

Additional Support Material Agenda Item No. 30

Board of Directors Meeting

June 1, 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

30. 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:

C. Upon completion of the public hearing, that the Board of Directors adopt the Resolution of Necessity No. 22-155 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 Daru Property Management, LLC, a California limited liability company (APN 1048-522-10). The Resolution must be approved by at least a two-thirds vote of the Board of Directors; and

E. Upon completion of the public hearing, that the Board of Directors adopt the Resolution of Necessity No. 22-157 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 Joao Ricardo Carvalho and Lisa Castro Carvalho, husband and wife, as joint tenants (APN 1049-063-05). The Resolution must be approved by at least a two-thirds vote of the Board of Directors; and

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

Request to speak from David Hernandez-Rodriguez, MD and Ruth Chambi Hernandez, MD, representing the interests of Daru Property Management, LLC, a California limited liability company and from Anish J. Banker representing the interests of Joao Ricardo Carvalho and Lisa Castro Carvalho, husband and wife, as joint tenants.

May 27, 2022

**SBCTA c/o Marleana Roman Clerk of the Board
1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Email: clerkoftheboard@gosbcta.com
With a copy to Ramie Dawit Email: rdawit@gosbcta.com**

Re:

**SBCTA intent to adopt a Resolution of Necessity to acquire a portion of 517 E. Holt Ave.,
Ontario (APN 1048-522-10), for the West Valley Connector Project
HEARING: June 1, 2022
Property Owner: Daru Property Management, LLC**

Honorable Members of the Board:

We come to you as a representation of property owners of Daru Property Management, LLC, and Three Angels Medical Professional Corporation, which operates as a medical clinic on the above referenced property. We request that this letter and its attachments be made part of the record at the above referenced hearing, and reserve the right to appear at the hearing and be heard on this matter.

We received a purchase offer dated February 7, 2022, from SBCTA, to acquire the front portion of the property plus a temporary construction easement. Initially, SBCTA made an offer to purchase the entirety of the property in fee for the project, dated August 17, 2021, but subsequently rescinded that offer and later presented the February 7 offer. The new offer on which the resolution of necessity would be based appears to require a front portion of the property that faces Holt Avenue, and would include acquisition of the front portion of the building in which Three Angels Medical Professional Corporation operates.

The offer to only buy a portion of the office would cause the building to lose significant value as well as severely impact my medical practice financially. This building was initially acquired to be our permanent office. Many modifications and time went into making this building up to code to be used for a medical office. When you initially offered to buy the building in its entirety the offer was adequate but having to sell only a portion of the office would not be feasible.

As you may know, the past few years have been very difficult for all businesses, we have all been impacted by Covid in one way or another. During the pandemic we were among the few offices in Ontario that continued to give medical care to our community. There is a significant shortage of primary care providers in this geographic area and we do not want to lose the opportunity to offer medical care to our community. Our community is rich in Hispanic population and it is continuously growing. This is why our practice is vital in this area as we have a good understanding of the needs of our patients, and understand their language, customs and traditions.

Allow us to explain to you the process a medical office has to undergo in order to relocate. As well, we would like to emphasize how our practice would be affected.

1. The construction would impact my practice significantly for several months. We would need to temporarily relocate our practice. Doing so, we are at risk of losing our patients that are not willing to relocate or due to office inconsistency. Not being able to utilize the remaining part of the building during construction will cause our patients delays in medical care and we do not want to put any of our patients' continuity of medical care at risk due to construction issues, this would be unethical.

2. If part of the building is sold, we would need to acquire a rental location that is appropriate for a medical office, in our experience when we rent a commercial property, we need to put up to codes the property in order to be a medical office and get the business licenses permits. Also, most of the landlord require us to sign lease agreement for at least 3 years. Base on the foot square that Mr. Dionisio Marquez/ Relocation and project manager sent us, the square rental rate in this geographic area is approximately \$2.00 sq ft. The monthly rent will be approximately 6,500, on top of that we will need to continue to pay the monthly rent to DARU LLC property management of \$ 3,500 for this location because we have already signed a lease agreement. That means we would have to pay \$10,000 monthly only for the rental expenses. It would be unreasonable amount of money to pay due to this matter and it will severely affect us financially.

3. The medical office that we will lease must be within 8 miles of our current office. There are certain requirements that must be met in order for the health plans to agree to allow us to relocate and see our patients.

