

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
1900 Main Street, 5th Floor | Irvine, CA 92614-7321
Telephone: 949.553.1313 | Facsimile: 949.553.8354
www.allenmatkins.com

K. Erik Friess
E-mail: rfriess@allenmatkins.com
Direct Dial: 949.851.5478 | File Number: 375486-00001/OC1102571.01

VIA EMAIL/U.S. MAIL

March 11, 2016

Board of Directors,
Santa Barbara County Flood Control and Water
Conservation District
134 Chapala Street, Santa Barbara, California
93101

Clerk of the Board
Santa Barbara County Flood Control and Water
Conservation District
105 East Anapamu Street
Santa Barbara, California 93101

**Re: Lower Mission Creek Flood Control Project Reach 2A, Objections
to Proposed Resolution of Necessity, March 15, 2016, Hearing**

Dear Board of Directors and Clerk of the Board:

This firm represents The Funk Youth Hostel, LLC, the record owners of the real property generally located at the corner of West Yanonali Street and Chapala Street in the City of Santa Barbara and sometimes referred to as Assessor's Parcel Number 033-074-001 ("Property"). We are in receipt of the County Flood Control and Water Conservation District's "Notice of an Opportunity to Appear and be Heard Regarding the Acquisition of Property for Public Use" dated March 1, 2016, in which the District proposes to adopt a resolution of necessity ("RON") to condemn a temporary and a permanent easement over the Property.

Please allow this letter is to detail Funk Youth Hostel's objections to the District's proposed RON, and to any related proposed RONs. We request that copies of this objection letter be distributed to all District decision makers prior to their considering the adoption of any such proposed resolution. Funk Youth Hostel reserves the right to make further and different objections before and at the hearing, and in any proceedings thereafter. In that regard, enclosed is an executed "Request to Appear" form.

References herein to the District's appraisal are to the Appraisal Summary Statement attached to the District's "Second & Final Offer" letter dated December 17, 2015. The District has not disclosed to Owner a full appraisal, if there is one.

Board of Directors,
Clerk of the Board
March 11, 2016
Page 2

OBJECTIONS

The District Failed To Make An Offer Of Just Compensation Based On A Proper Appraisal Of The Property

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

Further, because the evidence presented in these objections establishes that the District's appraisal is defective, the District 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 District initially failed to assess the obvious severance damages, and now claims to assess them but fails to properly do so.** The District's appraiser initially failed to include any analysis of severance damages as a result of the proposed taking and the construction and use of the District's project. In actuality, Funk Youth Hostel is certain to suffer substantial severance damages, all of which must be considered in the District's appraisal. The Property is a relatively small parcel to begin with, and the District's proposed easements significantly impair the ability to fully use the remainder of the parcel, including, without limitation, by obstructing access to and from the Property and by eliminating much needed space for outdoor recreational activities, which form a vital part Funk Youth Hostel's business model. Despite this, the appraisal only addresses 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 District 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 District's appraiser submitted alleged comparable land value showing prices of \$113 to \$216 per square foot. However, the actual offer to Funk Youth Hostel 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 permanent easement). Therefore, the District's own appraisal facially shows that the offer made by the District is fundamentally far below market value, and thus does not satisfy the requirements of the Eminent Domain Law, the California Constitution, and

Board of Directors,
Clerk of the Board
March 11, 2016
Page 3

the Federal Constitution, and will not support an RON. Additionally, the temporary easement offer of \$6,000 is provided with no comparables at all, and with no other support whatsoever. Therefore it too violates the Eminent Domain Law and the California and Federal Constitutions, and will not support a RON.

- **The District failed to identify the easements sought or their areas.** As an initial matter, the District's "Second & Final Offer" letter dated December 17, 2015, its attached Appraisal Summary Statement, and the proposed RON are all confusing as to what is being appraised, especially when viewed collectively. For example, the Offer Letter discusses three *easements*, while the Appraisal Summary Statement references a "fee simple" interest being appraised. Moreover, the District's RON notice includes three easements, two temporary and one permanent, but it provides only a legal description for the permanent easement – no graphical depiction is presented. These ambiguities make the proposed RON fundamentally flawed. They also make it extremely suspect that the appraiser had the information needed to properly value to the property interests the District proposes to acquire.
- **The District 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 District's proposed RON 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." Funk Youth Hostel has only been given the legal descriptions and plat drawings for the two temporary easements, but no easement terms limiting the scope of the easements in any way. 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 District could potentially completely occupy the easement areas on a 24-hour basis for the duration of the easements. Furthermore, although the summary statement apparently assumes the so-called "temporary construction area" easement will last a 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 limited 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."].) The summary statement -- and, by necessary implication, the amount of compensation offered to Funk Youth Hostel -- 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. Importantly, Caltrans and the Federal Highway Administration have expressly agreed that just compensation *must* be paid for the entire period that a temporary construction easement clouds an

Board of Directors,
Clerk of the Board
March 11, 2016
Page 4

owner's title, as reflected in their July 6, 2015, resolution of understanding, a copy of which is enclosed. Since the title cloud here would be indefinite, the District must pay full face value.

