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March 23, 2012

File Number: 0NAS-156983

VIA FACSIMILE AND U.S. MAIL
Facsimile Number: (916) 653-2134
Executive Director
California Transportation Commission
1120 "N" Street, MS-52
Sacramento, CA 95814

Re: Objection to Proposed Adoption of Resolution of Necessity for Acquisition of a Portion of Certain Real Property Identified As Parcel 102492-1, 2, 3, 4, 5, 01-01, For Interstate 5/State Route 74 ("I5/SR74") Project

Dear Executive Director:

We have received notice of the California Transportation Commission's ("CTC") intent to adopt a resolution of necessity authorizing the taking of certain portions of the subject property by condemnation for the Interstate 5/State Route 74 ("I5/SR74") project. Based upon this notice, the CTC's hearing is scheduled for March 28 and 29, 2012, in Sacramento, California. No time was specified in the notice.

The purpose of this letter is to provide written objection on behalf of Chevron U.S.A. Inc. ("Chevron") to the adoption of the resolution of necessity in lieu of personally appearing at the hearing. Accordingly, while we do not plan to appear at the hearing, we request that this letter be included as part of the formal record on that agenda item.

Chevron objects to the adoption of the resolution of necessity on each of the following specific grounds:

1. The State Failed To Extend A Legitimate Precondemnation Offer Pursuant To Government Code Section 7267.2.

Government Code section 7267.2 requires that the State make a legitimate offer of just compensation based upon an approved appraisal prior to initiating condemnation proceedings. A written statement and summary basis for the offer must include sufficient details to indicate clearly the basis for the offer. (Gov. Code, § 7267.2, subd. (b).)

The State's precondemnation offer is invalid insofar as it inappropriately deducted $3,000,000 from compensation based on the purported cost to remediate hazardous waste even though there was no evidence of any need to remediate any hazardous waste.

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2. The State Failed To Negotiate In Good Faith Pursuant To Government Code Section 7267.1.

Government Code section 7267.1 imposes an affirmative obligation on a public entity seeking to condemn property to seek to acquire that property first by negotiation. (Johnston v. Sonoma County Agricultural Preservation & Open Space Dist. (2002) 100 Cal.App.4th 973.) "The public entity shall make every reasonable effort to acquire expeditiously real property by negotiation." (Gov. Code, § 7267.1, subd. (a).) The duty to negotiate is designed to avoid litigation. "In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the public programs, and to promote public confidence in public land acquisition practices, public entities shall, to the greatest extent practicable, make every reasonable effort to acquire property by negotiation." (8 Witkin, Summary of Cal. Law (9th ed. 2004) Const. Law, § 972.)

As noted above, the State's recent offer was based on an inappropriate deduction of $3,000,000 for hazardous material remediation cost. Chevron objected to this approach and brought the issue to the State's attention, but the State has failed to make a revised and proper offer. This is an example of the State's refusal to engage in good faith negotiations with Chevron.

Further, to the extent that the State's offer was predicated upon an appraisal that inappropriately deducted $3,000,000 for the purported cost to remediate hazardous waste, as partially described above, that offer was inadequate as a matter of law and would not constitute an effort to acquire the property interests "expeditiously and by negotiation" as required by California Government Code section 7267.1. (Gov. Code, § 7267.1.)

3. The State's 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.

One of the necessity components that must be analyzed when considering the adoption of a resolution to authorize the taking of private property is whether the proposed project for which the property is sought to be taken is planned or located in a manner that is most compatible with the greatest public good and causes the least private injury. (Code Civ. Proc., § 1240.030, subd. (b).) In the absence of substantial evidence supporting the CTC's determination as to the planning and location of the proposed project, the Resolution of Necessity is invalid.

In this case, the I-5/SR74 project as proposed takes all of the subject property when not all of the subject property was needed, and therefore violates the "least private injury" requirement.

