

Revised Additional Support Material Agenda Item No. 21

Board of Directors Meeting

January 5, 2022

10:00 AM

Location:

San Bernardino County Transportation Authority
First Floor Lobby Board Room
Santa Fe Depot, 1170 W. 3rd Street
San Bernardino, CA 92410

DISCUSSION ITEMS

Transit

21. Hearing to Consider Resolutions of Necessity for Property Interests for the West Valley Connector Project

C. Upon completion of the public hearing, that the Board of Directors adopt the Resolution of Necessity No. 22-011 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property owned by Starbridge (Ontario) Investment, LLC, a California Limited Liability Company (APN 0210-211-33). The Resolution must be approved by at least a two-thirds vote of the Board of Directors;

E. Upon completion of the public hearing, that the Board of Directors adopt the Resolution of Necessity No. 22-013 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property owned by William S. Short & Audree L. Short (APNs 1011-141-11, 1011-141-13 & 1011-141-30). The Resolution must be approved by at least a two-thirds vote of the Board of Directors;

H. Upon completion of the public hearing, that the Board of Directors adopt the Resolution of Necessity No. 22-016 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property owned by Holt-San Antonio, LLC, a California Limited Liability Company (APN 1048-591-28). The Resolution must be approved by at least a two-thirds vote of the Board of Directors;

L. Upon completion of the public hearing, that the Board of Directors adopt the Resolution of Necessity No. 22-020 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property owned by Chi Hong Chiang & Hui-Chuan Wang, Trustees of the Chiang Family Trust dated July 8, 2010 (APNs 1049-021-03 & 1049-021-04). The Resolution must be approved by at least a two-thirds vote of the Board of Directors;

V. Upon completion of the public hearing, that the Board of Directors adopt the Resolution of Necessity No. 22-035 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring interests in real property owned by Patrick F. Grabowski and Janis Grabowski, Trustees of that Certain Revocable Declaration of Trust, known as the 2012 Grabowski Revocable Trust, dated June 21, 2012 (APNs 0110-072-10 & 0110-072-11). The Resolution must be approved by at least a two-thirds vote of the Board of Directors;

Material has been revised to include additional correspondences received.

- *Request to speak from Li Zhao representing the interests of Starbridge Ontario Investment;*
- *Request to speak from Glenn Block, California Eminent Domain Law Group, APC, representing the interests of William S. Short and Audree L. Short; and Holt-San Antonio, LLC.;*
- *An objection from Anish Banker, Palmieri Hennessey & Leifer, LLP., representing the interest of Chi Hong Chiang and Hui-Chuan Wang, as Trustees of The Chiang Family Trust dated July 8, 2010;*
- *Request to speak from Corey Roberts, PM Owl Construction, representing the interests of Patrick F. Grabowski and Janis Grabowski.*



700 North Haven Avenue
Ontario, CA 91764
(415) 690-0938

January 3, 2021

VIA FEDEX & ELECTRONIC MAIL
SBCTA
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715
Attention: Marleana Roman
clerkoftheboard@gosbcta.com
rdawit@gosbcta.com

Re: REQUEST OF INTENT TO APPEAR FOR HEARING

Meeting Time: January 5, 2022; 10:00a.m. - Sante Fe Depot - SBCTA Lobby
Site Address: 700 North Haven Avenue, Ontario, CA 91764

Dear Ms. Roman,

The purpose of this letter is to request the appearance of Starbridge Ontario Investment, LLC ("Starbridge"), with respect to the scheduled hearing as mentioned above. Starbridge is the owner of the real property located at 700 N. Haven Avenue, Ontario and identified as San Bernardino County Tax Assessor's Parcel Number 0210-211-33.

Starbridge respectfully requests its intent to appear at the hearing as it has various concerns and questions regarding the scope of the project and its necessity.

You may contact me at: lzhao@platinumcoastus.com or call the above referenced phone number if there is any need.

Sincerely,

/s/ Li Zhao

Representative for Starbridge Ontario Investment

GLENN L. BLOCK
GLB@CALEDLAW.COM
DIRECT DIAL – 818-957-6577

December 29, 2021

VIA EMAIL (clerkoftheboard@gosbcta.com)

SBCTA

Attn: Marlena Roman, Clerk of the Board
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715

**Re: January 5, 2022 – San Bernardino County Transportation Authority (SBCTA)
Public Hearing considering adoption of Resolution of Necessity
West Valley Connector Project
Site Address: 909 & 925-927 W. Holt Blvd., Ontario, CA 91761
Assessor's Parcel Nos.: 1011-141-11, -13 and -30
Owner: Mr. William and Mrs. Audree Short**

To The Honorable Board Members:

We have been retained as eminent domain counsel to Mr. William and Mrs. Audree Short with respect to SBCTA's proposed acquisition by eminent domain of portions of the above-referenced property ("Subject Property") for the West Valley Connector Bus Rapid Transit Project ("Project").

Mr. & Mrs. Short hereby object to SBCTA's consideration of adopting the above-referenced Resolution of Necessity and, if the hearing proceeds, we request the opportunity to be heard at the public hearing on January 5, 2022.

Mr. & Mrs. Short respectfully request that this matter be removed from consideration at the January 5, 2022 meeting, as it is premature because SBCTA has not made a proper offer of just compensation in consideration of the Subject Property's existing improvements and all the Project impacts. Moreover, because the scope of the impacts are not yet known, Mr. & Mrs. Short are unable to properly analyze and evaluate the potential impacts with their real estate appraiser and obtain an appraisal. Accordingly, the parties have not yet had the opportunity to engage in substantive negotiations in an effort to resolve this matter without the necessity of litigation.

Unless and until SBCTA makes a proper offer and the parties are afforded the opportunity to engage in substantive negotiations, it is premature for SBCTA to consider adoption of a Resolution of Necessity to take portions of Mr. & Mrs. Short's property.

