

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: June 10-11, 2009

Reference No.: 2.4a.(1)
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Timothy L. Craggs
Acting Chief
Division of Right of Way and
Land Surveys

Subject: **RESOLUTION OF NECESSITY - APPEARANCE**

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-20125 summarized on the following page.

ISSUE:

Prior to initiating Eminent Domain proceedings to acquire needed right of way for a programmed project, the Commission must first adopt a resolution, stipulating specific findings identified under Section 1245.230 of the Code of Civil Procedure, which are:

1. The public interest and necessity require the proposed project.
2. The proposed project is planned and located in a manner that will be most compatible with the greatest public good and the least private injury.
3. This property is necessary for the proposed project.
4. An offer to acquire the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property owners are contesting the Resolution and have requested a written appearance before the Commission to challenge the outstanding issues. At the request of the property owner, objections to the Resolution have been submitted in writing in lieu of a personal appearance before the Commission. The owner's objections are included as Attachment A. The Department's responses to the owner's objections are contained in Attachment B.

BACKGROUND:

Discussions have taken place with the owners, who have been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which they may subsequently be entitled. Adoption of the Resolution will not interrupt the Department's efforts to secure an equitable settlement. In accordance with statutory requirements, the owners' have been advised that the Department is requesting the Resolution at this time. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-20125 - David Meissner, et ux.

07-LA-5-PM 27.5 - Parcel 77408-1, 2, 3 - EA 1786A9.

Right of Way Certification Date: 05/21/09; Ready To List Date: 05/29/09. Freeway - modify interchange and realign ramps. Authorizes condemnation of land in fee for a State highway, together with all of those certain improvements which straddle the right of way line with an easement to enter the remaining ownership to remove such improvements, extinguishment of abutter's rights of access, and a temporary easement for construction purposes. Located in the city of Glendale at 640 Western Avenue and 1648-1650 Flower Street. Assessors Parcel Numbers 5627-008-019, -020

Attachments:

Attachment A – Owner’s Written Objections dated April 23, 2009

Attachment B – Department’s response dated May 12, 2009

Attachment C – Fact Sheet

Exhibits A and B – Parcel Maps

ARTHUR J. HAZARABEDIAN
AJH@CALEDLAW.COM
DIRECT DIAL – 818-957-0477 X 101

April 23, 2009

VIA FACSIMILE AND OVERNIGHT MAIL

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

Re: May 14, 2009 Hearing re Resolution of Necessity
Objection to Adoption of Resolution of Necessity
Parcel 77408-1, -2, -3 – 1632–1650 Flower St., 640 Western Ave., Glendale, CA

Honorable Director and Commission Members:

This firm represents David and Helen Meissner with respect to the State's proposed acquisition by eminent domain of a portion of the above-referenced property (the "subject property"). Please consider this Mr. and Mrs. Meissner's formal objection to the Commission's adoption of a Resolution of Necessity to acquire the subject property by eminent domain. The proposed Resolution is scheduled for hearing on May 14, 2009.

Mr. and Mrs. Meissner respectfully request that the Commission consider this letter and the objections contained herein when considering adoption of the proposed Resolution of Necessity. Please ensure that this letter is included in the administrative record pertaining to the hearing on this matter.

Mr. and Mrs. Meissner hereby object to adoption of the proposed Resolution of Necessity on, without limitation, the following grounds:

- 1. Adoption of the proposed Resolution would violate Code of Civil Procedure Sections 1245.230 and 1263.410 and Government Code section 7267.2 insofar as the pre-condemnation offer failed to take into account the severity of severance damages which will be caused to the subject property as a result of the taking and the project.**

California Code of Civil Procedure section 1245.230 provides that before a public agency may adopt a Resolution of Necessity, it must find, among other things, that an offer consistent with California Government Code section 7267.2 has been made. Cal. Civ. Proc. Code §

1245.230. California Government Code section 7267.2 requires that the government must obtain an appraisal of the property to be condemned in order to determine just compensation, and make an offer of just compensation to the owner in the amount so determined. Cal. Govt. Code § 7267.2.

