

MEMORANDUM

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: March 25, 2020

From: STEVEN KECK, Chief Financial Officer

Reference Number: 2.4a.(3), Action Item

Prepared By: Mark Phelan, Chief (Acting)
Division of Right of Way and Land Surveys

Subject: **RESOLUTION OF NECESSITY – APPEARANCE**

ISSUE:

Should the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-21843, for the parcel 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 Resolution and have requested an appearance before the Commission. The primary concerns and objections expressed by the property owners through their attorney is that the proposed project is not planned or located in the manner that will be most compatible with the greatest public good with the least private injury, and that a valid offer has not been made pursuant to Government Code Section 7267.2. The property owners' objections and the Department's responses are contained in Attachment B.

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*

RECOMMENDATION:

The Department recommends the Commission adopt Resolution C-21843 summarized on the following page. This Resolution is for a transportation project on State Route 1 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 this Resolution 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 the Resolution at the Commission's March 25-26, 2020 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 owner 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 this appearance proceed to the March 25-26, 2020 Commission meeting. Legal possession will allow the construction activities on the parcel 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 property.

C-21843 - Mark H. Balan and Kamala Balan as Trustees of the Balan Family Trust U/D/T
Dated November 3, 1988

12-Ora-1-PM 9.4 - Parcel 103763-1 - EA 0M9909.

Right of Way Certification Date: 03/27/20; Ready To List Date: 03/27/20. Conventional highway - Replace Box Culvert (Bridge). Authorizes condemnation of a temporary easement for construction purposes. Located in the city of Laguna Beach at 120 South Coast Highway. Assessor's Parcel Number 641-255-12.

Attachments:

Attachment A - Project Information

Exhibit A - Project Maps

Attachment B - Parcel Panel Report

Exhibit B - Parcel Maps

Exhibit C - Resolution of Necessity C-21843

Attachment C - Property owner's letter to the Commission dated November 8, 2019

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*

ATTACHMENT A

PROJECT INFORMATION

PROJECT DATA	12-Ora-1-PM 9.4 Project ID: 1213000086 (EA 0M9909)
Location:	In Orange County, in the city of Laguna Beach on State Route (SR) 1, Pacific Coast Highway, 150 feet south of Broadway Street (SR 133)
Limits:	Post Mile 9.4
Cost:	Programmed Construction Cost: \$3,571,111 (Capital) Current right of way cost estimate: \$800,000 (Capital)
Funding Source:	State Highway Operation and Protection Program (SHOPP)
Number of Lanes:	Existing: Northbound (NB) SR 1: Two General Purpose Lanes Southbound (SB) SR 1: Two General Purpose Lanes Proposed: Same as existing
Proposed Major Features:	Remove and replace Laguna Canyon Channel Bridge (Bridge Number 55-1106), a double reinforced concrete box culvert
Traffic:	Existing (year 2016): Average Annual Daily Traffic = 38,500

NEED FOR THE PROJECT

The purpose of the project is to remove and replace the Laguna Canyon Bridge that carries the Laguna Canyon Channel under SR1, 150 feet south of SR 133 in the city of Laguna Beach. The project will completely replace the double reinforced concrete box (RCB) structure of the Laguna Canyon Bridge and tie it into existing structures owned on either side owned by the city of Laguna Beach.

As noted in the Department's Bridge Inspection Reports (BIR's) dated June 2017 and June 2019, the Laguna Canyon Channel structure was built in 1928 and is in an advanced deteriorated condition. The BIR's recommendation is to remove and re-build

the structure portion belonging to the Department from Station (Sta.) 4+59.45 to Sta. 5+40.36.

The City of Laguna Beach owns and maintains the culvert outside of state right of way. The city is currently preparing plans, specifications, and estimates for restoration of their system upstream and downstream of this project. The purpose of the proposed project is to remove and replace the double reinforced concrete box (RCB) structure of the Laguna Canyon Bridge and tie into existing structures on either side in cooperation with the City of Laguna Beach.

Both the June 9, 2017 and June 26, 2019 BIR's identify the bridge as being structurally deficient and recommended full replacement. The BIR's inspected that portion of the RCB within the Department's right-of-way, from Sta. 4+59.45 to Sta. 5+40.36. The inspections showed that the RCB is in an advanced state of deterioration. According to the BIR's, between 5 and 10 percent of soffit area of each barrel within the RCB has spalled, with all bottom transverse rebars and some bottom longitudinal rebars exposed. The section loss for bottom transverse rebars, due to corrosion, was estimated to be up to 70 percent within each barrel of the RCB.

Due to the RCB's structural deficiencies and advanced state of deterioration, replacement is needed to protect the traveling public and the surrounding area in general. Without the proposed project, the existing Laguna Canyon Channel Bridge structure will continue to deteriorate over time and will eventually fail.

PROJECT PLANNING AND LOCATION

A Small Capital Value Project was approved June 28, 2013 which identified the structural deficiency of the Laguna Canyon Channel Bridge and proposed the single alternative of full replacement of the bridge structure.

The Project Report was approved on July 26, 2019. The Project Report also addressed the structural deficiency of the Laguna Canyon Channel Bridge structure and carried forward a single build alternative, which includes the complete removal and reconstruction of the RCB (Laguna channel). The existing roadway and other improvements, i.e. pavement section, curb, gutter, sidewalk, driveways, catch basins and storm drains, utility manholes and other appurtenances, and landscaping will be replaced in kind. A No-Build alternative was also considered. This alternative would leave the existing structure in place and it will continue to deteriorate over time and will eventually fail. Therefore, the No-Build alternative was rejected.