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In the event SBCTA denies Mr. & Mrs. Short's request to remove this matter from consideration on January 5, 2022, and proceed with the public hearing for consideration of a Resolution of Necessity to acquire portions of the Subject Property, Mr. & Mrs. Short object on several grounds, as discussed below:

1. CONSIDERATION OF THE PROPOSED RESOLUTION OF NECESSITY IS PREMATURE BECAUSE SBCTA HAS NOT MADE A LEGALLY SUFFICIENT OFFER AS REQUIRED BY CAL. GOVT. CODE §7267.2, ET SEQ.

SBCTA's initial offer of compensation is deficient in several respects. As such, SBCTA cannot establish that it has made a proper offer of compensation in compliance with Cal. Code of Civ. Proc. §1245.230(d).

a. SBCTA's offer fails to include the requisite "highest and best use" opinion.

First, SBCTA's appraisal fundamentally fails to include an opinion of the "highest and best use" of the property as required by law. Cal. Govt. Code §7267.2(b)(1); see also, Cal. Code of Civ. Proc. §1255.010(b)(A) and §1258.260(a)(3).

While SBCTA states in its September 23, 2021 offer letter that, "... the appraisal report takes into consideration the *highest and best use* of the Larger Parcel ...," nowhere in SBCTA's appraisal is there any reference to the appraiser's opinion of the "*highest and best use*" of the Subject Property. Moreover, SBCTA's appraiser incorrectly states that the summary complies with Cal. Code of Civ. Proc. §1255.010 or Cal. Govt. Code §7267.2 as it fails to include an opinion of the *highest and best use* of the Subject Property.

SBCTA's appraisal includes a reference to an "Appraised Use." However, this term is not defined. Moreover, the term "Appraised Use" is not defined or referenced anywhere in the Appraisal Institute's Dictionary of Real Estate Appraisal, 6th Ed or other appraisal publication. Most importantly, there is no discussion or analysis of the "*highest and best use*" of the Subject Property, anywhere in SBCTA's appraisal as required. Thus, SBCTA's offer is legally deficient and SBCTA cannot establish that it has made a proper offer of compensation in accordance with the requirements of Cal. Code of Civ. Proc. §1245.230(d).

b. SBCTA's offer fails to meet fundamental legal requirements.

Furthermore, SBCTA's appraisal does not properly reflect the fair market value of the Subject Property as required by Cal. Code Civ. Proc. §1263.320, nor does it give proper consideration to damages to the remaining property as a result of the construction and use of the Project as required by Cal. Code Civ. Proc. §1263.420. Accordingly, SBCTA has not made an

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offer that complies with Cal. Govt. Code §7267.2 so consideration of a Resolution of Necessity at this time is premature.

SBCTA's offer fails to meet the legal requirements of "just compensation" to which Mr. & Mrs. Short are entitled for the acquisition of portions of the Subject Property. Mr. & Mrs. Short are entitled to "just compensation" that reflects the fair market value of the Subject Property as defined by Cal. Code of Civ. Proc. §1263.320. Here, SBCTA did not appraise the property "as improved" with the existing commercial buildings in which Mr. & Mrs. Short operate their long-time tire business. Instead, SBCTA improperly appraised the property as vacant land.

Moreover, to the extent SBCTA's appraisal acknowledges the commercial building that will be eliminated as a result of the Project, the appraiser speculates – *without any reasonable basis whatsoever* – that the building could be replaced on the remaining property. SBCTA's appraiser did not investigate the zoning, building code or any other applicable regulations, did not obtain a site plan or other engineering or architectural plans, or otherwise analyze and evaluate the physical possibility or feasibility of replacing the building. Additionally, among other deficiencies, SBCTA's appraisal also fails to include any compensation for the 4+ parking spaces eliminated by the Project. Thus, SBCTA's offer is not legally valid.

SBCTA's offer also fails to properly consider the actual impacts of the proposed acquisition as required by law. Cal. Code Civ. Proc. §1263.420(a). In fact, SBCTA's appraiser acknowledges that they were not provided with the actual language of the proposed easements. "The exact easement language was not provided ...," Page 5 of Statement and Summary of Basis for Appraisal. Thus, without reviewing the actual language of the easements to be acquired, SBCTA's appraiser could not properly consider and evaluate the impacts of the proposed acquisition.

Furthermore, SBCTA's appraiser failed to properly evaluate and consider the actual impacts of construction of the Project as required by law. Cal. Code Civ. Proc. §1263.420(b). Among other reasons, SBCTA's failure to properly appraise the property "as improved" results in its failure to properly consider damages to the remaining property as a result of the Project. First, it does not appear that SBCTA's appraiser was provided copies of any Project plans as no plans are referenced or discussed in SBCTA's appraisal. Obviously, it is not possible for SBCTA's appraiser to properly evaluate potential damages to the remaining property as result of the construction and use of the Project in the manner proposed without consideration of the actual Project design/plans. Further, such an analysis requires that the Subject Property be analyzed in its existing condition as improved, with commercial tire shop buildings, in order to properly evaluate potential impacts. SBCTA failed to properly consider potential damages to the remaining property in its offer appraisal – and thus has not made a legally sufficient offer.

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The eminent domain law requires that before a public agency consider adoption of a Resolution of Necessity, it must make an offer based on a legally sufficient appraisal representing fair compensation. Here, SBCTA failed to make such an offer. Thus, SBCTA cannot proceed with adoption of a Resolution of Necessity.

2. IT IS IMPROPER FOR SBCTA TO PROCEED WITH THE HEARING ON A RESOLUTION OF NECESSITY BECAUSE SBCTA VIOLATED GOVERNMENT CODE §7267.1 BY FAILING TO “MAKE EVERY REASONABLE EFFORT” TO ACQUIRE MR. & MRS. SHORT’S PROPERTY BY NEGOTIATION.