4. Currently we have already signed contracts with Health Plans who are directly contracted with the government (Center of Medicare and Medi-Cal) and we must inform them 90 days prior to the move. If the health plan agrees to the relocation, a Site Audit must be performed prior to reopening our Medical Practice. There are certain requirements that we must have in order to be in compliance with state requirements and pass the audit.

5. Prior to moving we must apply for the New Business License to the Medical Office after getting it, we will need to apply for a transfer of all utility services and medical permits including but not limited to Fictitious Name Permit, CLIA Waiver, CLIA Registration. This process requires proper documentation and can take up to 45 business days to be processed.

6. We cannot perform any in office testing without the issue of the CLIA Waiver and Registration.

7. In the event that only a portion of the building is purchased we would need to hire a Mechanical Engineer, Architect to do a complete reconfiguration of the interior of the building in order to remain a viable medical office. Currently we are not financially prepared because it is not considered part of our budget expenses

8. The current AC units sit on the front area of the roof that will potentially be demolished. In order to relocate those units, it will take a considerable amount of roof work and restructure of the AC ducts.

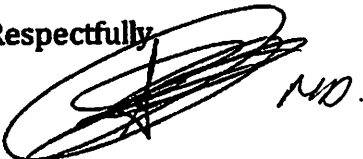
9. The underwriting in our current liability insurance for the business states that it will not cover any losses in the event that the office is vacant for 90 days or more.

10. The office will lose significant and important square footage there for reducing the capacity of patients that will be able to be seen. The area indicated is our lobby and front office space. Our lobby allows us to keep our patients well distant to avoid and decrease the risk of exposure.

As you can see it is not a simple process to relocate or agree to reduce my office space. We ask that you reconsider buying the property in its entirety so that we are able to make a smooth transition of our practice and avoid any delay in medical care for our patients. If you agree to purchase the entire building this would give us the opportunity to continue to serve the community and support our employees as well as decrease the financial impact on our medical practice.

We thank you for your time and consideration in this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "David Hernandez-Rodriguez", with a stylized flourish at the end.

David Hernandez-Rodriguez, MD
Internal Medicine

A handwritten signature in black ink, appearing to read "Ruth Chambi Hernandez", with a stylized flourish at the end.

Ruth Chambi Hernandez, MD
Family Practice

SBCTA West Valley Connector project

Attachments:

- 1. Business license**
- 2. State of California Department of Health Care Services Medical Care Site Review Survey Certificate# 01401170111620**
- 3. Lease agreement between Daru LLC Property Management and Three Angels Medical Professional Corporation.**
- 4. Mr. Dionisio Marquez letter of properties information that we could rent on this area.**
- 5. Letter of Attorney at Law send to Mark Mendoza and Jennifer Goralski Paragon Partners regarding the SBCTA offer to purchase a portion of 517 E Holt Blvd Ontario CA West Valley Connector project**

CITY OF ONTARIO

BUSINESS LICENSE

2021 - 2022

TO BE POSTED IN A CONSPICUOUS PLACE AND
NOT TRANSFERABLE OR ASSIGNABLE.

The party shown is granted this certificate pursuant to License and Permit Provisions of the Municipal Code. This is not an endorsement of the activity, nor certification of compliance with other laws. This license is issued without verification that the licensee is subject to or exempt from licensing by the State of California.

Business Name	THREE ANGELS MEDICAL PROFESSIONAL C	License Number	100667
Business Location	517 E HOLT BLVD ONTARIO, CA 91761-1704	Business Type	PROFESSIONAL & SEMI-PROFESSIONAL
Business Owner(s)	DAVID HERNANDEZ RODRIGUEZ CINDI ZAMUDIO	Effective Date	October 01, 2021
	THREE ANGELS MEDICAL PROFESSIONAL CORPORATION THREE ANGELS MEDICAL PROFESSIONAL CORPORATION #3 517 E HOLT BLVD ONTARIO, CA 91761-1704	Expiration Date	September 30, 2022

**Conditions/
Fire Permit** APPROVED FOR MEDICAL OFFICE. ZONE:CN PREVIOUS USE: MEDICAL CLINIC

THREE ANGELS MEDICAL PROFESSIONAL CORPORATION #3 :

Thank you for your payment on your City of Ontario Business License. **ALL LICENSES MUST BE AVAILABLE FOR INSPECTION UPON REQUEST.** If you have questions concerning your business license, contact the Business Support Center via email at: BusLic@ontarioca.gov or by telephone at: (909) 395-2022.