The project is Categorically Exempt under the State California Environmental Quality Act (CEQA) Guidelines and has been determined eligible for a Categorical Exclusion

(CE) in compliance with the National Environmental Policy Act (NEPA). The Categorical Exemption/Categorical Exclusion (CE/CE) was approved on November 28, 2018. The project is currently programmed in the 2018 SHOPP for fiscal year delivery of 2019/2020. The current Right of Way capital cost estimate is \$800,000 and the Construction budget/cost is estimated to be \$3,571,000. Right of Way Certification has a tentative date of March 27, 2020, with a Ready to List Date of March 27, 2020. Advertisement is tentatively set April 6, 2020.

EXHIBIT A

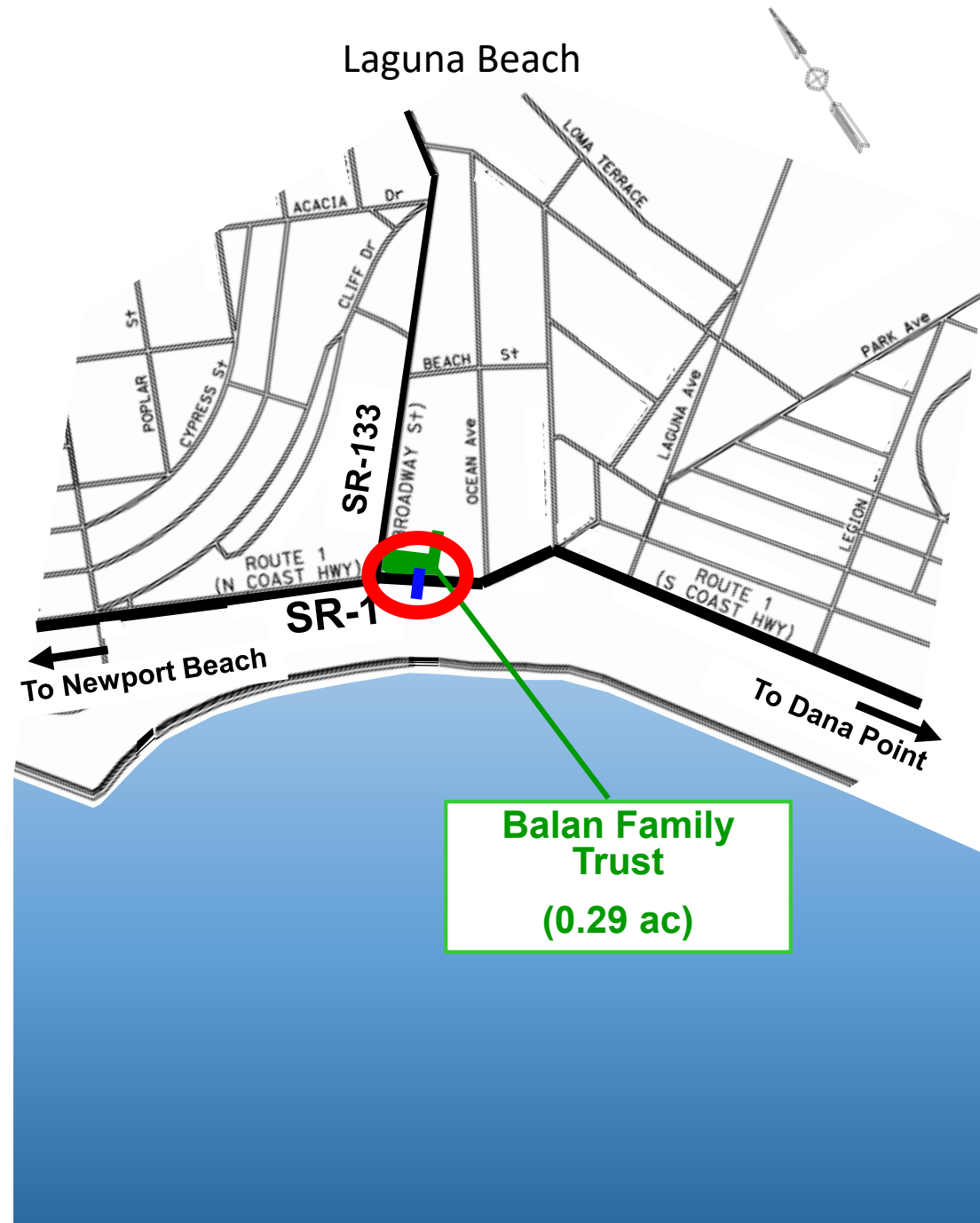
Project Vicinity Map



Project Location



Project Location



ATTACHMENT B

PARCEL PANEL REPORT

Property Owner: Mark H. Balan and Kamala Balan as Trustees of the Balan Family Trust u/d/t Dated November 3, 1988

Parcel Location: 120 South Coast Highway in the city of Laguna Beach

Present Use: Gas Station and convenience store

Zoning: Central Business District - Visitor Commercial

Area of Property: 12,808 Square Feet (SF)

Area Required: Parcel 103763-1: 400 SF - Temporary Construction Easement (TCE)

PARCEL DESCRIPTION

The subject parcel is located at 120 South Coast Highway in the city of Laguna Beach and identified as Assessor's Parcel Number 641-255-12. The parcel has a land use designation of Central Business District - Visitor Commercial and improved with a gas station and convenience store. The site is 12,808 SF with frontage along State Route (SR) 1 (Pacific Coast Highway) and SR 133 (Broadway Street). Vehicular access (ingress/egress) to the site is via two drive aprons located on SR 1, and one drive apron located on SR 133.