California Government Code §7267.1¹ requires SBCTA to “make every reasonable effort to acquire expeditiously real property by negotiation.” Here, SBCTA clearly failed to comply with this requirement because it rushed scheduling of the Resolution of Necessity hearing before providing Mr. & Mrs. Short a reasonable opportunity to even respond to SBCTA’s initial offer. Moreover, SBCTA is proceeding despite the fact that the parties have been engaged in ongoing discussions.

As SBCTA seeks to acquire portions of the Subject Property, Mr. & Mrs. Short are understandably concerned about the potential impacts of the taking of portions of the property and construction and use of the Project. However, Mr. & Mrs. Short have not yet had an opportunity to raise these concerns with SBCTA or its representatives.

Moreover, Mr. & Mrs. Short have been unable to properly analyze and evaluate these potential impacts because SBCTA has not yet finalized construction plans for the Project. There are a number of unresolved issues and questions related to the preliminary plans that SBCTA has prepared. As such, Mr. & Mrs. Short have not yet been able to properly review and analyze SBCTA’s proposed acquisition and construction plans or obtain an appraisal in order to determine the potential impacts and fair compensation.

There is no specific statutory or regulatory requirement describing an acceptable timeframe for pre-condemnation negotiations, or what constitutes “every reasonable effort” to acquire property by negotiation. However, as noted above, SBCTA has not made a proper offer and Mr. & Mrs. Short have not been afforded a reasonable opportunity to analyze and evaluate potential Project impacts. Thus, the parties are not yet prepared to engage in substantive discussions about fair compensation. Unless and until the parties have had an opportunity to discuss potential resolution, after SBCTA makes a proper offer and Mr. & Mrs. Short properly

¹ In addition to the California Government Code, the City is also subject to State and Federal acquisition regulations which impose similar requirements to make every reasonable effort to acquire property by negotiation. See Title 24 Code of Federal Regulations §24.102(a) and Title 25 California Code of Regulations §6182(a).

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investigate and evaluate potential project impacts, it is improper for SBCTA to proceed with consideration of a Resolution of Necessity.

SBCTA's effort to quickly adopt a Resolution of Necessity and file an eminent domain lawsuit before the parties can engage in any substantive negotiations violates Federal and State prohibitions against coercive actions by a public agency. "The Agency shall not advance the time of condemnation ... or take any other coercive action in order to induce an agreement on the price to be paid for the property." Title 24 Code of Federal Regulations §24.102(h); see also similar California provision in Title 25 California Code of Regulations §6182(j)(1).

Here, because Mr. & Mrs. Short have not yet had an opportunity to properly evaluate and analyze the Project impacts and obtain an independent appraisal, and no substantive discussion has taken place, SBCTA's actions constitute coercive efforts to compel Mr. & Mrs. Short to agree to sell their property before the filing of a lawsuit to take the property by force.

These same principles of justice and fairness have long been recognized by the California Supreme Court which stated, "The condemnor acts in a quasi-judicial capacity and should be encouraged to exercise his tremendous power fairly, equitably and with a deep understanding of the theory and practice of just compensation." City of Los Angeles v. Decker (1977) 18 Cal. 3d. 861. SBCTA's actions here clearly fail to meet this established standard of fairness and equity.

Yet, instead of simply affording Mr. & Mrs. Short a reasonable opportunity to analyze and evaluate the potential Project impacts and obtain an independent appraisal, and then making a *reasonable effort* to negotiate with Mr. & Mrs. Short – let alone making "every reasonable effort" to negotiate, as mandated by law – SBCTA is threatening to file a lawsuit before negotiations are even initiated.

Unless and until the parties have the opportunity to freely and reasonably engage in good-faith negotiations, consideration of a Resolution of Necessity to initiate an eminent domain lawsuit and litigate this matter is premature and improper.

3. IT IS IMPROPER FOR SBCTA TO PROCEED WITH ADOPTION OF A RESOLUTION OF NECESSITY AT THIS TIME BECAUSE SBCTA HAS NOT FINALIZED ITS DESIGN PLANS FOR THE PROJECT.

SBCTA has not completed design for this Project. Per our request, SBCTA's acquisition agent recently provided the latest plans for the Project construction at and near the Subject Property. These plans are noted as "100% *Submittal – For Review Only - Not For Construction.*" Thus, the plans are not complete. Furthermore, as noted above, there are a number of outstanding questions and issues related to the preliminary plans that have not been

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addressed (construction schedule, phasing or staging of construction, nighttime or overnight work, etc.)

Accordingly, because there are only preliminary plans prepared – it is possible that as the plans are further refined and finalized, the Project design and/or ROW requirements may change. As such, it cannot be determined at this time the full nature and scope of the partial interests to be acquired, or the impacts the taking and Project construction will cause to the remainder of the Subject Property.

Thus, it is improper for the City to proceed now with acquisition of any portion of the Subject Property based on preliminary plans.

4. CONCLUSION.

For the foregoing reasons, among others, Mr. & Mrs. Short respectfully submit that SBCTA should not consider adoption of the proposed Resolution of Necessity on January 5, 2022.

In the event that the public hearing proceeds on January 5, 2022, Mr. & Mrs. Short request the opportunity to appear before the SBCTA Board and be heard with respect to its objections to the proposed Resolution of Necessity. Please also ensure that this letter is presented to the SBCTA Board for consideration and included in the public record for this matter.

Very truly yours,



Glenn L. Block
California Eminent Domain Law Group,
a Professional Corporation

cc: Mr. William & Mrs. Audree Short (via email)
Ramie Dawit, SBCTA Right-of-Way Manager

GLENN L. BLOCK
GLB@CALEDLAW.COM
DIRECT DIAL – 818-957-6577

December 29, 2021

VIA EMAIL (clerkoftheboard@gosbcta.com)

SBCTA

Attn: Marlena Roman, Clerk of the Board
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715

**Re: January 5, 2022 – San Bernardino County Transportation Authority (SBCTA)
Public Hearing considering adoption of Resolution of Necessity
West Valley Connector Project
Site Address: 668 W. Holt Blvd., Ontario, CA 91761
Assessor's Parcel No.: 1048-591-28
Owner: Holt – San Antonio, LLC**

To The Honorable Board Members:

We have been retained as eminent domain counsel to Holt – San Antonio, LLC (Mr. Youssef Ibrahim) with respect to SBCTA's proposed acquisition by eminent domain of portions of the above-referenced property ("Subject Property") for the West Valley Connector Bus Rapid Transit Project ("Project").