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4. The State's Attempt to "Piece Meal" the Project Violates the California Environmental Quality Act.

There should be no debate that the State's taking of the subject property for the 1-5/SR74 freeway expansion constitutes- "project" within the meaning of CEQA. (Pub. Res. Code, § 21065.) Yet, it appears that the State is attempting to circumvent its duties and obligations under CEQA by "piece mealing" this massive freeway expansion project into small segments. The State's conduct violates the precepts under CEQA and ignores the multitude of potentially significant environmental, impacts that might result from the project, including, but not limited to, traffic impacts, air quality, land use planning, ground stability, and noise. As of today's, date, the State cannot have completed a proper CEQA analysis since it has not considered the environmental impacts stemming from the entire I-5/SR74 freeway expansion project, as a whole.

Based upon the foregoing objections, Chevron respectfully requests that the CTC not adopt the resolution or, at a minimum, continue the hearing on this agenda item until such time as the objections are addressed. If the CTC has any questions or comments concerning the content of this letter, it should contact the undersigned at the number listed above.

Very truly yours,

Sean P. O'Connor
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: Evangelina Washington (via email)
Ricky Rodriguez (via facsimile)

W02-WEST:NSO\404876979.1

FINAL MEETING HANDOUT

DEPARTMENT OF TRANSPORTATION
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Flex your power!
Be energy efficient!

March 26, 2012

Sent by Facsimile (714-513-5130) & U.S. Mail

Sean P. O'Connor, Esq.
Sheppard Mullin Richter & Hampton, LLP
650 Town Center Drive, 4th Floor
Costa Mesa, CA 92626-1993

RE: Chevron U.S.A.'s Objection to the Proposed Adoption of a Resolution of Necessity for Parcel 102492

Dear Mr. O'Connor:

The California Department of Transportation (Department) has received and reviewed your letter dated March 23, 2012, in which you raise certain objections to the proposed adoption of a resolution of necessity by the California Transportation Commission (Commission). The proposed resolution would affect property owned by your client, Chevron U.S.A., and is identified as parcel 102492.

This letter represents the Department's response to the objections you have raised. For convenience, each of your objections will be addressed in the order in which you originally raised them.

No. 1 - Objection to Precondemnation Offer.

You have objected to the Department's precondemnation offer of just compensation because the amount offered reflects a deduction from fair market value taken for the estimated cost of remediating hazardous waste on the property. You state that this is improper. The Department respectfully disagrees with your objection.

This parcel has been operated as a gasoline station for several years. During that time, it has been the subject of regulatory action by the State Regional Water Quality Control Board due to the release of hazardous materials. Under California law, it is proper to deduct the cost to remediate contamination on a property from the parcel's otherwise "clean" fair market value in order to arrive at a value representing just compensation. (*Redevelopment Agency v. Thrifty Oil Co.* (1992) 4 Cal. App. 4th 469, 473-474.)

Here, the Department retained a well-respected outside consultant, Ninyo & Moore Geotechnical and Environmental Sciences Consultants, to investigate the parcel and to provide an estimate for remediating any contamination on the property. The consultant estimated that it would cost

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$3,000,000 to remediate contamination on the parcel. Consistent with the *Thrifty Oil* decision, the Department's real estate appraiser then deducted that amount from the parcel's "clean" fair market value.

We recognize that there will be debate in the eminent domain litigation about the extent and cost of remediating contamination on the parcel. However, that debate is best reserved for the court system, not this proceeding before the Commission. This is especially true given your client's right to seek to increase the deposit of probable compensation under Code of Civil Procedure section 1255.030 once the case is filed.

In conclusion, the deduction taken for the cost to remediate was not done arbitrarily, and it is consistent with California law.

No. 2 - Objection over Good Faith Negotiations.

Your second objection is based on the assertion that the Department did not meet its obligation to negotiate in good faith with Chevron U.S.A. We respectfully disagree with this objection.