While Caltrans did obtain an appraisal and make an offer to Mr. and Mrs. Meissner, neither the appraisal nor Caltrans' determination of just compensation is consistent with law. Specifically, Code of Civil Procedure section 1263.410 expressly requires that just compensation shall consider all damages to the remainder property where, as here, the property to be taken is only a portion of a larger parcel.

Here, Caltrans' appraisal takes into account only a limited amount of damage, ignoring that the remainder of the subject property will essentially be rendered useless as a result of the part take and the construction and operation of the project in the manner proposed. Effectively, the Meissners will be left with an uneconomic remnant if Caltrans proceeds with the part take as presently proposed. This is not properly considered in Caltrans' appraisal or offer, and the offer thus cannot legally support the adoption of a resolution of necessity.

The Meissners submit that because of the substantial damages which will be caused to their remainder property as a result of the part take and construction and operation of the project on only a portion of their property, Caltrans should consider acquisition of the entirety of the subject property as an uneconomic remnant *provided* that price and terms can be agreed upon. The Meissners respectfully submit that until such an offer is made, the Commission should not consider adoption of the proposed Resolution of Necessity for only a portion of the property.

2. Adoption of the proposed Resolution would violate Code of Civil Procedure section 1245.230, as the proposed project is not planned in a manner consistent with the greatest public good and least private injury.

Code of Civil Procedure section 1245.230 provides, among other things, that a Resolution of Necessity may only be adopted where the proposed project is located in a manner consistent with the greatest public good and least private injury. Cal. Civ. Proc. Code § 1245.230.

As noted, the project is situated on the Meissners' property in such a way that it effectively destroys the viability of their remainder property. The Meissners will be left with an essentially useless uneconomic remnant. It is respectfully submitted that this is not what is contemplated by Code of Civil Procedure section 1245.230's mandate that projects be situated in such a manner as to cause the least private injury. It is thus respectfully submitted that the Commission cannot make the requisite findings to adopt the proposed Resolution of Necessity, and as such, the proposed Resolution should be rejected.

If, as we believe, the taking is going to leave the Meissners with an uneconomic remnant, then Caltrans should offer to acquire the entire property as an uneconomic remnant, and should acquire the same should price and terms be mutually agreeable.

3. Caltrans has not complied with all statutory and environmental prerequisites to adoption of a Resolution of Necessity.

As the hearing on the Resolution was noticed just recently, and this firm was only recently retained, we have not had an opportunity to seek or review the State's records leading up to this proposed Resolution of Necessity, including without limitation, any environmental review of the proposed project. The Meissners accordingly further object to adoption of the Resolution on the grounds of failure to comply with all legal prerequisites to adoption of the Resolution, including without limitation, compliance with all necessary environmental review. This objection is made in order to preserve the Meissners' right to challenge the Resolution in Court on these grounds should our investigation reveal such prerequisites have not been met.

Based on the foregoing, the Meissners respectfully submit that adoption of the proposed Resolution of Necessity would be legally improper at this time.

Thank you for your consideration.

Respectfully Submitted,



Arthur J. Hazarabedian
California Eminent Domain Law Group,
a Professional Corporation

AJH:aj

DEPARTMENT OF TRANSPORTATION

DISTRICT 7

100 MAIN STREET, SUITE 100
LOS ANGELES, CA 90012-3606
PHONE (213) 897-1901
FAX (213) 897-0360
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*Flex your power!
Be energy efficient!*

May 12, 2009

California Eminent Domain Law Group
Attn: Arthur J. Hazarabedian
3429 Ocean View Blvd. Suite L
Glendale, CA 91208

HIGHWAY R/W MATTERS
Appearance
7-LA-5-KP 44.3
EA 178A69
Parcel 77408-1,2,3
Grantor: David & Helen
Meissner

Dear Mr. Hazarabedian:

This letter is in response to your letter dated April 23, 2009, addressed to the Executive Director of the California Transportation Commission (Commission). In your letter you addressed concerns and objections to the proposed actions on several grounds, regarding Parcel 77408-1,2,3, located at 640 Western, 1648-1650 Flower Street, in the city of Glendale, owned by David and Helen Meissner.

Per discussion with your office, your letter will be submitted to the Commission in lieu of a personal appearance and will be made part of the official record.

