PALMIERI
HENNESSEY &
LEIFER, LLP

Michael H. Leifer
Direct Dial: (949) 851-7294
E-mail: mleifer@palmierilawgroup.com

October 16, 2025

Tab 70

VIA EMAIL

Executive Director
California Transportation Commission
P. O. Box 942873
Mail Station 52
Sacramento, CA 94273-0001
via email Tanisha.Taylor@catc.ca.gov

Re: **California Transportation Commission Consideration of a Resolution of Necessity regarding Parcel Numbers 82034-1 and 81943-1, 2**

Dear Executive Director:

This office represents Los Cerritos Wetlands, LLC and BOM Wetlands, LLC, owners of the above-referenced properties. Please distribute this letter to the California Transportation Commission Board concerning the resolutions of necessity being proposed for the above-referenced Parcel Numbers. On behalf of our clients, we object to the proposed resolutions of necessity that seek to authorize condemnation of portions of the Los Cerritos Wetlands and BOM Wetlands properties.

Caltrans has not shown that the project has been located or planned in a manner compatible with the greatest public good and least private injury. It has also not shown that the property interest(s) sought to be condemned are necessary for the Project.

From the language that is provided in the proposed resolution, it appears that Caltrans is taking too little in the way of property rights for the project. Caltrans has admitted at earlier administrative meetings that the reality of the use to be undertaken on the parts taken is indistinguishable from one another, but Caltrans has labeled indistinguishable takes differently.

From the BOM Wetlands property, Caltrans seeks to take two easements—with different labels—a temporary construction easement and a temporary access easement. At the second level review meeting with Caltrans representatives, Caltrans was unable to and did not explain the distinction between these two easements. As the property owner's representatives explained, in the field, during construction, there will be no distinction between the two separate easement areas.

Moreover, the label distinction may result in an entirely improper burden on the property owner to somehow monitor Caltrans' use of the areas. BOM Wetlands requests that Caltrans simply label the two areas what they are—temporary construction easements. There is no distinction.

In addition, the owners believe that Caltrans has not taken sufficient space for the construction of the trestle bridge. During the second level review meeting, Caltrans representatives asserted that the outside limit of the trestle bridge is vertically in line with the outer edge of the temporary construction easement areas being taken from the BOM Wetlands and Los Cerritos Wetlands properties. That means that during construction Caltrans will exceed the temporary construction easement area in constructing the trestle bridge.

The owners also believe that Caltrans will exceed the time set forth for the temporary easements. The legal descriptions state that the easements will "cease and terminate on February 1, 2028." However, the staff report states that the construction contract will not be accepted until December 30, 2028—a date 11-months *after* the expiration date of the proposed easements. The staff report also states that the project end date is April 30, 2030—more than 2 years after the expiration date of the proposed easements. Thus, based on the information in the staff report, Caltrans' will exert control over those portions of the subject properties for a much longer time.

Caltrans' unrealistic, unsupported and confusing takings burden the subject properties and ownership. Such a burden on the property owner is **contrary to Government Code Section 7267.6** which provides, "**No public entity shall make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property**." (See also *Taper v. City of Long Beach* (1982) 129 Cal.App.3d 590, 612.) It also demonstrates that the least private injury requirement is not satisfied.

Caltrans has not made a valid Government Code Section 7267.2 offer. [1]

Making a <u>valid</u> precondemnation offer is a **mandatory prerequisite** to condemnation. (Gov. Code §7267.2; *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005, 1011.) Government Code Section 7267.2 provides that "**Prior to adopting a resolution of necessity** . . . the public entity **shall establish an amount it believes to be <u>just compensation</u> therefor, and shall make an offer to the owner or owners of record** to acquire the property for the full amount so established . . ." (Gov. Code §7267.2, subd. (a)(1), emphasis added.)