Holt-San Antonio, LLC hereby objects to SBCTA's consideration of adopting the above-referenced Resolution of Necessity and, if the hearing proceeds, we request the opportunity to be heard at the public hearing on January 5, 2022.

Holt-San Antonio, LLC respectfully requests that this matter be removed from consideration at the January 5, 2022 meeting, as it is premature because SBCTA has not made a proper offer of just compensation in consideration of the Subject Property's existing improvements all the Project impacts. Moreover, because the scope of the impacts are not yet know, Holt-San Antonio is unable to properly analyze and evaluate the potential impacts with its real estate appraiser and obtain an appraisal. Accordingly, the parties have not yet had the opportunity to engage in substantive negotiations in an effort to resolve this matter without the necessity of litigation.

Unless and until SBCTA makes a proper offer and the parties are afforded the opportunity to engage in substantive negotiations, it is premature for SBCTA to consider adoption of a Resolution of Necessity to take portions of Holt-San Antonio LLC's property.

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In the event SBCTA denies Holt-San Antonio, LLC's request to remove this matter from consideration on January 5, 2022, and proceed with the public hearing for consideration of a Resolution of Necessity to acquire portions of the Subject Property, Holt-San Antonio, LLC objects on several grounds, as discussed below:

1. CONSIDERATION OF THE PROPOSED RESOLUTION OF NECESSITY IS PREMATURE BECAUSE SBCTA HAS NOT MADE A LEGALLY SUFFICIENT OFFER AS REQUIRED BY CAL. GOVT. CODE §7267.2, ET SEQ.

SBCTA's initial offer of compensation is deficient in several respects. As such, SBCTA cannot establish that it has made a proper offer of compensation in compliance with Cal. Code of Civ. Proc. §1245.230(d).

a. SBCTA's offer fails to include the requisite "highest and best use" opinion.

First, SBCTA's appraisal fundamentally fails to include an opinion of the "highest and best use" of the property as required by law. Cal. Govt. Code §7267.2(b)(1); see also, Cal. Code of Civ. Proc. §1255.010(b)(A) and §1258.260(a)(3).

While SBCTA states in its September 16, 2021 offer letter that, "... the appraisal report takes into consideration the *highest and best use* of the Larger Parcel ...," nowhere in SBCTA's appraisal is there any reference to the appraiser's opinion of the "*highest and best use*" of the Subject Property. Moreover, SBCTA's appraiser incorrectly states that the summary complies with Cal. Code of Civ. Proc. §1255.010 or Cal. Govt. Code §7267.2 as it fails to include an opinion of the *highest and best use* of the Subject Property.

SBCTA's appraisal includes a reference to an "Appraised Use." However, this term is not defined. Moreover, the term "Appraised Use" is not defined or referenced anywhere in the Appraisal Institute's Dictionary of Real Estate Appraisal, 6th Ed or other appraisal publication. Most importantly, there is no discussion or analysis of the "*highest and best use*" of the Subject Property, anywhere in SBCTA's appraisal as required. Thus, SBCTA's offer is legally deficient and SBCTA cannot establish that it has made a proper offer of compensation in accordance with the requirements of Cal. Code of Civ. Proc. §1245.230(d).

b. SBCTA's offer fails to meet fundamental legal requirements.

Furthermore, SBCTA's appraisal does not properly reflect the fair market value of the Subject Property as required by Cal. Code Civ. Proc. §1263.320, nor does it give proper consideration to damages to the remaining property as a result of the construction and use of the

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Project as required by Cal. Code Civ. Proc. §1263.420. Accordingly, SBCTA has not made an offer that complies with Cal. Govt. Code §7267.2 so consideration of a Resolution of Necessity at this time is premature.

SBCTA's offer fails to meet the legal requirements of "just compensation" to which Holt-San Antonio, LLC is entitled for the acquisition of portions of the Subject Property. Holt-San Antonio, LLC is entitled to "just compensation" that reflects the fair market value of the Subject Property as defined by Cal. Code of Civ. Proc. §1263.320. Here, SBCTA did not appraise the property "as improved" with the existing fast-food drive-thru restaurant improvements (occupied by El Pollo Loco). Instead, SBCTA improperly appraised the property as vacant land. Thus, SBCTA's offer is not legally valid.

SBCTA's offer also fails to properly consider the actual impacts of the proposed acquisition as required by law. Cal. Code Civ. Proc. §1263.420(a). In fact, SBCTA's appraiser acknowledges that they were not provided with the actual language of the proposed easements. "The exact easement language was not provided ...," Page 5 of Statement and Summary of Basis for Appraisal. Thus, without reviewing the actual language of the easements to be acquired, SBCTA's appraiser could not properly consider and evaluate the impacts of the proposed acquisition.

Furthermore, SBCTA's appraiser failed to properly evaluate and consider the actual impacts of construction of the Project as required by law. Cal. Code Civ. Proc. §1263.420(b). Among other reasons, SBCTA's failure to properly appraise the property "as improved" results in its failure to properly consider damages to the remaining property as a result of the Project. First, it does not appear that SBCTA's appraiser was provided copies of any Project plans as no plans are referenced or discussed in SBCTA's appraisal. Obviously, it is not possible for SBCTA's appraiser to properly evaluate potential damages to the remaining property as result of the construction and use of the Project in the manner proposed without consideration of the actual Project design/plans. Further, such an analysis requires that the Subject Property be analyzed in its existing condition as improved, with a fast-food drive-thru restaurant, in order to properly evaluate potential impacts. SBCTA failed to properly consider potential damages to the remaining property in its offer appraisal – and thus has not made a legally sufficient offer.

