interested and concerned parties, including private citizens, community groups, the business community, elected officials and public agencies. All public comments received were addressed; and were incorporated in the final IS/MND document pursuant to and in compliance with California Environmental Quality Act ("CEQA") Guidelines. No substantive comments on content or significant environmental issues related to the proposed project were raised, and the CEQA process concluded May 2015 with no comment or challenges. The project is exempt from the National Environmental Policy Act ("NEPA") pursuant to (CFR) 771.118(c). The final IS/MND document served as documentation to support the exemption from NEPA in anticipation of the Federal Transit Administration's ("FTA") consideration of a Federal TIGER grant to help fund the project. FTA found that the Project is exempt under 23 Code of the Federal Regulations 771.118 (c) (5).

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

made to the owner(s) of record.

CONCLUSION

Staff recommends that the Board approve the Resolution of Necessity.

ATTACHMENT C

**RESOLUTION OF THE
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
DECLARING CERTAIN REAL PROPERTY NECESSARY FOR PUBLIC PURPOSES
AND AUTHORIZING THE ACQUISITION THEREOF
PORTION OF 1657 NADEAU STREET, L.A**

THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY HEREBY FINDS, DETERMINES, AND RESOLVES AS FOLLOWS:

Section 1.

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

Section 2.

The property interest described hereinafter is to be taken for public use, namely, for public transportation purposes and all uses necessary, incidental or convenient thereto, and for all public purposes pursuant to the authority conferred upon the Board to acquire property by eminent domain by California Public Utilities Code Sections 30000-33027, inclusive, and particularly Section 30503 and 30600, Sections 130000-132650, inclusive, and particularly Sections 130051.13, 130220.5, and 132610, Code of Civil Procedure Sections 1230.010-1273.050, inclusive, and particularly Sections 1240.510 and 1240.610, and Article I, Section 19 of the California Constitution.

Section 3.

The property interest to be acquired consists of the fee simple interest as designated below, and as described more specifically in the exhibits attached hereto (hereinafter, the "Property"), all of which are incorporated herein by this reference:

METRO Parcel Number	Assessor's Parcel Number	Parcel Address	Property Owner	Purpose of Acquisition	Property Interest(s) Sought - See Exhibit:
Nadeau Street-NW	6021-018-020	Portion of 1657 Nadeau Street., Los Angeles, CA 90001	Fox Holdings, LLC.	Metro Blue Line Pedestrian Swing Gates Project	Fee Simple as shown of Exhibit A & B

METRO's acquisition of the above property interests is subject to the following limitation:

Construction of temporary or permanent improvements will not adversely impact the normal operations of surface traffic, or performance of utilities in the Project area. During construction, reasonable access to businesses and residences will be maintained at all times

Section 4.

(a) The acquisition of the above-described Property is necessary for the development, construction, operation, and maintenance of the Metro Track Improvement and Safety Enhancement Project ("Project");

(b) The environmental impacts of the Project were evaluated in the Final Environmental Impact Statement/Final Environmental Impact Report (FEIS/FEIR) Initial Study/ Mitigated Negative Declaration.

Section 5.

The Board hereby declares that it has found and determined each of the following:

(a) The public interest and necessity require the proposed Project;

(b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;

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

(d) The offer required by Section 7267.2 of the Government Code has been made to the owner(s) of record.

(6) Environmental review of the Project consistent with the California Environmental Quality Act (CEQA) has occurred.

Section 6.

Pursuant to Sections 1240.510 and 1240.610 of the Code of Civil Procedure, to the extent that the Property is already devoted to a public use, the use to which the Property is to be put is a more necessary public use than the use to which the Property is already devoted, or, in the alternative, is a compatible public use which will not unreasonably interfere with or impair the continuance of the public use to which the Property is already devoted.

Section 7.

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

Section 8.

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

Counsel is also authorized to reduce or modify the extent of the interests or property to be acquired so as to reduce the compensation payable in the action where such change would not substantially impair the construction and operation for the project for which the real property is being acquired.

Counsel is further authorized to compromise and settle such eminent domain proceedings, if such settlement can be reached, and in that event, to take all necessary action to complete the acquisition, including stipulations as to judgment and other matters, and causing all payments to be made. Counsel is further authorized to associate with, at its election, a private law firm for the preparation and prosecution of said proceedings.

I, MICHELLE JACKSON, Secretary of the Los Angeles County Metropolitan Transportation Authority, do hereby certify that the foregoing Resolution was duly and regularly adopted by a vote of two-thirds of all the members of the Board of the Metropolitan Transportation Authority at a meeting held on the 1st day of December, 2016.

MICHELLE JACKSON
METRO Secretary

Date: _____

ATTACHMENTS

1 - Exhibit "1" – Parcel Legal & Plat

EXHIBIT "A"

**LEGAL DESCRIPTIONS
NADEAU STREET/GRAHAM AVENUE**

PARCEL NDE NW PVT:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 13 WEST, SAN BERNARDINO MERIDIAN ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE UNINCORPORATED TERRITORY OF COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF NADEAU STREET, SAID POINT BEING IN THE SOUTHWEST CORNER OF SOUTHERN PACIFIC RAIL ROAD COMPANY RIGHT-OF-WAY (FORMERLY UNION PACIFIC RAIL ROAD), AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 152, PAGES 14 TO 26, INCLUSIVE OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID NORTHERLY LINE, N89°35'17"W 10.08 FEET; THENCE LEAVING SAID NORTHERLY LINE, N00°01'55"E 9.09 FEET; THENCE S89°35'17"E 9.01 FEET; THENCE S38°31'57"E 1.71 FEET TO THE WESTERLY LINE OF SAID SOUTHERN PACIFIC RAIL ROAD COMPANY; THENCE ALONG SAID WESTERLY LINE, S00°02'52"E 7.76 FEET TO THE POINT OF BEGINNING.