- **The District failed to account for temporary severance damages during construction.** The District's appraisal also fails to address the substantial construction-related severance damages. Among other things, the construction equipment and other work will likely have a negative impact on the Funk Youth Hostel's access to and operation of its anticipated hostel business. Funk Youth Hostel is thus entitled to severance damages for temporary loss of enjoyment of and 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 District's appraisal and included in the District's offer of compensation. Since the appraisal failed to properly account for these matters, the District has *not* made a proper Government Code section 7267.2 offer and *cannot* adopt a resolution of necessity.

CONCLUSION

As set forth above, the District cannot validly adopt any proposed RON to acquire interests in Funk Youth Hostel's Property. Funk Youth Hostel therefore respectfully requests that the District not proceed with any proposed RON, and that it instead obtain a new and proper appraisal and make a proper offer to Funk Youth Hostel.

Very truly yours,



K. Erik Friess

KEF:slp
Enclosures



Santa Barbara County Flood Control & Water
Conservation District and Water Agency

NOTICE OF AN OPPORTUNITY TO APPEAR AND BE HEARD
REGARDING THE ACQUISITION OF PROPERTY FOR PUBLIC USE

PARCEL NO.:033-074-001 Address: 134 Chapala Street, Santa Barbara DATE: March 1, 2016

PROJECT TITLE:The Lower Mission Creek Flood Control Project Reach 2A

(Cut Along Dash Line)

REQUEST TO APPEAR AND BE HEARD
REGARDING THE CONDEMNATION OF PROPERTY

TO: SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT,
AGENCY SECRETARY

DATE: March 15, 2016 PARCEL NOS: 033-074-001

PROPERTY ADDRESSES: 134 Chapala Street, Santa Barbara, California

PROJECT TITLE: Lower Mission Creek Flood Control Project – Reach 2A

NAME: K. Erik Friess, Esq., on behalf of Funk Youth Hostel, LLC, the owner of the above-referenced property.

ADDRESS: 1900 Main Street, Fifth Floor, Irvine, California 92614

SIGNATURE:

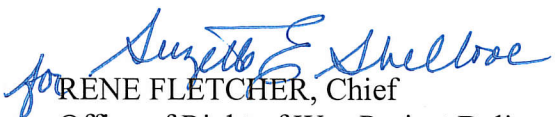
Memorandum

*Serious drought.
Help save water!*

To: DEPUTY DISTRICT DIRECTORS RIGHT OF WAY Date: July 6, 2015
REGION RIGHT OF WAY MANAGERS

File: Appraisals,
Local Programs, and
Acquisitions

From:  LINDA W. TONG, Chief
Office of Appraisals and Local Programs

 RENE FLETCHER, Chief
Office of Right of Way Project Delivery

Subject: TEMPORARY CONSTRUCTION EASEMENTS – PAYMENT OF JUST COMPENSATION

This memorandum is intended to clarify the appropriate payment of just compensation for Temporary Construction Easements (TCEs) paid to a grantor.

A TCE is a temporary property encumbrance for a specific anticipated use over a specified duration of time. Compensation for a TCE commences when the State takes legal and/or physical possession of the property.

Although the actual/physical use of a property may be anticipated for a limited duration within a set timeframe, the property is considered to be encumbered for the entire duration of the set timeframe if legal possession occurs at the close of escrow (COE) or effective date of the Order for Possession. TCEs cannot “float;” the Right of Way (R/W) Agreement (Contract, Possession and Use, etc.) must clearly define the terms of the encumbrance. For example, a TCE for a 12-month anticipated duration to be used within a 36-month timeframe is not permitted. Both Caltrans and FHWA agree that this constitutes a “taking” (encumbrance) even if actual/physical possession is only anticipated for 12 months. A property owner must be compensated for the entire TCE term (in this case, for the entire 36-month duration).

TCEs are valued by the owner’s loss in utility and enjoyment of the encumbered area for the entire TCE term/duration. This loss may be expressed as a discounted land rental rate. The extent of the owner’s loss of utility and enjoyment may be influenced by the owner’s inability to transfer, lease, or otherwise use the encumbered area. The appraisal analysis should therefore consider any such varying levels of the owner’s loss in utility and enjoyment of the encumbered area for the entire duration of the TCE term.

Should the TCE expire before construction is complete, a revised agreement with the property owner (including the additional calculated compensation) is required **prior** to the State’s continued possession of the property. In other words, payment in arrears at a prorated rate is not permitted. As payment is always required prior to possession, an amended or new agreement is necessary before the anticipated expiration of the TCE to ensure that payment for the extended duration is, at minimum, deposited into escrow.

cc: Andrew P. Nierenberg, Acting Chief, Division of Right of Way and Land Surveys
Jennifer Lowden, Assistant Chief, Division of Right of Way and Land Surveys
Melani M. Millard, Realty Officer, Federal Highway Administration, California Division Office
HQ Office Chiefs