As an initial matter, this objection is largely based on the same set of circumstances as your first objection: i.e., the contention that it was improper for the Department to take a deduction reflecting the estimated cost to remediate the parcel. As we have already noted, however, the deduction was lawful and based on an expert's opinion. More to the point, Department representatives have been in contact with you over the last several months to attempt to negotiate a resolution of this matter in order to forestall the eminent domain process. To this point however, I believe that we are still waiting for Chevron to make any type of counteroffer for the Department to consider.

In sum, the Department has negotiated in good faith, and will continue to do so in order to attempt to reach an equitable resolution to this matter.

No. 3 - Objection to Project based on Plan and Location.

Your third objection is based on the assertion that the Department did not meet its obligation to plan and locate the project in a manner that is most compatible with the greatest public good and least private injury. We respectfully disagree with this objection.

This interchange project is being undertaken to improve traffic flow and to address safety and congestion issues in south Orange County. The Department's engineers have designed this interchange project in the most efficient manner possible. Your client's parcel will be the location of the new northbound off-ramp connecting Interstate 5 to State Route 74. This is the very heart of the interchange project and requires a significant amount of land to construct and operate. The Department does acknowledge that it is acquiring a piece of your property that would otherwise be considered a "remnant" under Code of Civil Procedure section 1240.410, on the basis that the parcel would be "left in such size, shape, or condition as to be of little market

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value." However, the rationale for this decision is discussed in the appraisal you were previously provided, and compensation for the acquisition of this remnant parcel was included in the offer made to your client. More importantly, if this is actually the basis for your objection, there is a statutory remedy available to your client to challenge the acquisition of this particular parcel in the context of the eminent domain litigation.

In conclusion, the Department has planned and located the project in a manner that is most compatible with the greatest public good and least private injury.

No. 4 - Objection to Project based on California Environmental Quality Act.

Your final objection is based on the assertion that the Department did not meet its obligations under the California Environmental Quality Act (CEQA) because it has piecemealed or segmented the project. We respectfully disagree with this objection.

A full Environmental Impact Report for this project was completed in April 2009. That report addresses each of the issues identified in your letter (i.e., traffic, air quality, etc.), nothing was left out. More importantly, the scope of the environmental document—i.e., the "project" for which the report was done—is the entire Interstate 5/State Route 74 interchange as a whole, not "pieces" or "segments" of the same. All four quadrants of the interchange were analyzed; all four quadrants will be improved with this regionally important transportation project.

Accordingly, your objection that the Department has not met its obligations under CEQA is not accurate. The Department has met its obligations.

A copy of this letter will be transmitted to the Commission to be included in the record.

Very truly yours,

JOHN FREDERICK SMITH
Assistant Chief Counsel

c: Ms. Bimla Rhinehart, California Transportation Commission
Mr. Andre Boutros, California Transportation Commission
Mr. Stephen Maller, California Transportation Commission
Mr. Brent Green, Caltrans

PLANNING MEETING HANDOUT

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Sheppard Mullin Richter & Hampton, LLP
650 Town Center Drive, 4th Floor
Costa Mesa, CA 92626-1993

RE: Chevron U.S.A.'s Objection to the Proposed Adoption of a Resolution of Necessity for Parcel 102499

Dear Mr. O'Connor:

The California Department of Transportation (Department) has received and reviewed your letter dated March 23, 2012, in which you raise certain objections to the proposed adoption of a resolution of necessity by the California Transportation Commission (Commission). The proposed resolution would affect property owned by your client, Chevron U.S.A., and is identified as parcel 102499.

This letter represents the Department's response to the objections you have raised. For convenience, each of your objections will be addressed in the order in which you originally raised them.

No. 1 - Objection to Precondemnation Offer.

You have objected to the Department's precondemnation offer of just compensation because the amount offered reflects a deduction from fair market value taken for the estimated cost of remediating hazardous waste on the property. You state that this is improper. The Department respectfully disagrees with your objection.

