

Additional Support Material Agenda Item No. 21

Board of Directors Meeting

May 4, 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

VIDEO CONFERENCING WILL BE AVAILABLE AT THE FOLLOWING LOCATION:

City Council Chambers
1111 Bailey Ave.
Needles, CA 92363

DISCUSSION ITEMS

Transit

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

That the Board, acting as the San Bernardino County Transportation Authority:

I. Upon completion of the public hearing, that the Board of Directors adopt the Resolution of Necessity No. 22-119 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring certain real property interests on the real property owned by Linda L. Robinson, Trustee of the Linda L. Robinson Living Trust dated February 11, 1992 (APN 1010-543-09). The Resolution must be approved by at least a two-thirds vote of the Board of Directors; and

M. Upon completion of the public hearing, that the Board of Directors adopt the Resolution of Necessity No. 22-135 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring certain real property interests on the real property owned by Ron J. Goodin, Trustee of The R.J. Goodin Family Trust under Trust Instrument dated September 30, 1988 (APN 0110-111-06, 07 & 08). The Resolution must be approved by at least a two-thirds vote of the Board of Directors;

Received correspondences on the above Resolutions of Necessity after publication of the agenda.

Request to speak from Christopher G. Washington, California Eminent Domain Law Group, APC, representing the interests of The Linda Robinson Living Trust dated February 11, 1992.

Request to speak from Glenn L. Block, California Eminent Domain Law Group, APC, representing the interests of Cheryl Wood, as Trustee of The R.J. Goodin Family Trust dated September 30, 1988.

CHRISTOPHER G. WASHINGTON
GCGW@CALEDLAW.COM
DIRECT DIAL – 818-248-5090

April 29, 2022

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: May 4, 2022 – San Bernardino County Transportation Authority (SBCTA)
Public Hearing considering adoption of Resolution of Necessity
West Valley Connector Project
Site Address: 1322 W. Holt Blvd., Ontario, CA 91761
Assessor's Parcel No.: 1010-543-09
Owner: Linda Robinson Living Trust dated February 11, 1992**

To The Honorable Board Members:

We have been retained as eminent domain counsel to The Linda Robinson Living Trust dated February 11, 1992 (“Robinson Trust”) 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”).

Robinson Trust 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 May 4, 2022.

Robinson Trust respectfully requests that this matter be removed from consideration at the May 4, 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 is not yet known, Robinson Trust 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 Robinson Trust’s property.

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In the event SBCTA denies Robinson Trust's request to remove this matter from consideration on May 4, 2022, and proceed with the public hearing for consideration of a Resolution of Necessity to acquire portions of the Subject Property, Robinson Trust 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 any information regarding the determination of the value of the improvements to be taken (eliminated) as part of the Project.

First, SBCTA's appraisal fails entirely to provide any information regarding the valuation of the improvements to be taken and eliminated as part of the Project. Instead, the appraiser merely provides is valuation conclusion. This is in violation of Cal. Govt. Code §7267.2 which requires that the condemnor's summary appraisal statement, "contain detail sufficient to indicate clearly the basis for the offer, including ... (b) ... reproduction or replacement cost analysis ... supporting the determination of value." Absent this required information, SBCTA cannot establish that it has complied with making a proper offer of compensation.

b. SBCTA's offer fails to meet other 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 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 Robinson Trust is entitled for the acquisition of portions of the Subject Property. Robinson Trust 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. 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).

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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. 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.

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 ROBINSON TRUST’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 Robinson Trust 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, Robinson Trust is understandably concerned about the potential impacts of the taking of portions of the property and construction and use of the Project.

However, Robinson Trust has been unable to properly analyze and evaluate these potential impacts because SBCTA has not provided responses to Robinson Trust’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. As such, Robinson Trust has not yet been able to properly review and analyze SBCTA’s proposed acquisition and

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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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 Robinson Trust 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 Robinson Trust 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 Robinson Trust 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 Robinson Trust 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 Robinson Trust 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 Robinson Trust – 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.

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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 (Overland, Pacific & Cutler, LLC) recently provided the latest plans for the Project construction at and near the Subject Property. These plans are noted as "90% *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 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.