NEED FOR SUBJECT PROPERTY

The need for this parcel is based on the scope of work to replace the portion of the bridge box culvert within the limits of the Department's existing right-of-way within SR 1. In order to excavate to the bottom of the structure and have room to get workers and equipment safely in the excavation to remove and replace the culvert, the shoring is required to be offset from the outside face of the structure. To safely connect the new structure to the existing city owned portion of the structure that traverses beneath the subject property, a 400 SF TCE is required from the subject property so the contractor will be able to provide shoring and a clear work area to make the connection. Therefore, the subject property cannot be avoided, and the project requirements are needed and must be acquired.

It should be noted existing improvements (service station, convenience store, fuel canopy, pumps, etc.) on the parcel will not be physically impacted as a result of the

project. Paving and street improvements (sidewalk drive apron, signs, curbs and gutters, etc...) will be replaced in kind by the highway contractor.

To minimize inconvenience to the property owner and the motoring public in general, the construction of the project will be staged. This will include staging along SR 1 during construction. The construction staging will include reducing the existing lanes on SR 1 from two lanes in each direction to one lane in each direction to accommodate construction and replacement of the reinforced concrete box (RCB).

Stage 1 (Adjacent to the subject property): During this stage, construction activities commence for the replacement of the RCB. The two northbound lanes of SR 1 will be closed for construction activities and the two southbound lanes of SR 1 will be temporarily diverted into one lane in each direction (north and southbound).

As previously mentioned, vehicular access (ingress/egress) to the subject property is via two drive aprons located on SR 1, and one drive apron located on SR 133. To safely connect the new RCB structure to the existing city owned portion of the structure that traverses beneath the subject property, a 400 SF TCE is required from the subject property so the contractor will be able to provide shoring and a clear work area to make the connection. This TCE is located directly within the subject's easterly driveway along SR 1. As such, full closure of this driveway is necessary during construction of Stage 1. Also, while there will not be any construction activity within or in front of the subject property's westerly driveway on SR 1, it is anticipated that there will be construction equipment and materials located within SR1 in front of this westerly driveway during Stage 1 construction. A Crane will be placed in this area to set the box culvert segments. This part of the operation would likely happen for a very short window over the course of one or two nights (2 different nights separated by a couple of weeks), as deliveries of the culvert segments and temporary closures of Pacific Coast Highway would be more feasible at night. In addition, a Baker Tank will be placed in the area to capture any liquid/water encountered during Stage 1 of construction. Therefore, to ensure safety to the traveling public and the highway contractor, the westerly driveway will be closed during Stage 1 construction. However, access to the property will be maintained at all times via the driveway located along SR 133 which is not impacted by the project. Stage 1 construction activities are estimated to be completed in two weeks. After which, Stage 2 will commence.

Stage 2: During this stage, construction activities will continue to accommodate the replacement of the RCB from the centerline of PCH toward the ocean. The two southbound lanes of SR 1 will be closed for construction activities and the two northbound lanes of SR 1 will be temporarily diverted into one lane in each direction (north and southbound).

Lastly, to expedite the completion of the project, construction activities will be conducted on a 24/7 basis, precast segments of the RCB will be utilized, and incentive/disincentive

clauses will be incorporated into the construction contract. Efforts will also be taken to minimize traffic, congestion, and delays. Effective placement of appropriate signs, cones, and barricades in the vicinity of the construction will be implemented to increase safety and driver certainty.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met in Santa Ana on January 8, 2020. The Panel members included Jeffrey Purdie, Panel Chair, Department of Transportation (Department) Headquarters (HQ's) Division of Right of Way and Land Surveys; Glenn B. Mueller, Department's San Diego Legal Division; Carmen Shantz, 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 owner at the meeting was Stephanie Talavera from the law firm of Newmeyer & Dillion.

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 primary concerns and objections expressed by the property owners through their attorney is that the proposed project is not planned or located in the manner that will be most compatible with the greatest public good and least private injury, and that a valid offer has not been made pursuant to Government Code 7267.2.

The following is a description of the specific concerns raised by the property owners and/or their representatives, followed by the Department's response:

Owner Contends:

The Department failed to make every reasonable effort to expeditiously acquire the property by negotiation – not condemnation. In addition, the Department failed to pay for the reasonable cost of an independent appraisal secured by the property owner.

Department's Response:

The Department's written offer to purchase was sent to the property owners (and their attorney) via certified mail on September 24, 2019. Said offer included a copy of the appraisal report, and a summary statement detailing the amount of compensation, the interest to be acquired, improvements, and damages, if any. The Department has made every reasonable effort to actively negotiate and expeditiously acquire the property and avoid condemnation. There were several attempts made to make every reasonable effort to expeditiously acquire the property by negotiation with the property owners. Prior to even mailing the written offer to purchase, 7 phone calls were made, 2 of which the property owner personally answered. An additional attempt was also made via a visit to the subject property in hopes of personally meeting the property owners. All these attempts to meet with the property owner proved to be unsuccessful. Also, subsequent to the written offer, numerous phone calls and emails were made in an attempt to negotiate an agreement and avoid condemnation. To date, there has only been one

face to face meeting with the property owner and his attorney which took place at the subject property.

As to the allegation of pre-condemnation conduct in failing to reimburse and provide payment for an independent appraisal, the District Right of Way office did inform the owner of their right to get their own independent appraisal and provided our standard Appraisal Reimbursement Agreement. The District also explained and provided the property owner the opportunity to comment and/or edit the Department's standard Appraisal Reimbursement Agreement. The District affirmed that they were willing to review and possibly accommodate changes to the agreement so that the property owner could obtain an independent appraisal. To this date, no edits or comments have been submitted by or on behalf of the property owner.

Owner Contends:

The Department did not meet the requirements for an offer under Government Code section 7267.2, as the owner was obstructed from acquiring their own independent appraisal. Further, no compensation was offered to the business owners due to impacts of the taking or the project.