The eminent domain law requires that before a public agency consider adoption of a Resolution of Necessity, it must make an offer based on a legally sufficient appraisal representing fair compensation. Here, SBCTA failed to make such an offer. Thus, SBCTA cannot proceed with adoption of a Resolution of Necessity.

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2. IT IS IMPROPER FOR SBCTA TO PROCEED WITH THE HEARING ON A RESOLUTION OF NECESSITY BECAUSE SBCTA VIOLATED GOVERNMENT CODE §7267.1 BY FAILING TO “MAKE EVERY REASONABLE EFFORT” TO ACQUIRE HOLT-SAN ANTONIO, LLC’S PROPERTY BY NEGOTIATION.

California Government Code §7267.1¹ requires SBCTA to “make every reasonable effort to acquire expeditiously real property by negotiation.” Here, SBCTA clearly failed to comply with this requirement because it rushed scheduling of the Resolution of Necessity hearing before providing Holt-San Antonio, LLC a reasonable opportunity to even respond to SBCTA’s initial offer. Moreover, SBCTA is proceeding despite the fact that the parties have been engaged in ongoing discussions.

As SBCTA seeks to acquire portions of the Subject Property, Holt-San Antonio, LLC is understandably concerned about the potential impacts of the taking of portions of the property and construction and use of the Project. These concerns have been raised on several occasions with SBCTA’s representatives at Bender Rosenthal, and more recently in correspondence to Victor Lopez.

However, Holt-San Antonio, LLC has been unable to properly analyze and evaluate these potential impacts because SBCTA has not provided responses to Holt-San Antonio’s questions nor finalized construction plans for the Project. There are a number of unresolved issues and questions related to the preliminary plans that SBCTA provided. Moreover, Holt-San Antonio LLC requested the opportunity to meet with SBCTA’s engineers at the property to better understand SBCTA’s Project and plans, but such meeting has not yet been scheduled. As such, Holt-San Antonio, LLC has not yet been able to properly review and analyze SBCTA’s proposed acquisition and construction plans or obtain an appraisal in order to determine the potential impacts and fair compensation.

There is no specific statutory or regulatory requirement describing an acceptable timeframe for pre-condemnation negotiations, or what constitutes “every reasonable effort” to acquire property by negotiation. However, as noted above, SBCTA has not made a proper offer and Holt-San Antonio, LLC has not been afforded a reasonable opportunity to analyze and evaluate potential Project impacts. Thus, the parties are not yet prepared to engage in substantive discussions about fair compensation. Unless and until the parties have had an opportunity to discuss potential resolution, after SBCTA makes a proper offer and Holt-San

¹ In addition to the California Government Code, the City is also subject to State and Federal acquisition regulations which impose similar requirements to make every reasonable effort to acquire property by negotiation. See Title 24 Code of Federal Regulations §24.102(a) and Title 25 California Code of Regulations §6182(a).

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Antonio, LLC properly investigates and evaluates potential project impacts, it is improper for SBCTA to proceed with consideration of a Resolution of Necessity.

SBCTA's effort to quickly adopt a Resolution of Necessity and file an eminent domain lawsuit before the parties can engage in any substantive negotiations violates Federal and State prohibitions against coercive actions by a public agency. "The Agency shall not advance the time of condemnation ... or take any other coercive action in order to induce an agreement on the price to be paid for the property." Title 24 Code of Federal Regulations §24.102(h); see also similar California provision in Title 25 California Code of Regulations §6182(j)(1).

Here, because Holt-San Antonio, LLC has not yet had an opportunity to properly evaluate and analyze the Project impacts and obtain an independent appraisal, and no substantive discussion have taken place, SBCTA's actions constitute coercive efforts to compel Holt-San Antonio, LLC to agree to sell their property before the filing of a lawsuit to take the property by force.

These same principles of justice and fairness have long been recognized by the California Supreme Court which stated, "The condemnor acts in a quasi-judicial capacity and should be encouraged to exercise his tremendous power fairly, equitably and with a deep understanding of the theory and practice of just compensation." City of Los Angeles v. Decker (1977) 18 Cal. 3d. 861. SBCTA's actions here clearly fail to meet this established standard of fairness and equity.

Yet, instead of simply affording Holt-San Antonio, LLC a reasonable opportunity to analyze and evaluate the potential Project impacts and obtain an independent appraisal, and then making a *reasonable effort* to negotiate with Holt-San Antonio, LLC – let alone making "every reasonable effort" to negotiate, as mandated by law – SBCTA is threatening to file a lawsuit before negotiations are even initiated.

Unless and until the parties have the opportunity to freely and reasonably engage in good-faith negotiations, consideration of a Resolution of Necessity to initiate an eminent domain lawsuit and litigate this matter is premature and improper.

3. IT IS IMPROPER FOR SBCTA TO PROCEED WITH ADOPTION OF A RESOLUTION OF NECESSITY AT THIS TIME BECAUSE SBCTA HAS NOT FINALIZED ITS DESIGN PLANS FOR THE PROJECT.

SBCTA has not completed design for this Project. Per our request, SBCTA's acquisition agent (Bender Rosenthal) recently provided the latest plans for the Project construction at and near the Subject Property. These plans are noted as "100% *Submittal – For Review Only - Not For Construction.*" Thus, the plans are not complete. Furthermore, as noted above there are a

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number of outstanding questions and issues related to the preliminary plans that have not been addressed (construction schedule, phasing or staging of construction, nighttime or overnight work, etc.)

Accordingly, because there are only preliminary plans prepared – it is possible that as the plans are further refined and finalized, the Project design and/or ROW requirements may change. As such, it cannot be determined at this time the full nature and scope of the partial interests to be acquired, or the impacts the taking and Project construction will cause to the remainder of the Subject Property.