This parcel has been operated as a gasoline station for several years. It is currently subject to a cleanup and abatement order issued by the State Regional Water Quality Control Board due to the release of hazardous materials. Under California law, it is proper to deduct the cost to remediate contamination on a property from the parcel's otherwise "clean" fair market value in order to arrive at a value representing just compensation. (*Redevelopment Agency v. Thrifty Oil Co.* (1992) 4 Cal. App. 4th 469, 473-474.)

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Here, the Department retained a well-respected outside consultant, Ninyo & Moore Geotechnical and Environmental Sciences Consultants, to investigate the parcel and to provide an estimate for remediating any contamination on the property. The consultant estimated that it would cost $2,480,000 to remediate contamination on the parcel. Consistent with the *Thrifty Oil* decision, the Department's real estate appraiser then deducted that amount from the parcel's "clean" fair market value.

We recognize that there will be debate in the eminent domain litigation about the extent and cost of remediating contamination on the parcel. However, that debate is best reserved for the court system, not this proceeding before the Commission. This is especially true given your client's right to seek to increase the deposit of probable compensation under Code of Civil Procedure section 1255.030 once the case is filed.

In conclusion, the deduction taken for the cost to remediate was not done arbitrarily, and it is consistent with California law.

No. 2 - Objection over Good Faith Negotiations.

Your second objection is based on the assertion that the Department did not meet its obligation to negotiate in good faith with Chevron U.S.A. We respectfully disagree with this objection.

As an initial matter, this objection is largely based on the same set of circumstances as your first objection: i.e., the contention that it was improper for the Department to take a deduction reflecting the estimated cost to remediate the parcel. As we have already noted, however, the deduction was lawful and based on an expert's opinion. More to the point, Department representatives have been in contact with you over the last several months to attempt to negotiate a resolution of this matter in order to forestall the eminent domain process. To this point however, I believe that we are still waiting for Chevron to make any type of counteroffer on this parcel for the Department to consider.

In sum, the Department has negotiated in good faith, and will continue to do so in order to attempt to reach an equitable resolution to this matter.

No. 3 - Objection to Project based on Plan and Location.

Your third objection is based on the assertion that the Department did not meet its obligation to plan and locate the project in a manner that is most compatible with the greatest public good and least private injury. We respectfully disagree with this objection.

Your client's property is necessary to complete the Interstate 5/State Route 74 interchange project. As part of the overall interchange project, a local street (Del Obispo) on the west side of the freeway is also being realigned for operational and safety concerns. As a result, the whole of your client's property must be acquired for the project because it is located between the freeway

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onramp that will be widened, and the local street that will be realigned as part of the overall project.

In conclusion, the Department has planned and located the project in a manner that is most compatible with the greatest public good and least private injury.

No. 4 - Objection to Project based on California Environmental Quality Act.

Your final objection is based on the assertion that the Department did not meet its obligations under the California Environmental Quality Act (CEQA) because it has piecemealed or segmented the project. We respectfully disagree with this objection.

A full Environmental Impact Report for this project was completed in April 2009. That report addresses each of the issues identified in your letter (i.e., traffic, air quality, etc.), nothing was left out. More importantly, the scope of the environmental document—i.e., the "project" for which the report was done—is the entire Interstate 5/State Route 74 interchange as a whole, not "pieces" or "segments" of the same. All four quadrants of the interchange were analyzed; all four quadrants will be improved with this regionally important transportation project.

Accordingly, your objection that the Department has not met its obligations under CEQA is not accurate. The Department has met its obligations.

A copy of this letter will be transmitted to the Commission to be included in the record.

Very truly yours,

JOHN FREDERICK SMITH
Assistant Chief Counsel

c: Ms. Bimla Rhinehart, California Transportation Commission
Mr. Andre Boutros, California Transportation Commission
Mr. Stephen Maller, California Transportation Commission
Mr. Brent Green, Caltrans

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