

M e m o r a n d u m

To: CHAIR AND COMMISSIONERS
California Transportation Commission

Date: March 6, 2008

File: March Meeting, Tab 32

From: 
BIMLA G. RHINEHART

Chief
Division of Right of Way and Land Surveys

Subject: **ADDITIONAL INFORMATION FOR EDOUARD LAXAGUE - APPEARANCE**

Enclosed is additional information to be included as part of the March 12-13, 2008 California Transportation Commission (Commission) Meeting materials. The additional information includes:

- March 3, 2008 letter from the property owner's attorney, Mr. Alan A. Sozio.
- Department's response dated March 6, 2008.

Please add these letters into your March 12-13, 2008 Commission meeting book under Tab 32. This information will be made available at the meeting as a pink handout.

March 3, 2008

Nancy Johnson, Chief
Right of Way Acquisition and Appraisals
District 7 Satellite Team
Department of Transportation
Office of Right of Way
100 South Main Street, MS-6
Los Angeles, CA 90012

**SUPPLEMENT TO OBJECTION TO ADOPTION OF RESOLUTION OF
NECESSITY TO ACQUIRE CERTAIN REAL PROPERTY OR INTEREST
IN REAL PROPERTY BY EMINENT DOMAIN**

Re: CalTrans adv. *Edouard Laxague (Aristocrat Motel)*

Dear Ms. Johnson:

I write to supplement my letter dated February 20, 2008. Please ensure that this correspondence is included in the record of the March 12-13, 2008 hearing before the Commission to be held in Sacramento, California.

It has been represented by CalTrans that damages sustained by the Aristocrat Motel during construction are not compensable. That is not so. In *Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th 954, the Supreme Court held that a property owner "generally should be able to present evidence to show whether and to what extent the delay disrupted its use of the remaining property." 41 Cal.4th at 975. In so holding, the Supreme Court upheld the trial court's determination that "[t]he time period of construction may result in severance damages as to rental losses...." *Id.* at 974.

As unequivocally reiterated in *City of Fremont v. Fisher* (Feb. 28, 2008) 2008 DJDAR 3032:

"Temporary severance damages resulting from the construction of a public project are also compensable. (*Metropolitan Water*, supra, 41 Cal.4th at p. 975.) A property owner "generally should be able to present evidence to show whether and to what extent the delay disrupted its use of the remaining property"



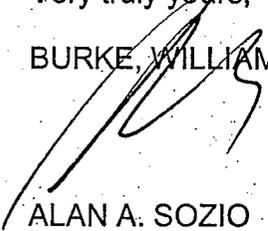
Nancy Johnson, Chief
Right of Way Acquisition and Appraisals
District 7 Satellite Team
March 3, 2008
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Here, the Aristocrat Motel contends the three years of construction to widen the freeway will interfere with the Aristocrat Motel's actual use of the property, as it will substantially prevent use of the property for its actual intended use as a motel, resulting in significant rental losses. This impact is directly quantifiable. The summary appraisals accompanying the Government Code section 7267.2 offer did not consider, let alone quantify, this impact. Consequently, the appraisals, and the offer, are invalid.

Should you have any questions or comments in regard to the foregoing, please do not hesitate to contact me.

Very truly yours,

BURKE, WILLIAMS & SORENSEN, LLP



ALAN A. SOZIO

AAS:amc

cc: John F. Barner, Executive Director
California Transportation Commission

DEPARTMENT OF TRANSPORTATION

DISTRICT 7

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*Flex your power!
Be energy efficient!*

March 6, 2008

Burke, Williams & Sorensen, LLP
Attn: Alan A. Sozio, Esquire
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953

07-LA-10-31.7PM
E. A. 117079
Parcel No. 79155-1, -2

Re: Mr. Edouard Laxague - Aristocrat Motel in Baldwin Park

Dear Mr. Sozio:

This letter is in response to your letter dated March 3, 2008. The Department of Transportation feels it has thoroughly addressed your issues and objections as stated in this letter and your previous letters.

The Fremont Fisher case does not present any new law, but restates existing law; "temporary severance damages" like all other damages must be based on compensable items, not just an unsubstantiated claim for speculative damages. Nothing has been presented to the Department as to what your client's claimed loss will be due to; i.e. just due to construction is insufficient as a matter of law.

We have an appraisal that addresses the value of the Fee, Temporary Construction Easement, and improvements, and concludes there are no severance damages. The property owner here does not, and has not, after the two levels of review and at least three letters, presented any facts whatsoever, that can be considered to bring his claim for temporary severance damages within the ruling set forth in the Fremont Fisher case. Whatever claim he does have can be adequately addressed within the context of an eminent domain trial on compensation.

In accordance with your request, your current and previous written objections to the adoption of the Resolution of Necessity in lieu of your client's personal appearance before the Commission will be made available to the Commission at its March 12, 2008 meeting, and included as part of the official record.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew P. Nierenberg", written over a horizontal line.

ANDREW P. NIERENBERG
District Right of Way Manager
District 7