Contact the Business Registration Division at (909) 395-2022 if the business closes prior to the expiration date of the certificate. Please notify this office within ten (10) days of any change of business name, ownership, address location or activity.

Starting January 1, 2021, Assembly Bill 1607 requires the prevention of gender-based discrimination of business establishments. A full notice is available in English or other languages by going to: <https://www.dca.ca.gov/publications/>.



LICENSING DIVISION
303 EAST B STREET
ONTARIO, CA. 91764-4196



City of Ontario
BUSINESS LICENSE

THREE ANGELS MEDICAL PROFESSIONAL
CORPORATION
THREE ANGELS MEDICAL PROFESSIONAL
CORPORATION #3
517 E HOLT BLVD
ONTARIO, CA 91761-1704

License Number: 100667

Date of Issue: 10/01/2021

The State of California Department of Health Services



Acknowledges
Dr. Ruth Chambi-Hernandez
517 E Holt Blvd Ontario, CA 91761

as successfully completing the Department of Health Care Services
Medi-Cal Managed Care Division's Site Review Survey. This
site is deemed a DHCS CERTIFIED Quality Medical Site under the
provisions of: MMCD policy letter 14-004.

Date issued 9/26/2018
Certificate # 01401170111620

A handwritten signature in black ink, appearing to read 'J Sayles'.

Jennifer N. Sayles, MD, MPH
Chief Medical Officer
Inland Empire Health Plan



COMMERCIAL LEASE

This Lease Agreement (this "Lease") is dated as of October 01, 2021, by and between DARU LLC PROPERTY MANAGEMENT ("Landlord"), and THREE ANGELS MEDICAL PROFESSIONAL CORPORATION ("Tenant"). The parties agree as follows:

PREMISES. Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant 3,244 square foot Medical Office (the "Premises") located at 517 E HOLT BLVD, ONTARIO, CA 91761.

TERM. The lease term will begin on October 01, 2021 and will terminate on September 30, 2026.

LEASE PAYMENTS. Tenant shall pay to Landlord monthly installments of \$3,500.00, payable in advance on the first day of each month. Lease payments shall be made to the Landlord at 16954 Cramer Cir, Riverside, California 92504. The payment address may be changed from time to time by the Landlord.

SECURITY DEPOSIT. At the time of the signing of this Lease, Tenant shall pay to Landlord, in trust, a security deposit of \$3,500.00 to be held and disbursed for Tenant damages to the Premises (if any) as provided by law.

POSSESSION. Tenant shall be entitled to possession on the first day of the term of this Lease, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing. At the expiration of the term, Tenant shall remove its goods and effects and peaceably yield up the Premises to Landlord in as good a condition as when delivered to Tenant, ordinary wear and tear excepted.

USE OF PREMISES. Tenant may use the Premises only for Medical office. The Premises may be used for any other purpose only with the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall notify Landlord of any anticipated extended absence from the Premises not later than the first day of the extended absence.

EXCLUSIVITY. Landlord shall not directly or indirectly, through any employee, agent, or otherwise, lease any space within the property (except the Premises herein described), or permit the use or occupancy of any such space whose primary business activity is in, or may result in, competition with the Tenant's primary business activity. The Landlord hereby gives the Tenant the exclusive right to conduct their primary business activity on the property.

PARKING. Tenant shall be entitled to use 7 parking space(s) for the parking of the Tenant's customers' /guests' motor vehicle(s).

STORAGE. Tenant shall be entitled to store items of personal property in no during the term of this Lease. Landlord shall not be liable for loss of, or damage to, such stored items.

PROPERTY INSURANCE. Landlord and Tenant shall each maintain appropriate insurance for their respective interests in the Premises and property located on the Premises. Landlord shall be named as an additional insured in such policies. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force issued by companies reasonably satisfactory to Landlord. Landlord shall receive advance written notice from the insurer prior to any termination of such insurance policies. Tenant shall also maintain any other insurance which Landlord may reasonably require for the protection of Landlord's interest in the Premises. Tenant is responsible for maintaining casualty insurance on its own property.

LIABILITY INSURANCE. Tenant shall maintain liability insurance on the Premises in a total aggregate sum of at least \$1,500.00. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force issued by companies reasonably satisfactory to Landlord. Landlord shall receive advance written notice from the insurer prior to any termination of such insurance policies.