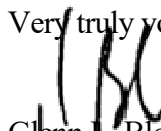
Thus, it is improper for the City to proceed now with acquisition of any portion of the Subject Property based on preliminary plans.

4. CONCLUSION.

For the foregoing reasons, among others, Holt-San Antonio, LLC respectfully submits that SBCTA should not consider adoption of the proposed Resolution of Necessity on January 5, 2022.

In the event that the public hearing proceeds on January 5, 2022, Holt-San Antonio, LLC requests the opportunity to appear before the SBCTA Board and be heard with respect to its objections to the proposed Resolution of Necessity. Please also ensure that this letter is presented to the SBCTA Board for consideration and included in the public record for this matter.

Very truly yours,



Glenn L. Block
California Eminent Domain Law Group,
a Professional Corporation

cc: Mr. Youssef Ibrahim (via email)
Ramie Dawit, SBCTA Right-of-Way Manager

January 4, 2022

VIA E-MAIL (ClerkoftheBoard@gosbcta.com) & U.S. MAIL

Marleana Roman
Clerk of the Board
San Bernardino County Transportation Authority
1170 W. 3rd Street, 2nd Floor
San Bernardino, California

**Re: Objection to San Bernardino County Transportation Authority's
Intent to Adopt a Resolution of Necessity for Taking Portions of
Certain Real Property Located at 625 and 627 W. Holt Blvd.,
Ontario, California by Eminent Domain for the West Valley
Connector Project**

Dear Clerk of the Board:

This firm represents Chi Hong Chiang and Hui-Chuan Wang, as Trustees of The Chiang Family Trust dated July 8, 2010, owners of the above-referenced real property (the "Subject Property").

We have received inadequate notice that San Bernardino County Transportation Authority ("SBCTA") intends to consider adopting a resolution of necessity authorizing the taking of portions of the Subject Property by condemnation for the West Valley Connector Project (the "Project"). The hearing on the resolution of necessity is set for January 5, 2022, at 10:00 a.m., at the Santa Fe Depot – SBCTA Lobby, located at 1170 W. 3rd Street, San Bernardino, California. The purpose of this letter is to provide written objections on behalf of the property owner to the adoption of the resolution of necessity in lieu of personally appearing at the hearing. Accordingly, we request that this letter be included as part of the formal record on that agenda item.

The Chiang Family Trust believes that the adoption of the resolution of necessity is improper at this time, and objects to its adoption on each of the following specific grounds:

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1. The Notice Provided Is Defective and Improper.

SBCTA must provide the property owner with at least 15 days' notice prior to adopting a resolution of necessity. (See, Code Civ. Proc., §§ 1245.235, *et seq.*) In this case, SBCTA sent notice to a knowingly invalid address. On at least two prior occasions many months before the notice was sent, both the property owner and its legal counsel instructed SBCTA and its Row of Way agents in writing and in person that the address where the notice was sent was not valid and provided SBCTA with the property owner's current address and the contact information of its legal counsel. The Property Owner also instructed SBCTA to provide all notices to its legal counsel. Notwithstanding the foregoing, SBCTA chose to "hammer" a resolution of necessity hearing through on an expedited basis by only providing notice to a knowingly invalid address. Such conduct is not only improper and insincere, but also constitutes no notice at all.

2. SBCTA Has Failed To Extend A Legitimate Precondemnation Offer Pursuant to Government Code section 7267.2.

California law requires that SBCTA make a legitimate offer of just compensation based upon its approved appraisal prior to initiating a condemnation proceeding. Compliance with Government Code section 7267.2 is a *mandatory* prerequisite to adopting a resolution of necessity and initiating an eminent domain action. (Code Civ. Proc., §§ 1240.040, 1245.230, subd. (c)(4); *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005.) Failure to strictly comply with the requirements of this section are grounds for dismissing the entire proceeding.

First and foremost, in order for a precondemnation offer to be *legitimate*, the offer must be based on a *current* appraisal. Here, SBCTA's precondemnation offer is invalid insofar as it was predicated upon a *stale* appraisal.

Second, the appraiser, acting on SBCTA's behalf, did not engage in a proper severance damage analysis because the appraiser did not consider the larger parcel which includes more than simply two retail store fronts (but, also, the residential units and lot behind the residential units all owned by the property owner) or the impacts from both the construction and use of the Project as proposed to the mixed-use commercial and residential development. This Project calls for an undertaking of significant duration of no less than 2 years. Based upon the information provided so far, there will be extensive Project construction related activities, the specifics of which, however, have not been disclosed to the property owner or considered, let, alone, analyzed as part of SBCTA's precondemnation offer.

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In any part-take eminent domain proceeding such as this one, the real estate appraiser is required to value the entire larger parcel (land and improvements) in the so-called "before" (or no Project) and "after" (or Project-impacted) conditions, and to assess any impacts occurring to the remainder property (all of the land and the improvements) relating to either or both the parts taken and/or the construction and use of the project in the manner proposed in order to properly assess severance damages. This appraisal fails because the required analysis was not done.

Third, SBCTA's preconditionment offer is also invalid because SBCTA's appraiser failed to properly consider the substantial severance damages permanently impacting the remainder property's access and use during and after condition caused from the construction and use of its Project. Rather, SBCTA's appraiser performed a very cursory severance damages analysis and willfully ignored obvious impacts to the remainder property.

Although these factors and impacts have been known by SBCTA for some time, its preconditionment offer was based upon a stale appraisal that failed to consider any of them and, therefore, contained no analysis of, or compensation for, the resulting damages. As a result of the foregoing, SBCTA's preconditionment offer was invalid and cannot support the adoption of a resolution of necessity authorizing the acquisition of portions of the Subject Property by eminent domain.

