

December 11, 2013 2:00 PM Agenda Item

Representing: **Makram Hanna**

Presenter:

Floyd E. Davis, Jr. PE, AICP

Education: Master's Degrees: Math, Civil Engineer & Business Administration
Registration: Registered Civil Engineer, 1981, State of California, C-32951
Certification: American Institute of Certified Planners, 2001 American Planning Assoc.
Related Experience: County Right of Way Agent & Utility Coordinator 1979-1981
City Land Development Engineer 1997-2001
District 6 - Caltrans Project Engineer, 2002-2007

Thank You, Caltrans District 11 staff for providing Plans for Drainage, Right of Way and Drainage Study after the October 14, 2013 California Transportation Commission Meeting.

Outstanding Issues: See attached map.

- 1) Northwest corner of Parcel: Additional Right of Way not shown on the agreed Right of Way Map of August 26, 2013.
REQUEST: Revert back to the agreed upon Right of Way Map of August 26, 2013
- 2) Drainage Easement – Parcel 34808-5
REQUEST: Review and Approve a proposed private Drainage Plan prepared for Caltrans in order to vacate the easement after construction of the Caltrans approved Drainage facilities by the owner.
- 3) Access Easement – Parcel 34808-7
REQUEST: Relinquish access easement in favor of a proposed 20' Public Storm Drainage Easement as delineated on referenced map. Note: Said easement is within an internal roads system, thus allowing for better access.
- 4) Negative Grading Impacts: Caltrans' acquisition of land has caused a severe imbalance of soils material for the proposed development of the remaining parcel.
REQUEST: Mitigate the negative grading impact to the satisfaction of the property owner and thus negate any private injury issues.

As Submitted,



Floyd Davis, Agent for Owner: Makram Hanna

SR-11 FREEWAY

NOT AS AGREED TO ON THE
AUGUST 26, 2013 RIGHT OF WAY MAP

PROPOSED CAL-TRANS
36" RCP STORM DRAIN

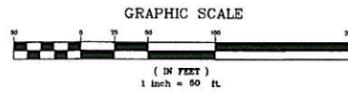
128.0'

PROPOSED CAL-TRANS OFF RAMP

PARCEL 34808-5

PARCEL 34808-7

PROPOSED 20' PUBLIC
STORM DRAIN EASEMENT
WITH 36" DIAMETER PIPE



STREET "A"

E N R I C O F E R M I D R I V E

PROPOSED 20' PUBLIC
STORM DRAIN EASEMENT
WITH 36" DIAMETER PIPE

A I R W A Y R O A D

DE Davis Engineering C-32951
4491 Mariposa Creek Circle
Mariposa, California 95338
(209) 966-5938 Voice /FAX (209) 617-8697 Mobile

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You are in receipt of the issues that remain unresolved through our request to appear before the commission today. However, this document was sent to the members of the commission prior to our receipt of Department's updated summary of issues.

It is clear from the tone of the document that the Department is enraged by the fact that we are exercising our right to object to an acquisition that we do not believe is equitable. The document contains language that is extremely inflammatory, and is clearly designed to paint us as obstructionist liars, who have flip-flopped on our position, which has in fact never changed, and has been made clear in written communications with the Department on many occasions.

I recognize when a document attempts to shift the attention of the reader from the pertinent issues of a contested matter. This updated summary of issues is just such a document. It is a personal attack that has as its core argument the premise that the Resolution of Necessity should be adopted because Mr. Hanna has made inconsistent statements and misrepresented the progress of our site plan to the commission. It does not address the issues that were presented to the Department in writing on October 17, 2013. It is clear that the point of the Department requesting the issues in a written document was not to address them, but rather to analyze the writing and fabricate inconsistencies in an outrageous attempt to undermine Mr. Hanna's character. It is a document that is inflammatory, offensive and peppered with untruths.

The Department has never even contemplated negotiating this acquisition with us. This is made clear by the fact that it has been in communication with all other landowners affected by this project as it was being planned and designed over the last several years, and waited until the point that it was prepared to acquire a portion of our property to initiate any contact with us. I can only surmise as to what the reasons for this might be, but that is a matter that will be addressed in a separate legal filing. Suffice it to say that the agency had expected us to roll over and accept its proposal by repeatedly refusing to provide information to us regarding its project.

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This was a deliberate action designed to leave us in the dark until the last possible moment, in the expectation that by doing so, the agency could acquire the parcel raw. This is evidenced by the agency's own updated summary of issues, in which it indicated that it provided us with a full set of contract plans and the drainage report on October 14, 2013.

Undoubtedly, had we not made an appearance at the October 08, 2013 commission meeting we never would have received these documents, despite requesting the information in 2005, 2007, 2008 and again when the appraiser came to assess the property in July, 2012.

The stark reality, the elephant in the room, as it were, is the fact that Department is required to adhere to a timeline to ensure its receipt of federal funding for this project, and this date is looming ever closer. This is the reason that the agency violated normal protocol and has already awarded the contract to construct the project, despite the fact that it has not yet acquired all necessary rights of way and land necessary to complete the project. This is not a fact that should go unnoticed, as it is the crux of the matter at this point, because it explains why the Department has taken the hardline position not to negotiate with us. We are not citizens with justified concerns, but a roadblock, an annoying irritation to the progress of its project.

Since the adjournment of the meeting on October 08, 2013, it is we who have repeatedly requested meetings, come to the table to discuss the matters at issue, and offered alternatives. The result has been for the agency to punish us for our objection to the design by reverting back from the straight line design to which it had previously agreed, to the crooked one. We have in fact moved backward, rather than forward in our negotiations.