CONTAINS: 91 SQUARE FEET, MORE OR LESS.

NOTE:

THIS LEGAL DESCRIPTION WAS NOT PREPARED FOR ANY PURPOSE THAT WOULD BE IN VIOLATION OF THE STATE OF CALIFORNIA SUBDIVISION MAP ACT OR LOCAL ORDINANCES OF THE GOVERNING BODY HAVING JURISDICTION.

PREPARED BY:

Stephanie A. Wagner
STEPHANIE A. WAGNER, P.L.S. 5752

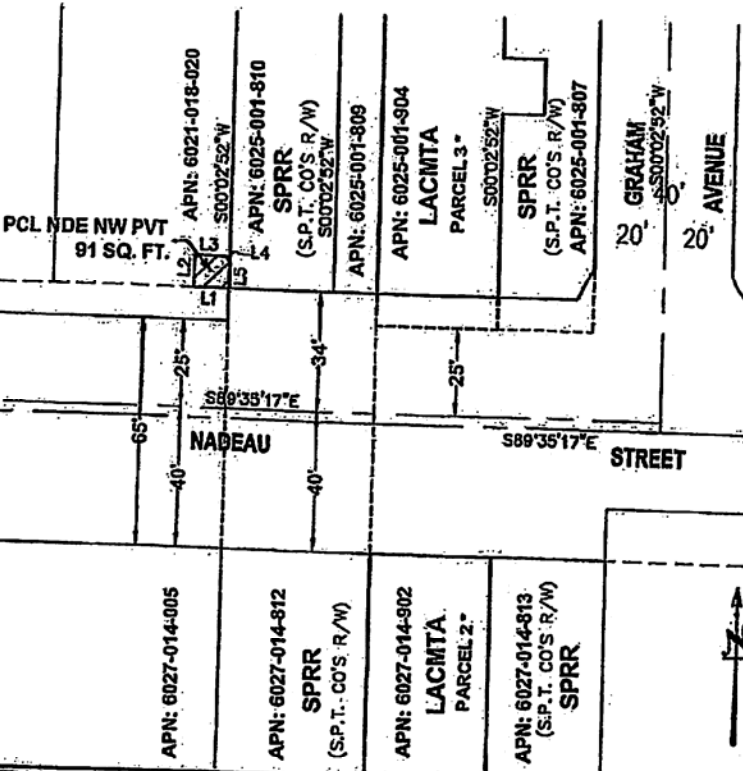
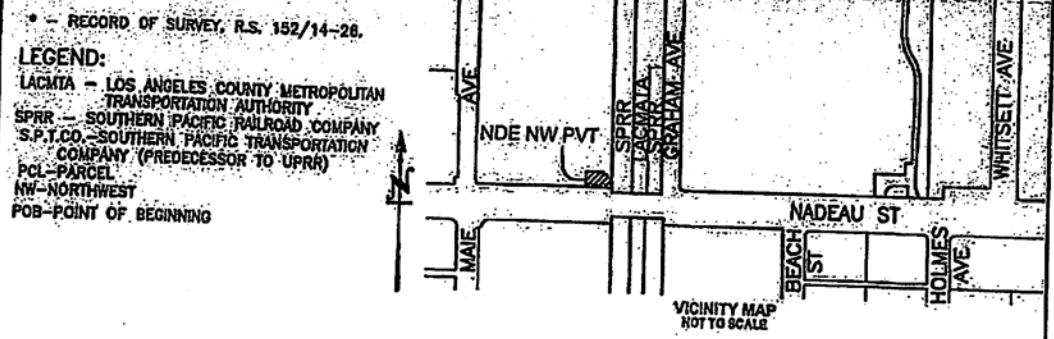
June 12, 2015
DATE:



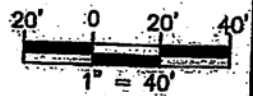
EXHIBIT "B"

Grantor: **FOX HOLDING, LLC**
 Description: **POR NE 1/4 OF SEC 28, T2S, R13W, S.B.M. IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF LOS ANGELES**
 THE BASIS OF BEARINGS IS PER CCS, ZONE 6, NAD 83 (EPOCH 2010), AS DETERMINED LOCALLY BY NGS STATIONS DY1716 AND DY9296.

Assessor's Ref: **6021-018-020** | ROW Ref: | No. | Date | Revision | Description



LINE	BEARING	LENGTH
L1	N89°35'17"W	10.09'
L2	N00°01'55"E	9.09'
L3	S89°35'17"E	8.01'
L4	S38°31'57"E	1.71'
L5	S00°02'52"W	7.76'



Metro
 APPROVED BY: _____
 PROJECT MANAGER
 PREPARED BY: *Stephanie Wagner* DATE: _____
 CHECKED BY: _____
 L.S.: 6752

METRO BLUE LINE PEDESTRIAN GATE INSTALLATION
 NADEAU STREET / GRAHAM AVENUE
 UNINCORPORATED TERRITORY OF THE COUNTY OF LOS ANGELES
 DATE: **06/12/2015**
 SCALE: **1" = 50'**
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 PARCEL No. **NDE NW PVT**