Finally, a cursory review of recent sales of comparable properties in the surrounding area indicate a unit rate in excess of the per square foot rate relied upon by SBCTA in its preconditionment offer. As such, SBCTA's preconditionment offer is invalid and cannot support the adoption of a resolution of necessity authorizing the acquisition of the sought for portions of the Subject Property.

SBCTA must re-appraise the entire larger parcel (and not a portion thereof) including all of the improvements located thereon, in both the before condition and the after condition and make an appropriate revised preconditionment offer based upon a current date of value before commencing this acquisition process.

It is inappropriate to attempt to condemn first, and then suggest that an error can be corrected by a subsequent offer or subsequent appraisal *after* the adoption of a resolution of necessity. (See, *City of Stockton v. Marina Towers* (2009) 171 Cal.App.4th 93.) SBCTA cannot correct its error by simply reappraising *after* adopting a resolution of necessity to retroactively confer upon itself with the authority to do that which it has already done.

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California's Eminent Domain Law mandates *strict compliance* with its statutory requirements *before* a public entity may confer upon itself with the awesome power of eminent domain to condemn private property for a public purpose. "The proceeding to condemn land for a public use is special and statutory and the prescribed method in such cases must be strictly pursued especially if those methods benefit the [property] owner." (*City of Needles v. Griswold* (1992) 6 Cal.App.4th 1881, 1895, quoting *Harrington v. Superior Court* (1924) 194 Cal. 185, 191 and *City of Los Angeles v. Glassell* (1928) 203 Cal. 44, 46 [emphasis added].)

3. SBCTA Has Failed To Negotiate In Good Faith Pursuant To Government Code Section 7267.1.

SBCTA is ignoring the substantial improvements located on-site and the damages the Project will cause to the larger parcel for which the Subject Property is a part of. Government Code section 7267.1 imposes an affirmative obligation on a public entity seeking to condemn property to seek **to acquire that property first by negotiation.** (*Johnston v. Sonoma County Agricultural Preservation & Open Space Dist.* (2002) 100 Cal.App.4th 973.) "The public entity shall make every reasonable effort to acquire expeditiously real property by negotiation." (Gov. Code, § 7267.1, subd. (a).) The duty to negotiate is designed to *avoid* litigation, not avoid the recognition of the improved property. "In order to encourage and expedite the acquisition of real property by agreements with Owner, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for Owner in the public programs, and to promote public confidence in public land acquisition practices, public entities shall, to the greatest extent practicable, make every reasonable effort to acquire property by negotiation." (8 Witkin, Summary of Cal. Law (9th ed. 2004) Const. Law, § 972.)

The fundamental precept of any good faith negotiation is that it be predicated on a *legitimate* precondemnation offer that complies with the Government Code. Here, SBCTA has made a knowingly inadequate precondemnation offer that the property owner cannot possibly accept because the offer does not account for the Project's true impacts to the larger parcel for which the Subject Property is a part of. Though SBCTA has made a precondemnation offer to the owner, the offer is predicated on a stale appraisal that did not consider the construction and use of the Project in the manner proposed, as necessitated under the Eminent Domain law. SBCTA's appraiser has ignored these damages. The offer as proposed cannot be accepted. It fails to account for the substantial damages accruing to the marketability of the remainder property and its component improvements due to the construction and use of the Project as proposed.

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Instead of analyzing the Project's true impacts on the larger parcel, SBCTA is prematurely moving forward with this condemnation action and demanding that the property owner either "blindly" accept its precondemnation offer "as is" (without first providing the property owner with an opportunity to assess the adequacy of the offer) or be named as a defendant in a condemnation action.

From the limited information provided, however, SBCTA's proposed Project will result in substantial damages to the Subject Property, which damages SBCTA has neither appraised nor made an offer of compensation to redress. SBCTA's statutory obligation to "make every reasonable effort to acquire expeditiously real property by negotiation" means *nothing* if it does not include (i) making reasonable efforts to provide all information to the property owner to assess the adequacy of the offer made, (ii) to modify Project to eliminate or mitigate potentially damaging Project impacts, and/or (iii) making an offer of compensation to pay for the damages that cannot otherwise be mitigated.

SBCTA asserts that adoption of a resolution will allow negotiations to continue while pursuing condemnation. If that is true, SBCTA's conduct is illegal and improper because negotiations are required for every acquisition. If that statement is in fact false, SBCTA's position that this eminent domain action is necessary to allow for negotiations is illegal. This hearing is supposed to be a real deliberation of the pros and cons of condemnation.

The power of eminent domain is the most coercive power granted to the government under the Constitution relating directly to the ownership of private property. However, with such coercive power comes the responsibility to exercise it appropriately and to seek impartial justice for both the government and private property owner. (See, *City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871. Here, SBCTA is ignoring its *affirmative* obligation under the Government Code. Rather, SBCTA seeks to force the property owner to accept a knowingly inadequate offer or be involved in a lawsuit.

In this instance, SBCTA's conduct falls below its affirmative duty imposed under the Government Code and higher ethical duty to seek impartial justice. (See, *Decker*, *supra*, 18 Cal.3d at p. 871; See also, Gov. Code, §§ 7267.1, *et seq.*)

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4. SBCTA's proposed Project Is Not Planned or Located In The Manner That Will Be Most Compatible With The Greatest Public Good And The Least Private Injury.

SBCTA's consideration and adoption of a resolution of necessity requires a finding that the Project as proposed is planned and located in the manner that will be most compatible with the greatest public good and the least private injury. (Code Civ. Proc., § 1245.340(c)(2).) The property owner is informed and believes and based thereon alleges that SBCTA has failed and refused to consider viable Project alternatives that would reduce the damaging impacts to the Subject Property and larger parcel while maintaining (or improving) any claimed beneficial aspects of the Project. Because each alternative would enable SBCTA to achieve the Project objectives at a greatly reduced private injury, SBCTA must consider those alternatives before an informed determination can be made as to whether the Project as proposed is "most compatible with the greatest public good and the least private injury."

