

UPDATED SUMMARY OF ISSUES

On October 8, 2013, a Resolution of Necessity (Resolution) request was presented to the California Transportation Commission (Commission) for adoption. Property owners, Mr. Makram Hanna and Mrs. Maureen Hanna, were present and contested the design requirements for the project, asserted that they had not received a valid fair market offer under Government Code 7267.2, and represented to the Commission that they could not complete their proposed development plans until they received grading and drainage plans from the California Department of Transportation (Department). The Commission deferred action on the Resolution to allow for the Department to continue its collaborative efforts to resolve the owners' remaining issues.

On October 14, 2013, the Department mailed the owners a full set of contract plans (layout plans, grading plans, drainage sheets) and the drainage report, while requesting written confirmation of all unresolved issues from the property owners' perspective. On October 17, 2013, the Department received a written summary of the owners' remaining contentions. The owners' written summary included a statement that they actually did not need project grading and drainage plans to assist with their proposed development plans, contradicting statements made by the property owners at the October 8th, 2013 Commission meeting.

The Department met with property owner, Makram Hanna (who was representing both owners) on October 25, 2013. This personal meeting focused on discussing in detail the owners' written summary of contentions and concerns as provided to the Department on October 17, 2013. The contentions that the proposed westerly right of way limits are excessive and that the proposed drainage easement is much larger than necessary, were addressed together since the Department's drainage plan controls the design footprint and corresponding right of way requirements in this area of the subject property. This contention is not new. It was first addressed back in May, June, and July of 2013, when the owners requested a straight line design and first submitted their "100 foot straight line design option" for the Department's review. The Department explained then that this owner-suggested 100 foot design option would not be feasible because it would impact key design features.

As an information item, it should be noted that after collaborating with the property owners and their engineering consultants for several months earlier this year, the Department received verbal and written consent from the property owners agreeing to move forward with a straight line 129 foot design alternative, which was subsequently presented at the October 8, 2013 Commission meeting.

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The Department reiterated to the owners at the October 25th meeting, as had been done on numerous previous occasions, why the 100 foot option would not be feasible. The Department again explained in detail that the owner-suggested 100-foot straight line design option would impact the Department's proposed cross culvert and bio-swale ditch, thus making this design option infeasible.

The Department further explained that as the cross culvert design was based on existing terrain, natural drainage courses, and maintenance requirements, the required drainage culvert was designed for a 100-year storm event. The Department explained the need for the proposed 36-inch drainage pipe and that it is required to facilitate maintenance activities. Furthermore, the Department explained that any attempt to move the inlet/drop-off for the planned drainage facility to a location further north, would result in a fixed object within the clear recovery zone, creating a potential safety concern for the new freeway facility, which is projected to be heavily travelled by large commercial vehicles.

After the Department explained the above issues, and that the owner-suggested design option would compromise project safety and maintenance activities, the owner continued to assert that his team of engineers could redesign the project's drainage requirements so that these facilities would be constructed within the proposed right of way limits as suggested by the property owners. However, to date, the Department has not been provided with said alternate design plans for review and consideration.

During the October 25th meeting, the owners again asserted that the proposed design on the east side of the property is excessive. The Department explained that the proposed right of way limits along Enrico Fermi Drive are based on County circulation requirements and related access control requirements, as called out in the Department's Highway Design Manual (HDM) in Section 504.8. In addition, the property owner was reminded that the Department had previously reduced right of way requirements in this area, based on his prior inquiries. A copy of Highway Design Manual Section 504.8 was provided to the owners at this meeting. The owners have also been advised that the project's design in this area of the subject property is consistent with requirements addressed in the Final Tier 2 Environmental Impact Report/Environmental Impact Statement for the SR 11 project.