The agency is irritated that we have brought these facts to light, and has resorted to providing the Commission with a document littered with untruths, a document which is a personal attack, all in an effort to divert attention from its own failure to engage in meaningful dialogue and negotiations.

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This is made clear by the fact that Mr. Orso elected to contact the County of San Diego to document the fact that we do not currently have an active permit application open with the County of San Diego Department of Planning & Development Services (PDS).

In its updated summary of issues, the agency states that this information is not consistent with statements made by Mr. Hanna at the October 08, 2013 Commission meeting. This is an outright untruth. Not at that time, nor at any other time has Mr. Hanna ever stated that we have an active permit application open. In fact, in his July 21, 2013 reply to an e-mail from Michael Webster, Mr. Hanna stated that our pre-application meeting with the County had already taken place and that the application could not be completed pending the outcome of our negotiations with the Department.

In an e-mail from our engineer, Mr. Neal Benhoff, directly to Mr. Orso on February 11, 2013 Mr. Orso was informed that we were proceeding with the development and processing of a County of San Diego Site Plan for APN 648-130-27, that we were retaining *the required consultants needed to complete the County Site Plan submittal package and expected to submit within 45 days.* Mr. Benhoff stated that if we could *not obtain additional design data from Cal-Trans within the next few weeks he feared that we would have additional expenses in the development of a Site Plan for APN 648-130-27.*

Mr. Benhoff indicated that Cal-Trans providing us with additional information would not only benefit us, but CalTrans as well and that the more information that we had the better we could assure that design conflicts were eliminated and that not only would our be site developed in the best way but also Cal-Trans facilities and land acquisitions would be done in the most cost effective manner.

Mr. Benhoff asked if Mr. Orso could provide us with any kind of time table for when Cal-Trans could provide us with any additional information? If so what information did he expect to have available?

Note that we never received the information needed to assess the effects of the proposed project on our parcel until November 14, 2013.

The fact that we do not currently have an open application with the county was again re-iterated when the summary of our contentions was sent to Mr. Aragon on October 17, 2013. In fact, our transcript of this e-mail is included

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on page 4 of our request to appear before the Commission today. In this communication Mr. Hanna stated that time was of the essence, and again indicated that we have submitted our pre-application proposal to the County of San Diego, that we have completed all studies required by the County, including our environmental report, and that we are indeed ready to submit our final plans, but that our final site plan is pending the outcome of these negotiations with the Department. The fact that we are unable to submit our plans makes clear the fact that the Department has purposely obstructed our progress in order to acquire its proposed acquisition in raw form.

The fact that the letter that Mr. Orso obtained from the County of San Diego confirming that we do not have an active application, is dated November 14, 2013, is evidence of the fact that

in an effort to portray Mr. Hanna as untruthful, Mr. Orso obtained a letter to confirm a fact of which CalTrans was already aware. The agency untruthfully stated that Mr. Hanna had indicated to the Commission that we had something other than a pre-application meeting.

The updated summary of issues provided to the Commission by CalTrans contradicts itself. On page 1 of the document, it states that we requested a straight line design and first submitted the "100 foot straight line design option " for the Department's review in May, June, and July of 2013. This is true, but it is also true that this design proposal also provided for the transition of drainage water from the Department's project into our system. This drainage proposal is in accordance with the current CalTrans design manual, and can solve the drainage issue immediately. In fact, had CalTrans permitted this plan when initially proposed, or at any time thereafter, drainage would not even be an issue.

Since the plan submitted for the Department's review in May, June, and July of 2013 addresses the drainage issue, the statement on page 2 of the document that the "...Department has not yet been provided with said alternate design plans for review and consideration." is inaccurate..

Page 2 of the document also states that the "soils issue" is a new contention never presented prior to the Commission meeting on October 08, 2013, which is untrue. In fact, the soil issue was the first issue to arise in our

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discussions with the Department back in to 2008 when the Department first engaged in grading the contiguous parcel to the north of ours (the Roll/Dillard parcel APN 646-130-41, known as South County Center, LLC). It should also be noted that we are aware that this took place due to the fact that in order to accomplish these activities, the Department encroached upon our parcel without obtaining the proper permission. When we inquired as to having a similar arrangement for our parcel, our inquiries were ignored entirely. This issue has been ongoing since that time and has always been a concern. This issue has never been characterized by us as a severance damage issue, despite the Department's labeling of the matter as such. Our grading study indicates that in regard to these areas there is a serious issue, as discussed by Mr. Davis.

It is the Department that has labeled it as a severance issue so that the matter can remain unaddressed. This is an attempt to merely kick the can down the road, so that it is one less obstacle to the progress of their project.

The fact that the Department has made an offer does not constitute just compensation. Just

compensation must address the negative impact of the proposed design upon the parcel.

specifically, it should address how the soil issue will be mitigated. It should also address the negative impact of the loss of frontage on the westerly and northerly boundaries of the project.

The statement in Mr. Keck's Memorandum that adoption of the resolution will not interrupt the Department's efforts to secure an equitable settlement is ridiculous. To date, the department has made little effort to secure an equitable settlement, so once the resolution is granted, there is no incentive for it to make any effort whatsoever to secure an equitable settlement.

Mr. Keck's statement that progress has been made is simply untrue, as we have reverted back the original design that initiated our complaint in the first place.