Department's Response:

On September 24, 2019 via certified mail, the Department provided the owners of record with an offer based on the full amount of an approved appraisal, in an amount it believes to be just compensation thus satisfying Government Code section 7267.2. The owner was not obstructed from acquiring their own independent appraisal. Rather, the Department did inform the owner of their right to get their own independent appraisal and provided our standard Appraisal Reimbursement Agreement should they want the Department to pay for those costs associated with the independent appraisal which are deemed to be reasonable. Lastly, the offer contemplated under Government Code Section 7267.2 pertains to "real property" interest and not business impacts, or loss of business goodwill.

Nevertheless, the property owner was provided with a loss of goodwill claim form. Any loss of goodwill claimed is a compensation issue where the business owner would bear the burden of proof as to legal entitlement. Compensation issues are outside the purview of the Commission and not relevant in the process of adopting a Resolution of Necessity.

Owner Contends:

The Department is incapable of conducting a fair, legal, and impartial hearing on the Resolution.

Department's Response:

The Department is requesting the adoption of the Resolution of Necessity (RON) from the California Transportation Commission (Commission). The Department may condemn property to be used for highway and related purposes by authority of Streets & Highway Code Section 102. However, the Commission must first adopt a RON.

CCP Section 1245.235(a) states that "The governing body of the public entity may adopt a resolution of necessity only after the governing body has given each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll notice and a reasonable opportunity to appear and be heard on matters referred to in Section 1240.030."

In this case, the Commission is the governing body of the public entity, which is the Department. It's the Commission that conducts the hearing/meeting regarding the adoption of the RON. The Commission is an independent, impartial body, that either adopts, or does not adopt, the RON based upon the evidence presented before them at their hearing.

Owner Contends:

The Department failed to complete the necessary environmental review of the project. From a preliminary review of the project, there appears to be evidence that the project will impact the environment.

Department's Response:

The State is confident that the appropriate environmental processes were followed as required by law (CEQA and NEPA) for the project. A Categorical Exemption (CE) Class 1(d) was prepared under CEQA and a Categorical Exclusion (CE) 23 USC 326 was prepared under NEPA, and approved on November 28, 2018. Technical studies have been performed and there are no significant impacts anticipated with the project work activities to raise the level of the environmental document. The project in itself is not compacity increasing and the construction impacts to air quality, water quality, traffic, air, dust, and noise are temporary and negligible in nature.

Owner Contends:

The project in not compatible with the greatest public good because it will disproportionately and negatively impact the owners' use and enjoyment of the subject property. Thus, the project is not planned in a manner that will cause the least private injury.

Department's Response:

The greatest public good is served by protecting the State Highway from collapse of an aging and deteriorating structure. The consequences of not executing this project is a potential loss of life and a severe hardship on commerce and the community, as Pacific Coast Highway is a main business thoroughfare and access point to the City of Laguna

Beach, as well as an interregional route to coastal cities of Dana Point, Huntington Beach, Seal Beach, and Newport Beach. If the culvert fails as a result of the Department's failure to execute this project, the impacts and damages suffered by the subject property, and surrounding properties can reasonably be expected to be greater in extent and duration than if the culvert is replaced in a planned and orderly manner, as proposed by the project.

Every effort is being made to minimize impacts to the community and the adjacent private property by allowing 24/7 construction, incorporating pre-cast segments of the box culvert and implementing incentive/disincentive clauses in the construction contract.

Owner Contends:

Can construction equipment be placed in from of the Cinema property located just east of the subject property, instead of in front of the subject's westerly driveway?

Department's Response:

The area east just east of the subject property in front of the Cinema is anticipated to be the main staging and laydown area during construction. As far as the subject's westerly driveway, this area within SR1 will also be needed for construction equipment and materials during Stage 1 of construction. A Crane will be placed in this area to set the box culvert segments. This part of the operation would likely happen for a very short window over the course of one or two nights (2 different nights separated by a couple of weeks), as deliveries of the culvert segments and temporary closures of Pacific Coast Highway would be more feasible at night. In addition, a Baker Tank will be placed in this area to capture any liquid/water encountered during Stage 1 of construction. Therefore, to ensure safety to the traveling public and the highway contractor, the westerly driveway will be closed during Stage 1 construction. However, access to the property will be maintained at all times via the driveway located along SR 133 which is not impacted by the project. Stage 1 construction activities are estimated to be completed in two weeks.

DEPARTMENT CONTACTS:

The following is a summary of the contacts made with the property owner/attorney:

Type of Contact	No of Contacts
Mailing of information	2
Emailing of Information	32+
Telephone	23+
Personal Call	2

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 the Government Code Section 7267.2. The 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 accordance 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.

JEFFREY PURDIE
Chief, Office of Project Delivery
HQ Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