The subject of the amount of compensation for your clients' is not an issue for the Commission and will not be considered by them. The California Department of Transportation's (Department) acquisition agent will continue to be available to you and your client to discuss project related issues and compensation in efforts to negotiate a settlement by contract.

The following is the Department's response to the concerns and objections that appeared in your letter to the Commission.

Owner:

The offer to acquire failed to take into account the severity of severance damages, caused by the project and the partial acquisition.

Department:

The appraisal report considered severance damages, both curable and incurable, to the subject property. Payment for curable damages was included in the Department's offer of just compensation. The acquisition and demolition of the impacted building leaves vacant land

"Caltrans improves mobility across California"

for the construction of a truck turnaround area. After curative work is completed, damages to the remainder would be mitigated, and there would be no other severance damages.

Owner:

The partial acquisition, in the manner proposed, will leave the grantors with an uneconomic remnant.

Department:

In the after condition, the remainder will still have value in the market. The remainder is currently improved with a building, which is leased to two separate lessees and will still produce a stream of income to the grantors. The remainder will have adequate parking, as well as a turnaround area for delivery trucks to use for exiting the property.

Owner:

Caltrans is not in compliance with statutory or environmental prerequisites prior to adoption of Resolution of Necessity.

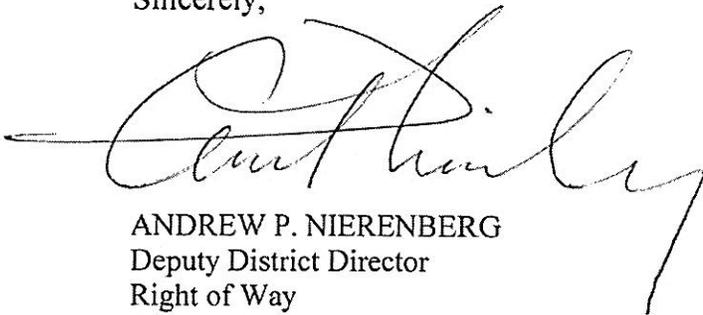
Department:

The Department has completed studies, reports, documentation, and mitigation as required by law. The Environmental Document was approved on September 29, 2000. A written offer for the full amount of the Department's approved appraisal was presented to the grantors' counsel on March 9, 2009. The Notice of Intent was mailed on April 9, 2009 for the May 14, 2009 hearing. The Department has complied with the law in performing its acquisition activities.

Please be advised that your request to appear will not be heard at the May 14, 2009 meeting, but rather will be going to the June 10-11, 2009 CTC meeting to be held in Sacramento.

If you have any questions, please contact Dalia Jaramillo at (213) 897-0932.

Sincerely,



ANDREW P. NIERENBERG
Deputy District Director
Right of Way
District 7

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA 07-LA-5-PM 27.5/28.1
Expenditure Authorization 1786A9

Location: Interstate 5 (I-5) in the city of Glendale

Limits: In Los Angeles County between Sonora Avenue and Allen Street

Cost: Programmed capital construction costs: \$11,000,000
Current capital right of way capital cost estimate: \$14,564,000

Funding Source: State Transportation Improvement Program (Interregional Improvement Program and Regional Improvement Program),
Congestion Mitigation and Air Quality

Number of Lanes: Existing (Western Avenue Interchange): one-lane on and off-ramps
Proposed (Western Avenue Interchange): two-lane on-ramp, two-lane to four-lane off-ramp

Proposed Major Features: Interchanges: Northbound I-5 at Western Avenue Interchange
Realign on-and off-ramps

Traffic: Existing (year 2007): 251,000 Average Daily Traffic (ADT)
Proposed (year 2021): 406,000 ADT

PARCEL DATA

Property Owner: David and Helen Meissner, et ux.