RENEWAL TERMS. This Lease shall automatically renew for an additional period of 5 years per renewal term, unless either party gives written notice of termination no later than 90 days prior to the end of the term or renewal term. The lease terms during any such renewal term shall be the same as those contained in this Lease except that the lease installment payments shall be \$3,745.00 per month.

MAINTENANCE.

Landlord's obligations for maintenance shall include:

- the roof, outside walls, and other structural parts of the building
- the parking lot, driveways, and sidewalks, including snow and ice removal
- the sewer, water pipes, and other matters related to plumbing
- the electrical wiring
- the air conditioning system

Tenant's obligations for maintenance shall include:

- all other items of maintenance not specifically delegated to Landlord under this Lease.

TAXES. Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

REAL ESTATE TAXES. Landlord shall pay all real estate taxes and assessments for the Premises.

PERSONAL TAXES. Landlord shall pay all personal taxes and any other charges which may be levied against the Premises and which are attributable to Tenant's use of the Premises, along with all sales and /or use taxes (if any) that may be due in connection with lease payments.

TERMINATION UPON SALE OF PREMISES. Notwithstanding any other provision of this Lease, Landlord may terminate this lease upon 90 days' written notice to Tenant that the Premises have been sold.

DEFAULTS. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 10 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent". The rights provided by this paragraph are cumulative in nature and are in addition to any other rights afforded by law.

LATE PAYMENTS. For any payment that is not paid within 10 days after its due date, Tenant shall pay a late fee of \$250.00.

CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

NON-SUFFICIENT FUNDS. Tenant shall be charged \$25.00 for each check that is returned to Landlord for lack of sufficient funds.

REMODELING OR STRUCTURAL IMPROVEMENTS. Tenant shall have the obligation to conduct any construction or remodeling (at Tenant's expense) that may be required to use the Premises as specified above. Tenant may also construct such fixtures on the Premises (at Tenant's expense) that appropriately facilitate its use for such purposes. Such construction shall be undertaken and such fixtures may be erected only with the prior written consent of the Landlord which shall not be unreasonably withheld. Tenant shall not install awnings or advertisements on any part of the Premises without Landlord's prior written consent. At the end of the lease term, Tenant shall be entitled to remove (or at the request of Landlord shall remove) such fixtures, and shall restore the Premises to substantially the same condition of the Premises at the commencement of this Lease.

ACCESS BY LANDLORD TO PREMISES. Subject to Tenant's consent (which shall not be unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. However, Landlord does not assume any liability for the care or supervision of the Premises. As provided by law, in the case of an emergency, Landlord may enter the Premises without Tenant's consent. During the last three months of this Lease, or any extension of this Lease, Landlord shall be allowed to display the usual "To Let" signs and show the Premises to prospective tenants.

DANGEROUS MATERIALS. Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

COMPLIANCE WITH REGULATIONS. Tenant shall promptly comply with all laws, ordinances, requirements and regulations of the federal, state, county, municipal and other authorities, and the fire insurance underwriters. However, Tenant shall not by this provision be required to make alterations to the exterior of the building or alterations of a structural nature.

MECHANICS LIENS. Neither the Tenant nor anyone claiming through the Tenant shall have the right to file mechanics liens or any other kind of lien on the Premises and the filing of this Lease constitutes notice that such liens are invalid. Further, Tenant agrees to (1) give actual advance notice to any contractors, subcontractors or suppliers of goods, labor, or services that such liens will not be valid, and (2) take whatever additional steps that are necessary in order to keep the premises free of all liens resulting from construction done by or for the Tenant.

ASSIGNABILITY/SUBLETTING. Tenant may not assign or sublease any interest in the Premises, nor effect a change in the majority ownership of the Tenant (from the ownership existing at the inception of this lease), nor assign, mortgage or pledge this Lease, without the prior written consent of Landlord, which shall not be unreasonably withheld.

NOTICE. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LANDLORD:

DARU LLC PROPERTY MANAGEMENT
16954 Cramer Cir
Riverside, California 92504

TENANT:

THREE ANGELS MEDICAL PROFESSIONAL CORPORATION
517 E HOLT BLVD
ONTARIO, CA 91761

Such addresses may be changed from time to time by any party by providing notice as set forth above. Notices mailed in accordance with the above provisions shall be deemed received on the third day after posting.

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of California.