MIKE KEEVER
Chief Engineer

**PERSONS ATTENDING CONDEMNATION PANEL REVIEW
MEETING ON JANUARY 8, 2020**

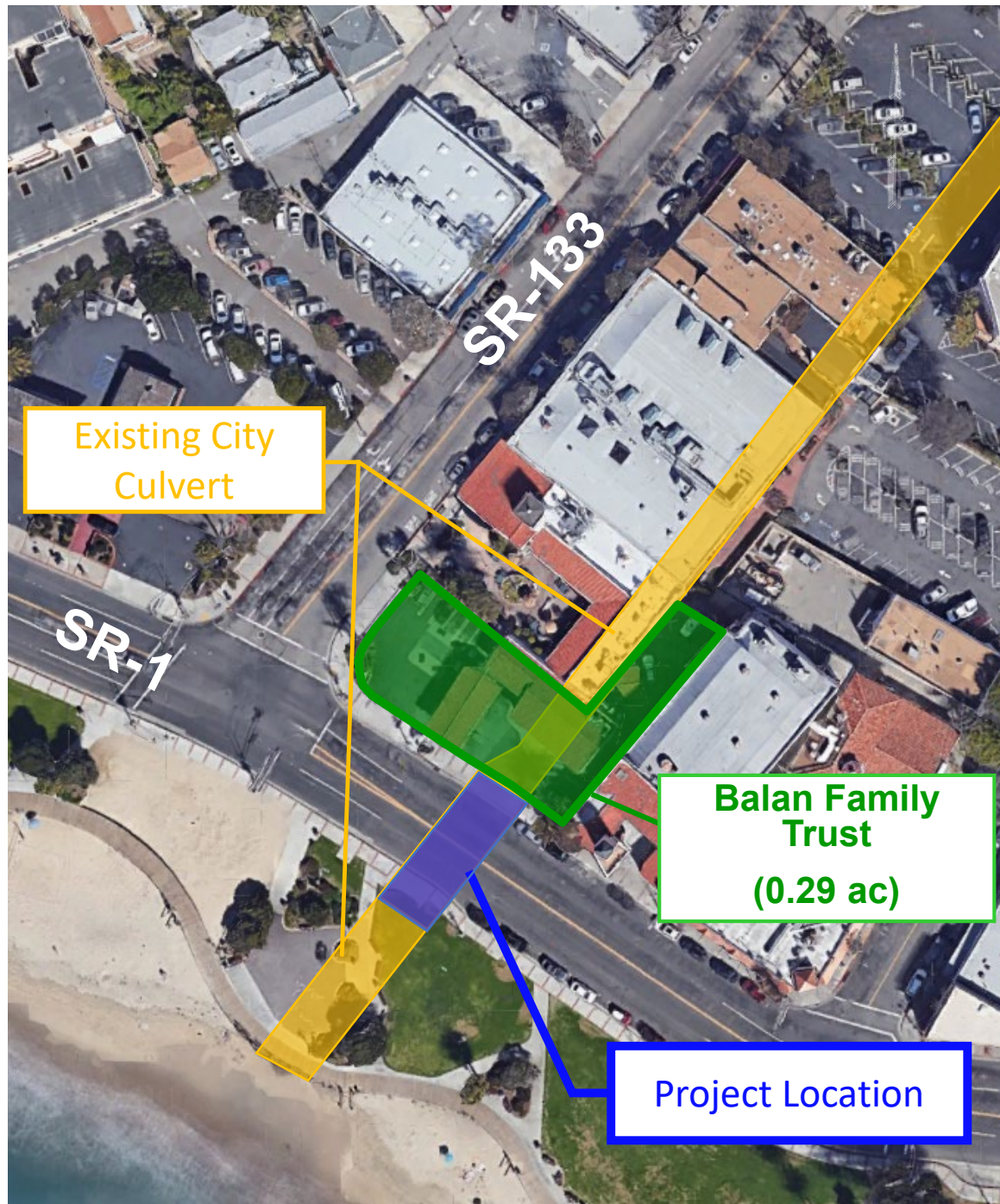
Jeffrey Purdie, HQ's Division of Right of Way and Land Surveys, Panel Chair
Glenn B. Mueller, Assistant Chief Counsel, San Diego Legal Division, Panel Member
Carmen Shantz, HQ's Division of Design, Panel Member
Mark Zgombic, HQ's Division of Right of Way and Land Surveys, Panel Secretary

Ryan Chamberlain, District Director, District 12
Adnan Maiah, Deputy District Director, District 12
Benjamin D. Martin, Acting Office Chief, Office of Right of Way and Land Surveys,
District 12
Evangelina Washington, Senior Right of Way Agent, District 12
Antonio Avila, Right of Way Agent, District 12
Andrew Oshrin, Senior Transportation Engineer, Design Branch D, District 12
Bob Bazargon, Project Manager, Program Project Management, District 12

