

Tab 8



PALMIERI, TYLER, WIENER, WILHELM & WALDRON<sup>®</sup>

2603 MAIN STREET  
EAST TOWER – SUITE 1300  
IRVINE, CALIFORNIA 92614-4281  
(949) 851-9400  
www.ptwww.com

P.O. BOX 19712  
IRVINE, CA 92623-9712

WRITER'S DIRECT  
DIAL NUMBER  
(949) 851-7294

WRITER'S DIRECT  
FACSIMILE NUMBER  
(949) 825-5412

FIRM'S DIRECT  
FACSIMILE NUMBERS  
(949) 851-1554  
(949) 757-1225

mieifer@ptwww.com

REFER TO FILE NO.  
37460-000

ANGELO J. PALMIERI (1926-1996)  
ROBERT F. WALDRON (1927-1998)

ALAN H. WIENER*	DONNA L. SNOW
ROBERT C. IHRKE*	RYAN M. EASTER
MICHAEL J. GREENE*	ELISE M. KERN
DENNIS W. GHAN*	MELISA R. PEREZ
DAVID D. PARR*	MICHAEL I. KEHOE
CHARLES H. KANTER*	CHADWICK C. BUNCH
PATRICK A. HENNESSEY	ANISH J. BANKER
DON FISHER	RYAN M. PRAGER
GREGORY N. WEILER	ROBERT H. GARRETSON
WARREN A. WILLIAMS	BLAINE M. SEARLE
JOHN R. LISTER	JERAD BELTZ
MICHAEL H. LEIFER	ERIN BALSARA NADERI
SCOTT R. CARPENTER	ERICA M. SOROSKY
RICHARD A. SALUS	PETER MOSLEH
NORMAN J. RODICH	JOSHUA J. MARX
RONALD M. COLE	ERIN K. OYAMA
MICHAEL L. D'ANGELO	STEVEN R. GUESS
STEPHEN A. SCHECK	

MICHAEL C. CHO, OF COUNSEL  
JAMES E. WILHELM, OF COUNSEL  
DENNIS G. TYLER\*, RETIRED  
\*A PROFESSIONAL CORPORATION

December 11, 2013

**VIA E-MAIL & FACSIMILE (916) 653-2134**

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

Re: San Bernardino Development LLC, San  
Bernardino Hotel, LLC; Objection to  
Resolutions of Necessity For Acquisition  
Parcel Nos. 22550-1; 22549-1, 2

Dear Commissioners:

Our clients object to the adoption of the proposed resolution of necessity.

The offer is not valid. It fails to compensate for what is being taken because what is being taken was not appraised. Caltrans and its contractor conceded during multiple design-review meetings it is taking fee to get my clients' dirt for use as fill on other portions of the project. What Caltrans and its contractor call "project balancing". Dirt as construction fill material admittedly has value. The cost/value of the dirt to be acquired as fill material was not appraised. No offer was received for such taking. Instead, the offer provided for \$0.20 per square foot! According to Caltrans, you could buy 20 square feet of my clients' property for the cost of a Starbucks latte. As discussed at the design review, Caltrans is taking 130,000 cubic yards; values of \$8 to \$12 per cubic yard were likewise discussed. As \$9 per cubic yard, the value of the fill is \$1,117,000. No such offer was made because no appropriate appraisal was done.

California Transportation Commission  
December 11, 2013  
Page 2

A new appraisal and new offer should be made consistent with the value of what is being taking. Since the appraisal did not value what is really being taken, the offer fails.

Caltrans has pre-committed the Commission to acquire the right-of-way. Prior to this hearing, the right of way was set. Caltrans' report to the Commission makes a point of highlighting that the right of way was set on April 11, 2013. As has been repeatedly referenced in the Caltrans report, this is a design-build contract. As a result, Caltrans/SANBAG have already contractually pre-committed to deliver the right-of-way to the design-builder well before this hearing undermining any discretion of this Commission to reject the proposed takings. As a result adoption of the resolution would constitute an abuse of discretion.

The proposed fee taking is not necessary and leaves the property owner with an uneconomic remnant. To construct its project on the subject property, Caltrans does not need a fee taking. An easement would suffice. Yet, fee is being proposed in order to acquire the dirt as fill (without paying for it as such). The proposed take is unnecessary. By taking in fee to get the dirt, the project causes greater injury than necessary by leaving the property owner with an uneconomic remnant. Essentially, the project takes the developable, freeway-fronting portion of the property and leaves the undulating hills making development infeasible.

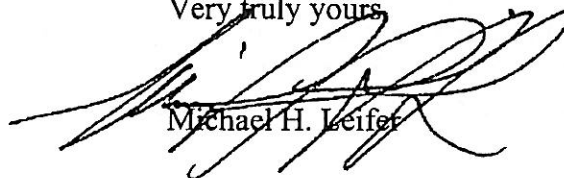
The project will not cause the least private injury. Caltrans admits it needs to relocate the Edison power pole. However, Caltrans is failing to take the rights necessary to do the relocation.

Caltrans is at the same time taking too much (without compensating for it) and taking too little.

We request that the hearing on the resolutions be postponed so that our concerns may be addressed prior to authorization of any condemnation action.

Please include this letter as part of the record on this matter. We incorporate by reference the zoning documents, project documents, offer/appraisal, and correspondence.

Very truly yours,



Michael H. Leifer

MHL:sh

California Transportation Commission  
December 11, 2013  
Page 3

cc: Mark Zgombic (via email)  
Clients