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January 12, 2010

VIA EMAIL AND REGULAR MAIL

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

Re: Record Information from Owner- Response to Panel Report
10-SJ-5-PM 22.6/23.0
EA 0E4909
Parcel 16006-1, 2
Khosrow Roy Hifai, Trustee, et al.

Dear Ms. Rhinchart:

The owners hereby request that this letter and the attached exhibits be included in the record for the hearing on the Resolution of Necessity for above-referenced parcel scheduled for January 13, 2010.

The owners respond to the Condemnation Review Panel report received on December 23, 2009.

The owners objected to the realignment of Manthey Road from its existing location North of French Camp Road, not the difference between the project report alignment and the current design as stated in the panel report on page 2. The Department states on page 2 that “[t]he difference between the project report alignment and the current design in travelling from the I-5 southbound off-ramp and French Camp Road intersection to the subject property is approximately 1,220 feet, or less than 30 seconds travelling at an average speed of 30 miles per hour.” This statement is incomplete and misleading.

As demonstrated in the attached exhibits, the distance from the existing southbound off-ramp to the property entrance is approximately 2,915± feet (0.55 mile) with no controlled intersections intervening and clear visibility of the parcel from French Camp Road. In the after condition, the distance is approximately 7,750± feet (1.48 miles). Moreover, the Weston Ranch Towne Center is proposed just West of the proposed southbound off-ramp, which when constructed will obliterate the view of the parcel from French Camp Road and require traffic to pass through at least two new signalized intersections on French Camp Road and to reach the parcel by a circuitous route behind several big box anchors and numerous pads in the proposed center, including a Wal-Mart Superstore.

The owner therefore contends that the project is not planned or located in the manner most compatible with the least private injury.

The owners objected that the proposed land acquisition will leave an uneconomic remnant consisting of approximately 8,000 square feet at the southerly tip of the parcel. This is so because the development standards for the applicable zoning requires a minimum set back of 20 feet along the entire frontage of the remainder parcel. Due to the size and shape of the remainder, its southerly tip will not be economically useable for any purpose such as parking. The owners therefore requested that the Department acquire the uneconomic remnant.

The Department responds at page 3 of the Panel Report that it “has determined that the proposed acquisition does not leave an uneconomic remnant” and that “[t]his is a compensation issue and is outside the purview of the Commission”. The owners disagree on both counts.

First, there are absolutely no facts set forth in the panel report which address the determination that the proposed acquisition does not leave an uneconomic remnant, and no facts were offered by the Department in its appraisal summary or at the panel meeting. To the contrary, the owner has asserted with support in the city’s zoning ordinance that the southern tip of its property is not economically or physically useable in the after condition. That portion of the remainder that is considered by the owners to be an uneconomic remnant is depicted in the attached exhibits.

The Department is equally mistaken in its conclusion that this is an appraisal issue and outside the purview of the Commission. Section 1240.410 of the Code of Civil Procedure defines an uneconomic remnant as a portion of a remainder that will be left in such size, shape, or condition as to be of little market value. The slender tip of the parcel clearly fits the definition. Subdivision (b) of Section 1240.410 of the code provides that when acquisition will leave an uneconomic remnant “the public entity may exercise the power of eminent domain to acquire the remnant.” Furthermore, if the Department determines to acquire the uneconomic remnant, Section 1240.420 requires that “the resolution of necessity ... shall specifically refer to [...] section [1240.410].”

The owners therefore request (without waiving their objection stated above) that if the Commission is disposed to adopt a resolution, it first require the Department acquire the uneconomic remnant, and not adopt the proposed resolution without the reference required by Section 1240.420.

Yours very truly,

BELZER & CARR, LLP



STEVEN P. BELZER

SPB:

cc: Roy Hifai
Andy Zarakani and Mila Padilla
Donald E. Grebe, Chief, Office of Project Delivery