Stephanie Talavera, Newmeyer & Dillion LLP, Attorney for Property Owner

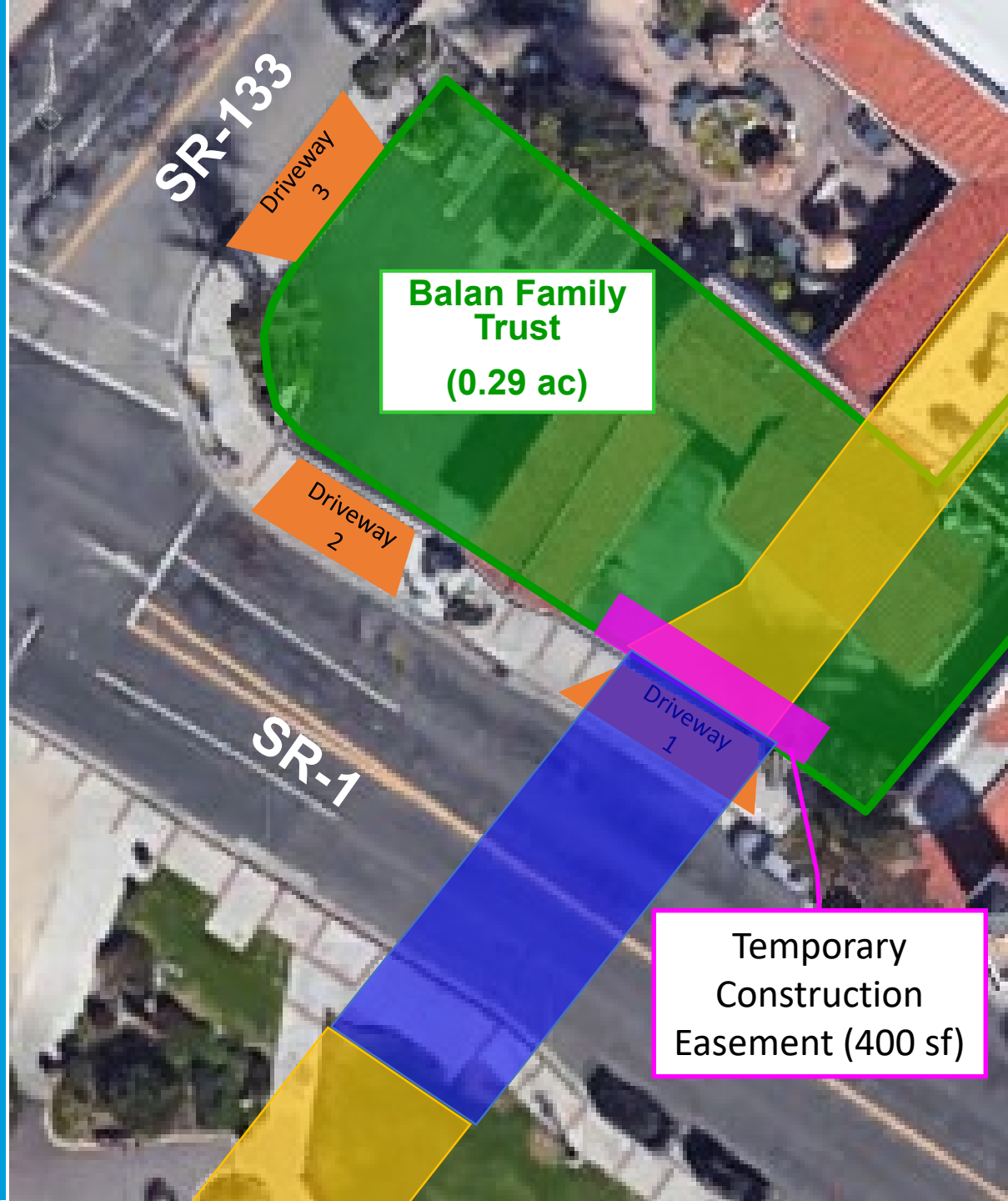
EXHIBIT B

Parcel Location



Project Impacts

Temporary Construction Easement



Project Impact



Project Impacts

Stage 1 Construction



Project Impacts

Stage 2 Construction



EXHIBIT C

TRANSPORTATION COMMISSION
RESOLUTION NO.

C-21843

CALIFORNIA TRANSPORTATION COMMISSION
RESOLUTION OF NECESSITY
TO ACQUIRE CERTAIN REAL PROPERTY
OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN
HIGHWAY 12-Ora-1-PM 9.4 PARCEL 103763-1

OWNER: Mark H. Balan and Kamala Balan as Trustees of the Balan Family Trust U/D/T
Dated November 3, 1988

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

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

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

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
owner or owners of record; and be it further