5. SBCTA Is Incapable of Conducting A Fair, Legal, And Impartial Hearing on The Proposed Adoption of The Resolution of Necessity.

SBCTA has already committed itself to the proposed taking, so any hearing resulting in the adoption of the resolution by SBCTA would be a predetermined result. The proposed resolution hearing is a pretense and artifice, and any resolution adopted under these circumstances would be voidable by a court of competent jurisdiction. (See, *Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1127.)

As a condition precedent to the exercise of the power of eminent domain, a public agency "must hold a public hearing to determine whether a particular taking meets the [requirements of Civil Code section 1245.235, i.e., is for a public use, necessary, and designed in such a manner to cause the least private injury....]" (*Norm's Slauson, supra*, 173 Cal.App.3d at p. 1125 [Emphasis added].) "Implicit in this requirement...is the concept that...the [a]gency engage in a good faith and judicious consideration of the pros and cons of the issue and that the decision to take be buttressed by substantial evidence...." (*Id.*, at pp. 1125-1126.) "[A]n agency that would take private property...must...conduct a fair hearing and make its determination on the basis of evidence presented in a judicious and nonarbitrary fashion." (*Id.*, at p. 1129.) In the absence of a fair and impartial hearing, the resolution of necessity is void.

If the condemning agency fails to conduct itself in this manner, then the resolution is not entitled to its ordinary conclusive effect and the burden of proving the elements for

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a taking rests on the government agency with the court being the final adjudicator. (*Norm's Slauson, supra*, 173 Cal.App.3d at pp. 1128-1129.) "The governmental agency in such a situation cannot act arbitrarily and then seek the benefit of having its decision afforded the deference to which it might otherwise be entitled." (*Id.* at p. 1129.)

In *Norm's Slauson*, the Court held that the condemning agency's approval of the resolution of necessity was invalid when the agency "simply 'rubber stamped' a predetermined result" because, prior to any hearing on the resolution, it (a) entered into an agreement with a developer by which the agency agreed to transfer a portion of defendant/property owner's restaurant, and the developer agreed to construct a condominium thereon; and (b) issued and sold tax exempt bonds to pay for the acquisition. (*Id.* at p. 1127.) "In short, the agency, without any notice to Norm's [the property owner], in effect sold the property and issued bonds to obtain the money to acquire the property all before taking any steps to condemn the property." (*Id.*, at p. 1125.)

Here, the property owner is informed and believes that SBCTA has impermissibly committed itself to take portions of the Subject Property.

By having already committed to the Project, SBCTA has left itself no discretion but to approve the resolution. (See, e.g., *Norm's Slauson, supra*, 173 Cal.App.3d at pp. 1127-1130; Code Civ. Proc., § 1245.255, subd. (b).) Accordingly, if the resolution is adopted, the hearing which led to its adoption will have been a pretense and SBCTA's policy-making board will simply be "rubber stamping" a pre-determined result. If the resolution is adopted under such circumstances, it will be voidable on that basis.

6. The Property Sought To Be Acquired Is Not Necessary For the Project.

One of the mandatory components to the necessity determination is that the property sought to be acquired must be necessary for the project. (Code Civ. Proc. § 1240.030, subd. (c).) The Eminent Domain Law defines "property" to include real and personal property and any interest thereon. (Code Civ. Proc., § 1235.170.) Thus, SBCTA must not only consider whether the property is necessary for the project, but, also whether the particular interest in the property that SBCTA to take is necessary. In the absence of substantial evidence supporting such a determination, the resolution of necessity will be invalid.

Here, the property owner is informed and believes that SBCTA has not considered any Project alternatives including, without limitation, shifting the project away from the

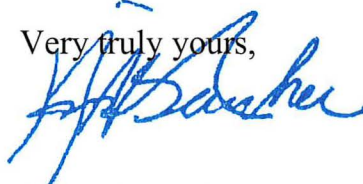
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Subject Property. Viable project alternatives exist that would provide all of the amenities of the proposed Project but at a substantially reduced cost and with less private property. Those alternatives would materially reduce the need to acquire any private property for construction of the proposed project. However, SBCTA has failed to consider those project alternatives. Barring such consideration, SBCTA cannot make an informed determination as to whether the Subject Property is actually necessary for the project.

Based upon the foregoing objections, we respectfully request that SBCTA not adopt the resolution or, at a minimum, continue the hearing on this agenda item until such time as the objections are addressed. If SBCTA has any questions or comments concerning the content of this letter, it should contact the undersigned.

Very truly yours,



Anish J. Banker

AJB

cc: Ramie Dawit, Right-of-Way Manager (via email only - rdawit@gosbcta.com)
Jennifer Cole (via email only - j.cole@benderrosenthal.com)
Todd Comer (via email only - t.comer@benderrosenthal.com)
Michael Kehoe

From: [PM Owl Construction](#)
To: [clerkoftheboard](#)
Cc: [Ramie Dawit](#); [Cheryl Miotke](#)
Subject: SBCTA hearing January 5, 2022
Date: Wednesday, December 29, 2021 12:27:25 PM

Hello Marleana,

My name is Corey Roberts. I represent Patrick F. Grabowski & Janis Grabowski, trustees to the 2012 Grabowski Revocable Trust, dated June 21, 2012. This is in regards to their property located at 1405 E. Holt Blvd., Ontario CA 91761.

SBCTA has a hearing scheduled for 10am on January 5, 2022 at the Santa Fe Depot, 1st Floor at 1170 W. 3rd St., San Bernardino, CA.

I would like to represent the owners of the property at this meeting. I would like to speak on their behalf at this meeting. Please schedule me for attending and speaking to the board with questions at this meeting.

Please respond to this email as acknowledgment to attend the meeting on January 5th, 2022.

Thanks,
Corey Roberts
909-225-0816

Sent from my iPhone