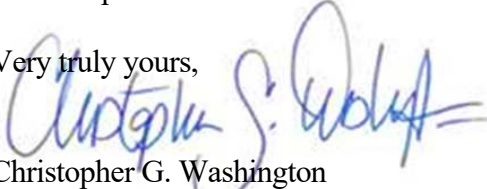
Thus, it is improper for the City to proceed now with acquisition of any portion of the Subject Property based on preliminary plans.

4. CONCLUSION.

For the foregoing reasons, among others, Robinson Trust respectfully submits that SBCTA should not consider adoption of the proposed Resolution of Necessity on May 4, 2022.

In the event that the public hearing proceeds on May 4, 2022, Robinson Trust 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,



Christopher G. Washington
California Eminent Domain Law Group,
a Professional Corporation

cc: Ms. Linda Robinson (via email)
Ramie Dawit, SBCTA Right-of-Way Manager

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

April 29, 2022

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: March 2, 2022 – San Bernardino County Transportation Authority (SBCTA)
Public Hearing considering adoption of Resolution of Necessity
West Valley Connector Project
Site Address: 1628 – 1670 E. Holt Blvd., Ontario, CA
Assessor’s Parcel Nos.: APN 0110-111-06; 07; 08
Owner: Cheryl Wood, as Trustee of The R. J. Goodin Family Trust dated
September 30, 1988**

To The Honorable Board Members:

We have been retained as eminent domain counsel to Cheryl Wood, as Trustee of The R. J. Goodin Family Trust dated September 30, 1988, 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”).

Cheryl Wood, as Trustee of The R. J. Goodin Family Trust dated September 30, 1988 (“Goodin Trust”) 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 May 4, 2022.

Goodin Trust respectfully requests that this matter be removed from consideration at the May 4, 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 is not yet known, Goodin Trust 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 Goodin Trust’s property.

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In the event SBCTA denies Goodin Trust's request to remove this matter from consideration on May 4, 2022, and proceed with the public hearing for consideration of a Resolution of Necessity to acquire portions of the Subject Property, Goodin Trust 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(a)(4).

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

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 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 Goodin Trust is entitled for the acquisition of portions of the Subject Property. Goodin Trust 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 structures and site improvements on the Goodin Trust's property. Instead, SBCTA improperly appraised the property as vacant land. (*See* p. 2 of the Statement and Summary of Basis for Appraisal.) Moreover, on the date of the inspection of the Subject Property by the appraiser, "the larger parcel boundary and proposed acquisition were not staked" leaving the appraiser to derive his valuation opinion based on "extraordinary assumptions." (*See* p. 2 of the Statement of Summary of Basis for Appraisal.)

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. Additionally, the appraisal failed to take into account the impact the project would have on the security of the Goodin Trust's Property during the Project construction. Goodin Trust operates a truck parking lot on the Subject Property, secured by chain link fencing. As part of the Project, SBCTA will demolish the chain link fencing thereby eliminating a primary security feature and protection of the trucks that park on the Subject Property in an area that has experienced criminal activity. Without security, the existing use of the property is impaired and impeded. Further, such an analysis requires that the Subject Property be analyzed in its existing condition as presently utilized for truck parking, with the existing site improvements in order to properly evaluate potential impacts. SBCTA failed to

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properly consider potential damages to the remaining property in its offer appraisal – and thus has not made a legally sufficient offer.

Therefore, SBCTA’s appraiser could not properly consider and evaluate the impacts of the proposed acquisition.

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 GOODIN TRUST’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 Goodin Trust 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, Goodin Trust is understandably concerned about the potential impacts of the taking of portions of the property and construction and use of the Project.

However, Goodin Trust has been unable to properly analyze and evaluate these potential impacts because SBCTA only recently provided some responses to some the questions, but many questions remain and SBCTA has not finalized construction plans for the Project. There are a number of unresolved issues and questions related to the preliminary plans that SBCTA provided. As such, Goodin Trust 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 Goodin Trust has not been afforded a reasonable opportunity to analyze and evaluate potential

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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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 Goodin Trust 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 Goodin Trust has 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 Goodin Trust 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 Goodin Trust 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 Goodin Trust – 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 "*90% 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 addressed (construction schedule, phasing or staging of construction, nighttime or overnight work, etc.)

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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, Goodin Trust respectfully submit that SBCTA should not consider adoption of the proposed Resolution of Necessity on May 4, 2022.

In the event that the public hearing proceeds on May 4, 2022, Goodin Trust 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: Cheryl Wood (via email)
Ramie Dawit, SBCTA Right-of-Way Manager