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

APPROVED AS TO FORM AND PROCEDURE

APPROVAL RECOMMENDED

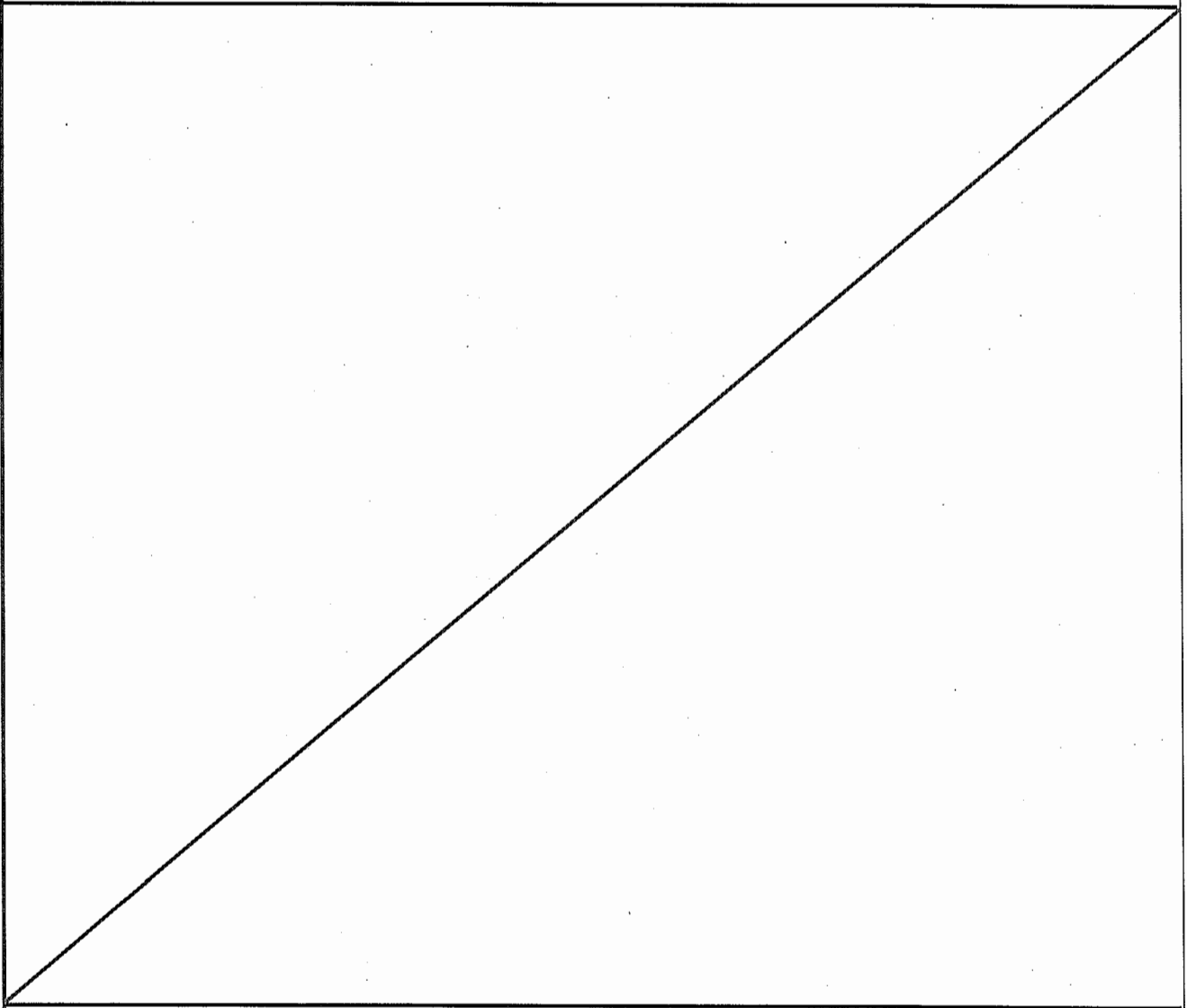
Attorney, Department of Transportation

DIVISION OF RIGHT OF WAY

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

The real property or interests in real property, which the Department of Transportation is by this resolution authorized to acquire, is situated in the County of Orange, State of California, Highway 12-Ora-1 and described as follows:



Legal Description

PARCEL 103763-1

A Temporary Construction Easement for State Highway purposes in and to that portion of Parcel 1 and Parcel 2, in the City of Laguna Beach, County of Orange, State of California, as described in a deed recorded May 2, 2002 as Instrument No. 20020371673 of Official Records, in the Office of the County Recorder of said county, described as follows:

BEGINNING at the Southeasterly terminus of that certain course shown as "North 57°34'05" West, 0.25 feet" in the Northeasterly Right of Way line of Pacific Coast Highway on Record of Survey 92-1001, filed in Book 138, Pages 1 through 8, of Record of Surveys, in the Office of said County Recorder;

thence along said Northeasterly Right of Way line of Pacific Coast Highway North 57°33'17" West 35.44 feet;

thence leaving said Northeasterly line North 39°52'48" East 10.00 feet;

thence South 57°33'17" East 35.44 feet;

thence South 54°13'34" East 4.87 feet;

thence South 39°52'48" West 10.00 feet, to a point on said Northeasterly Right of Way line of Pacific Coast Highway;

thence along said Northeasterly line North 54°13'34" West 4.87 feet to the **POINT OF BEGINNING**

Unless otherwise noted, all bearings and distances in this description are based on the California Coordinate System, (CCS83) Zone VI, NAD83 (1991.35 Epoch O.C.S.GPS Adjustment). All distances are grid, divide distances by 0.99996252 to obtain ground distances.

Rights to the above described temporary easement shall cease and terminate on October 6, 2020. Said rights may also be terminated prior to the above date by STATE upon notice to OWNER.

ATTACHMENT C



11-25-19 - Sent to Caltrans
Right of Way
C: Teri Anderson

Newmeyer & Dillion LLP
895 Dove Street
Fifth Floor
Newport Beach, CA 92660
949 854 7000

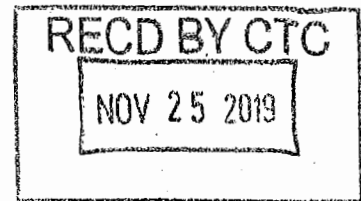
November 8, 2019

Charles S. Krolikowski
Charles.Krolikowski@ndlf.com

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED,
U.S. MAIL, & E-MAIL**

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

Antonio Avila
California Department of Transportation
1750 E. Fourth Street, Suite 100
Santa Ana, CA 92705
Antonio.avila@dot.ca.gov



Re: Caltrans Project No. 1213000086
Parcel No. 103763-1
Request to Personally Appear and Submit Written Objections Mark H. Balan and
Kamala Balan as Trustees of the Balan Family Trust

Dear Executive Director:

As you know, this office represents Mark H. Balan and Kamala Balan as Trustees of the Balan Family Trust, the owners ("Owners") of certain real property and improvements located at 120 S. Coast Highway, Laguna Beach, CA 92651, commonly referred to by the California Department of Transportation ("Caltrans") as Caltrans Parcel No. 103763-1 (the "Subject Property").

Caltrans seeks to acquire an interest in the Subject Property by eminent domain for construction related to its ongoing public project ("Project"). Accordingly, the California Transportation Commission (the "Commission") notified the Owners of its Notice of Intent to Adopt Resolution of Necessity to Acquire Certain Real Property or Interest in Real Property by Eminent Domain ("Notice") by letter dated November 1, 2019. This letter serves as the Owners' written and filed request to personally appear and/or to object, in writing and in person, at the Resolution of Necessity ("Resolution") hearings currently set for December 4, 2019, and December 5, 2019.

The Owners request that this letter be included as part of the permanent record and be provided to the Commission. The Owners also expressly reserve the right to provide additional comment, written or otherwise, up to and at the hearings identified above.

Without waiver of any right or defense in favor of the Owners, including the right to submit comment up to and at the public hearings, the Owners hereby object to the Notice and the proposed Resolution on each of the following grounds.¹

1. Caltrans Failed to Make Every Reasonable Effort To Expeditiously Acquire the Property By Negotiation—Not Condemnation.