---

[1] The Government Code Section 7267.2 offer requirement is <u>not</u> a quasi-legislative determination subject to Code of Civil Procedure Section 1245.235. Even so, the offer does <u>not</u> comply with Government Code Section 7267.2. The proffered offers are invalid.

PALMIERI
HENNESSEY &
LEIFER, LLP

The Government Code requires that the appraisal and offer shall be based on the principles of just compensation. (Gov. Code §7267.2, subds. (a) and (b).) The Government Code *requires* that the offer must be for the "just compensation for the real property acquired and for damages to remaining property." (Gov. Code §7267.2, subd. (b).) In the Eminent Domain Law, there are specific standards to be applied in determining just compensation including compensation for damages to the remaining property (or severance damages). (See Code Civ. Proc., §§1263.310 *et seq.*, 1263.410 *et seq.*)

Caltrans' precondemnation offers are invalid as the fundamental directive to determine just compensation has not been followed. The offer appraisals are stale. The appraisals utilize a date of value of April 2024—18 months ago. The appraisals rely on sales it claims are "comparable" that occurred in 2021 and early 2022—more than 4 years ago.

The appraisals also apply an incorrect methodology to avoid paying just compensation for the proposed easements. For example, the appraisals discuss the proposed easements, stating that the "TCEs will be fenced/closed off to the grantor or the public." This was also confirmed by Caltrans representatives during the second level review meeting. Yet, the appraiser values the easement area as though the use is "non-exclusive" even though the grantor will be fenced out, prohibited from using the area. According to the Caltrans Design Engineer, other Caltrans representatives, and the language of the taking, the temporary construction easement and temporary access easement areas are exclusive. Yet, for purpose of valuation, the appraiser purposely undervalued the easements treating them as "non-exclusive." That is not consistent with just compensation principles.

These are just some of the glaring deficiencies and contradictions in the appraisals that make the precondemnation offers invalid. The appraisals fail to comply with the fundamental requirements to establish the constitutional requirement of just compensation. The Caltrans appraisals and offers fail to comply with Government Code Section 7267.2. It is contrary to the policy behind the mandatory Government Code requirements found in other provisions of the Government Code. The purpose of the Government Code precondemnation offer is to require the public entity to "make every reasonable effort to acquire expeditiously real property by negotiation." (Gov. Code §7267.1; see also Gov. Code §§7267.6, 7267.7; *Taper, supra,* 129 Cal.App.3d at 612.) By failing to make a valid offer, Caltrans has failed in this fundamental prerequisite.

Caltrans is not conducting a fair, legal and impartial hearing on the proposed adoption of the resolution of necessity. As a condition precedent to the exercise of the power of eminent domain, a public entity must hold a public hearing to determine whether a particular taking meets the three public interest and necessity criteria articulated in Code of Civil Procedure Section 1240.030. (Code Civ. Proc., § 1245.235.) If, after such public hearing, the public entity determines that the proposed taking meets that criteria, then it must adopt a resolution of necessity before proceeding to condemn. (Code Civ. Proc., §§1240.040, 1245.220.)

Implicit in this requirement of a hearing and the adoption of a resolution of necessity is the concept that, in arriving at its decision to take, the public entity engages in a good faith and judicious consideration of the pros and cons of the issue and that the decision to take be buttressed by substantial evidence of the existence of the three basic requirements set forth in Code of Civil Procedure Section 1240.030. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1125-1126.) In the absence of a fair and impartial hearing, the resolution of necessity is void.

Caltrans has already committed itself to the project and has committed itself to the adoption of these resolutions of necessity. Caltrans is precommitted and thus cannot decide not to acquire or delay acquiring the right-of-way proposed. Adoption of these proposed resolutions of necessity would be an abuse of discretion. The resolutions of necessity would be void.

Los Cerritos Wetlands, LLC and BOM Wetlands, LLC reserve the right to raise additional objections.

Very truly yours,

Michael H. Leifer

MHL:mp

cc: Ailun Kuo – Caltrans Right of Way – via email ailun.kuo@dot.ca.gov