

# Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law  
501 West Broadway, 15<sup>th</sup> Floor | San Diego, CA 92101-3541  
Telephone: 619.233.1155 | Facsimile: 619.233.1158  
www.allenmatkins.com

**Mark J. Hattam**  
E-mail: mhattam@allenmatkins.com  
Direct Dial: 619.235.1529 File Number: 373494-00002/SD837845.01

## Via Email/U.S. Mail

January 4, 2016

Mr. James J. Cleary  
Office of Real Estate Services  
County of Santa Barbara  
The Santa Barbara Historical Courthouse Building  
1105 Santa Barbara Street, Second Floor  
Santa Barbara, CA 93101

**Re: Offer to Purchase  
Lower Mission Creek Flood Control Project-Reach 2A  
Portion of Assessor's Parcel Number 033-074-001**

Dear Mr. Cleary:

As you know, our firm represents The Funk Youth Hostel, LLC ("Owner"), the record owners of Santa Barbara County Assessor's Parcel Number 033-074-001 (the "Property"). We are in receipt of the County of Santa Barbara's (the "County") "Second & Final Offer" letter of December 17, 2015, in which the County offers \$292,000 for both a permanent easement and two temporary construction easements (the "Offer Letter").

The purpose of this letter is to detail Owner's objections to the County's Offer Letter, and to any related proposed resolution of necessity. We request that copies of this objection letter be distributed to all County decision makers prior to their considering the adoption of any such proposed resolution. Owner reserves the right to make further and different objections before and at the hearing, and in any proceedings thereafter.

### OBJECTIONS

#### **The County Failed To Make An Offer Of Just Compensation Based On A Proper Appraisal Of The Property**

The County must pay Owner for the fair market value of the property taken. (Cal. Const., art. I, § 19; Code Civ. Proc., § 1263.310.) Accordingly, the County's appraisal must reflect the fair market value of Owner's Property and take into account all relevant considerations. Here, the County's appraisal is seriously defective. Because of these defects in the appraisal, the County has not properly made an offer pursuant to Government Code section 7267.2 and cannot make a finding that it has. Thus, the County cannot properly adopt a resolution of necessity.

Mr. James J. Cleary  
January 4, 2016  
Page 2

Further, because the evidence presented in these objections establishes that the County's appraisal is defective, the County must commission a new or updated appraisal and make a new offer before proceeding with a resolution of necessity. (*See* 25 Cal. Code Reg., § 6182(i)(2).)

Specifically:

- **The County Initially Failed To Assess The Obvious Severance Damages, And Now Claims To Assess Them But Fails To Properly Do So.** The County's appraiser initially failed to include any analysis of severance damages as a result of the proposed taking and the construction of the County's project.<sup>1</sup> In actuality, Owner is certain to suffer substantial severance damages, all of which must be considered in the County's appraisal. The Property is a relatively small parcel to begin with, and the County's proposed easements significantly impair the ability to fully use the remainder of the parcel. Yet, the appraisal only provides compensation for the land actually taken, not the significant devaluation of the remainder of the Property. Accordingly, as a fundamental matter, the appraisal is defective, and the County has *not* made the required offer.
- **The Valuation Is Not Supported By The Comparables.** The "Easement Land Value" offer is \$247,296. In support of this the County's appraiser submitted alleged comparable land value sales showing prices of \$113 to \$216 per square foot. However, the actual offer to Owner for its land value is only \$84.43 per square foot (\$247,296 land value offer, divided by the 2,929 square feet listed on the description of the sought permanent easement). Therefore, the County's own appraisal facially shows that the offer made by the County is fundamentally far below market, and thus does not satisfy eminent domain law, and will not support a resolution of necessity. Additionally, the temporary easement offer of \$6,000 is provided with no comparables at all, and with no support whatsoever. It too therefore violates eminent domain law, and will not support a resolution of necessity.
- **The County Failed To Value The True Nature Of The Undescribed Easements, Which The Law Therefore Presumes To Be Indefinite, Total Takings Of The Property Described.** Significantly, the County's Offer Letter does not include any proposed language for the three easements to be taken, which the appraisal summary statement describes as "permanent and temporary construction easements." Owner has only been given the legal descriptions and plat drawings, but no easement terms. As such, the "easements" have no limitations or conditions on notice, time, use, safety protocols, access, insurance requirements, or any other limitations or conditions, meaning the County could potentially completely occupy the easement areas on a 24-hour basis for the duration of the easements. Further, although the summary statement apparently assumes the so-called "temporary construction area" easement will last a

---

<sup>1</sup> References herein to the County's appraisal are to the Appraisal Summary Statement attached to the Offer Letter. The County has not disclosed to Owner a full appraisal, if there is one.

Mr. James J. Cleary  
January 4, 2016  
Page 3

maximum of nine months, there is no such restrictive language in any proposed easement documents -- again, because no such easement documents have been provided, only legal descriptions and drawings. It is axiomatic that in eminent domain cases, the property taken must be valued at the "most injurious use." (*See, e.g., County of San Diego v. Bressi* (1986) 184 Cal.App.3d 112, 123 ["the jury must consider the most injurious use of the property reasonably possible. [Citations.]."]) The summary statement -- and, by necessary implication, the amount of compensation offered to Owner -- fails to account for this, because it assumes the easements are of a limited nature, when in fact, all of them are completely unrestricted in time and use, etc.<sup>2</sup>

- **The County Failed To Account For Temporary Severance Damages During Construction.** The County's appraisal also fails to address the substantial construction-related severance damages. The construction equipment and other work will likely have a negative impact on the Owner's access to and operation of its anticipated hostel business. Owner is thus entitled to severance damages for temporary loss of access to its property. (*County of Livermore v. Baca* (2012) 205 Cal.App.4th 1460, 1472; *Pierpont Inn, Inc. v. State of California* (1969) 70 Cal.2d 282.)

Each of these damages and shortcomings must be considered in the appraisal and included in the County's offer of compensation. Since the appraisal failed to properly account for these matters, the County has *not* made a proper Government Code section 7267.2 offer and *cannot* adopt a resolution of necessity.

#### CONCLUSION

For the reasons set forth in this letter, the County cannot validly adopt any proposed resolution of necessity to acquire interests in Owner's Property. Therefore, Owner requests that the County not proceed with any proposed resolution of necessity, and that it instead issue a new and proper appraisal and offer to Owner.

Very truly yours,

Mark J. Hattam

MJH:cs

---

<sup>2</sup> It should be noted that the Offer Letter and its attached Appraisal Summary Statement are confusing as to what is being appraised. The Offer Letter talks about the three easements, while the Appraisal Summary Statement references a "fee simple" interest being appraised. Which is it? Thus, the County's appraisal may not even have appraised easements -- it is impossible to tell.