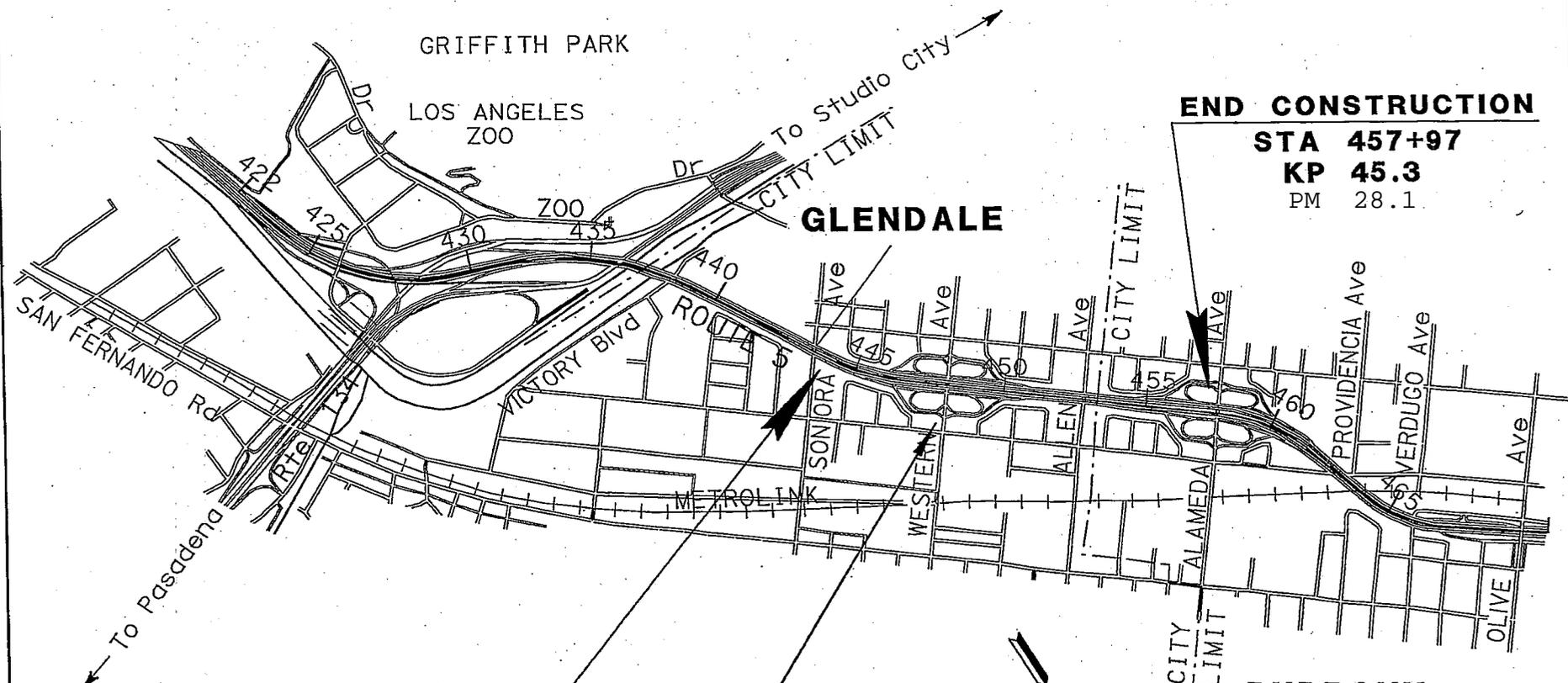
Parcel Location: At the corner of Western Avenue and Flower Street, east of I-5.
Located in the city of Glendale at 640 Western Avenue, 1648-1650 Flower Street. Assessor Parcel Numbers 5627-008-019, -020.

Present Use: Industrial warehouse and office space, with three lessees
Zoned Industrial

Area of Property: 43,734 Square Feet (sq ft)

Area Required: Parcel 77408-1 - 4,352 sq ft - Fee
Parcel 77408-2 - 2,789 sq ft - Temporary Construction Easement
Parcel 77408-3 - 222 lineal feet - Vehicular Access Rights

CITY OF GLENDALE



END CONSTRUCTION

STA 457+97
KP 45.3
PM 28.1

BEGIN CONSTRUCTION

STA 443+57
KP 44.3
PM 27.5

SUBJECT



PARCEL



EXHIBIT " A "

07-LA-5-KP 44.3 / PM 27.5

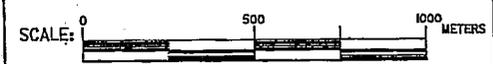


EXHIBIT A