The last contention discussed at the October 25th meeting related to soil issues. Mr. Hanna again claimed that the Department's acquisition will create a shortage of 147,000 cubic yards of soil "needed to balance the remainder parcel" in the after-condition for development purposes, and that this would result in the owners having to import soil if the Department's project is initiated first. In conjunction with above, the owners also expressed the opinion that they would lose net buildable area, as a result of lowered ground levels in the after-condition, and this would result in "severance damages" due to reductions in net developable areas and additional costs associated with having to export soil if the Department acquires soil now located in the required right of way areas. The above assertion were new contentions, never presented to the Department prior

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to being raised at the October 8, 2013 Commission meeting. It should be noted that the concerns as noted above have now changed from what was originally identified by the owners in their May 20, 2013 correspondence to the Commission requesting a personal appearance.

Although the property owners have opined that the above soil issues are not "compensation-related", the Department explained that the owners' contentions of "severance damages" are clearly an appraisal issue, typically addressed in the condemnation process, by hiring expert witness appraisers to evaluate such contentions.

The October 25, 2013 meeting concluded with the Department asking Mr. Hanna if he required any other technical data to help in the preparation of his conceptual development plans. Mr., Hanna specifically responded that he did not require any further project information or plans to facilitate his development activities.

Based on negotiations continuing to be at an impasse, and given the owners' repeated written and verbal contentions challenging previously proposed right of way requirements as excessive and unnecessary, the Department is compelled to reduce its right of way requirements to match minimum design requirements for the project. This design alternative was previously presented to the owners at the initiation of negotiations on March 13, 2013, but was subsequently revised in an attempt to accommodate the owners' numerous requests for changes. However, this reversion to minimum project requirements still incorporates owner-requested revocable slope, drainage, and access easements, in lieu of fee acquisition areas.

On November 8, 2013, the Department again met with Makram Hanna and his son, in the hopes of overcoming the continuing impasse on the above issues. Updated maps, an updated written offer, revised appraisal, and related documents were personally presented to Mr. Hanna, based on the above reversion to original right of way requirements (including revocable easements). Mr. Hanna asked for the SR-11 Contractor's contact information for the purpose of negotiating the use of possible excess soil from his remainder parcel for construction of the project. Mr. Hanna also requested information on water quality issues relating to runoff that will be directed through project drainage facilities. Mr. Hanna suggested that he would again consider right of way requirements presented at the October 8, 2013 Commission meeting, if he was satisfied with the Department's responses to his water quality inquiries.

On November 14, 2013, the Department responded in writing to the property owners, providing contact information for the SR-11 Contractor and responding to the owners' water quality inquiries.

On November 15, 2013, the Department spoke to Mr. Hanna by phone as a follow-up to the above-referenced November 14, 2013 letter, and to make sure that Mr. Hanna was aware that Department representatives would continue to make themselves available for further discussions. The property owner strongly stated that he and the Department were now at an impasse.

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On November 18, 2013, Mr. Hanna contacted the Department by phone and requested to meet in person or speak with District 11 Director, Laurie Berman, to further his discussions regarding his coordination efforts with the SR 11 Contractor relating to soil on his remainder parcel and to secure additional assurance that runoff draining into a project culvert on the subject property will be cleaned. A follow-up call to Mr. Hanna is pending to discuss the above issues further.

The Department believes it has now made every reasonable effort to address and resolve all remaining design-related contentions made by the property owners. In addition, on November 14, 2013, the Department received a letter from David Sibbet, Planning Manager for the County of San Diego Planning and Development Services Department, certifying that property owner, Mr. Hanna *“does not have an active permit application open with the County of San Diego Department of Planning & Development Services (PDS). PDS held an Initial Consultation meeting with Mr. Hanna on February 1, 2013. Mr. Hanna submitted a plot plan for discussion during that meeting, but did not receive formal review or any type of approval for his plans since an Initial Consultation meeting is only intended to outline the permitting process and does not constitute a permit application. There have been no further submittals from Mr. Hanna since February 1.”* A copy of the above-referenced letter is attached.

The above information is not consistent with statements made by Mr. Hanna at the October 8, 2013 Commission meeting. Given this fact, and that no development plans or entitlements have been approved by the County of San Diego for the property owners' speculative and conceptual development plans, the Department believes it is reasonable and appropriate to proceed with seeking authority to condemn only those minimum right of way requirements deemed absolutely necessary for construction of the SR 11 project, and has now submitted a Resolution of Necessity request commensurate with those requirements.