Per Government Code section 7267.1, Caltrans "shall make every reasonable effort to acquire expeditiously real property by negotiation." (See Gov. Code, § 7267.1, subd. (a).) Four things are of note in this statutory mandate. First, it is a mandate and cannot be ignored on Caltrans's whim. (*Ibid.* [using "shall"].) Second, it requires "every reasonable effort" to acquire the Subject Property—not just one attempt—but a sincere, repeated, reasonable effort. (*Ibid.* [emphasis added].) Third, every reasonable effort to acquire the Subject Property must be done "expeditiously" or with speed and efficiency. (*Ibid.*) Finally, Caltrans must make such an attempt to acquire the Subject Property by negotiation—not condemnation. (*Ibid.*)

To date, Caltrans has failed to meet its mandate. Caltrans has not made every reasonable effort to negotiate with the Owners to acquire the Subject Property—it has only made one, unilateral offer and failed to negotiate. Moreover, Caltrans has failed to provide or has otherwise improperly placed unreasonable conditions on the Owners' exercise of their constitutional rights with respect to the Owners' request for the reasonable costs of an independent appraisal. Per Code of Civil Procedure section 1263.025, Caltrans is required to pay the reasonable costs of that independent appraisal, not exceeding \$5,000.00. (See Code Civ. Proc., § 1263.025.) Caltrans's overt failure to comply with this duty by making compliance conditioned on unreasonable terms cannot be construed as it making "every reasonable effort" to negotiate.

Aside from failing to negotiate, much less make every reasonable effort to do so, Caltrans has also failed to do so expeditiously by failing to reimburse per the appraisal

¹ As the Notice acknowledges, the Commission must provide the Owners with a meaningful opportunity to appear and object at said hearings. The Notice also states that the written request to personally appear and/or submit written objections must "actually be on file with the Commission within" 15-days from the date of the letter, November 1, 2019. The Notice also dictates that all such requests must be sent, by certified mail with return receipt requested, to the Executive Director at the above-addressed P.O. Box. All questions are to be directed to Right of Way Agent Antonio Avila. The Owners expressly reserve the right to object to this prehearing procedure to the extent that it places onerous or obstructive conditions on the Owners' exercise of their legal and constitutional rights to provide public comment at a public hearing.

procedure. Indeed, offering a unilateral appraisal amount is not a negotiation. This inflexibility is akin to unreasonable precondemnation conduct. (*Tilem v. City of Los Angeles* (1983) 142 Cal.App.3d 694, 705 [191 Cal.Rptr. 229] [statutory directives of Government Code section 7267 et seq. provide a ready guide for determining whether a public agency has engaged in unreasonable or oppressive precondemnation conduct].)

Thus, the District failed to meet the requirements under Government Code section 7267.1.

2. A Government Code section 7267.2 Offer Has Not Been Made.

Government Code section 7267.2 requires that Caltrans make a legitimate offer of compensation pursuant to an approved appraisal before initiating eminent domain proceedings. (See Gov. Code, § 7267.2.) The appraisal report upon which Caltrans has premised its purported precondemnation offer is inadequate in part because it has engaged in unreasonable or oppressive precondemnation conduct obstructing the Owners from acquiring an independent appraisal. Further, no notice or compensation was offered to the business owners resulting from the impacts of the takings and project construction.

Thus, Caltrans failed to meet the requirements for an offer under Government Code section 7267.2.

3. Caltrans Is Incapable of Conducting a Fair, Legal, and Impartial Hearing on the Resolution.

Due to its involvement in designing and ultimately constructing the Project, Caltrans has already committed itself to the Project. As such, the adoption of the Resolution here would be a sham hearing staged for Caltrans to reach a predetermined result.

Along those lines, Caltrans has indicated that it has certain critical deadlines to meet related to the Project. Given that the taking of the Subject Property is a component of those deadlines, there are likely documents and agreements reflecting Caltrans's lack of discretion with respect to its adoption of the Resolution and that it must proceed with the takings and Project regardless of any valid objections raised to the same. As such, any hearing to "consider" the issues pertaining to the adoption of the Resolution would be a sham, rendering the Resolution void. (See *Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1127-1129 [219 Cal.Rptr. 365].)

4. Caltrans Failed to Complete the Necessary Environmental Review for the Project.

From a preliminary review of the Project, there appears to be evidence to support a fair argument that the Project will have significant impacts to the environment as it relates to traffic, circulation, noise, dust, aesthetics, air quality, etc. To comply with the California

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Environmental Quality Act ("CEQA"), Caltrans should update its technical reports related to traffic impacts and greenhouse gas emissions both during and after construction.

Unless and until all of the potential environmental issues have been addressed, and mitigation measures identified, Caltrans cannot adopt the Resolution as it would violate CEQA.

5. The Project Is Not Planned or Located In a Manner That Will Be Most Compatible with the Greatest Public Good and the Least Private Injury.

The Project is not compatible with the greatest public good because it will disproportionately and negatively impact the Owners' use and enjoyment of the Subject Property. (See Code Civ. Proc., §1245.230, subd. (c)(2)(3).) Thus, the Project is not planned in a manner that will cause the least private injury.

Based on the foregoing, the Owners request that Caltrans wait to adopt the Resolution until all of the above issues have been addressed and resolved. At a minimum, Caltrans should continue its hearings to a later date, after the Owners have acquired an independent appraisal and fully and fairly negotiated the Subject Property's acquisition.

Nothing in this letter shall be construed as a waiver of any right or defense in the Owners' favor and such other objections and defenses are hereby expressly reserved.

If you have any questions or comments regarding the above, do not hesitate to contact the undersigned.

Very truly yours,



Charles S. Krolkowski

CSK:slt