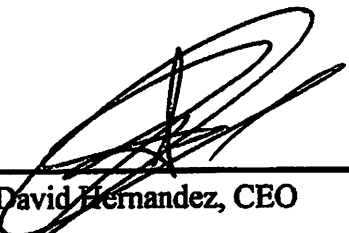
ENTIRE AGREEMENT/AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

BINDING EFFECT. The provisions of this Lease shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors and assigns.

LANDLORD:
DARU LLC PROPERTY MANAGEMENT

By:  _____
David Hernandez, CEO

Date: 10/1/2021

TENANT:
THREE ANGELS MEDICAL PROFESSIONAL CORPORATION

By:  _____
David Hernandez, Director

Date: 10/1/2021

Good afternoon, Mr. Peterson:

I understand you represent Three Angels Medical Corporation, the tenant occupant of the property at 517 E. Holt Avenue, Ontario, CA 91761 (APN 1048-522-10).

I am sending this email to inform you that I have been assigned the relocation file of Three Angels Medical Corporation. Therefore, I would like to schedule a time to meet with you and your client to better understand the relocation needs of the business.

In the meantime, I would greatly appreciate it if you could deliver, explain, and secure signatures on the following items:

- 1 Notice of Relocation Entitlement – Please secure signature and return.

(This notice was previously sent but I am updating with my name as the relocation agent)

2. Non-Residential Relocation Brochure
3. Receipt of Relocation Brochure – Please secure signature and return
4. Certification of Legal Residency – Please secure signature and return
5. List of Required Documents – Please secure documents

Additionally, based on the current building size I am providing the following referrals with approximately the same square footage.

Street Address	City	Type (Retail, Medical, Office, etc.)	Sq. Ft. Available	Price/ Sq. Ft. or Rental Rate	Contact Person	Contact Number
350 Vinton Ave.	Pomona	Medical	3420	\$2.00 MG	Sonja Krenek	949-294-6416
9605 Foothill Blvd.	Rancho Cucamonga	Medical	3060	\$1.70 +\$0.42 NNN	Sonja Krenek	949-294-6416
300 N. Euclid	Upland	Retail/ Medical	2600	\$1.95/ MG	John Daciolas	909-645-1088

I would appreciate some feedback on these referrals and look forward to meeting you and your client.

Thank you

Dionisio Márquez, R/W-RAC

Relocation Manager/ Project Manager

PETERSON LAW GROUP

PROFESSIONAL CORPORATION

SUITE 290

19800 MACARTHUR BOULEVARD

IRVINE, CALIFORNIA 92612

TELEPHONE: (949) 955-0127

FACSIMILE: (949) 955-9007

www.petersonlawgroup.com

February 22, 2022

Mark Mendoza
Jennifer Goralski
PARAGON PARTNERS
5560 Katella Ave., Suite 100
Cypress, CA 90630

**Re: SBCTA offer to purchase a portion of 517 E. Holt Ave., Ontario (APN 1048-522-10)
West Valley Connector Project**

Mark and Jennifer:

We received the above offer dated February 7, 2022, from SBCTA on behalf of property owner Daru Property Management, LLC, and Three Angels Medical Corporation, which operates a medical clinic. Initially, SBCTA made an offer to purchase the entirety of the property in fee for the project, but subsequently rescinded that offer. The new offer referenced above appears to require a frontage of portion of the property that fronts Holt Avenue, and would include acquisition of the front portion of the building in which Three Angels operates.

Attached to the offer is an engineering analysis from Proactive Engineering Consultants that provides a recommended "fix" to the portion of the building that would remain after the proposed partial acquisition by SBCTA, and states that approximately 19% of the building would be acquired. The proposed fix is a lateral restraint system, bracing, and constructing a new shear wall or "moment frames." The Proactive report notes that "the entire [medical] lobby waiting room would be impacted by the approximate 14-foot proposed ROW area of acquisition."

Moreover, SBCTA proposes a TCE over the entirety of the property, which would necessitate demolishing and reconstructing most of, if not all of the building. Proactive notes that this course of action "will impact the business for several months."

A part-take as proposed is not feasible. On behalf of Daru and Three Angels, we ask that SBCTA acquire the entirety of the property in fee, as it previously offered, under Code of Civil Procedure section 1240.410 (noneconomic remnants). A part-take would result in the same effects as a full take on both the business and the real property.

As to the building, the medical office would be losing the entirety of its patient waiting room, reception desk, file storage, and portions of other storage rooms and examination rooms. In order for the property to remain a viable medical office, a complete reconfiguration of the interior of the building would be required in order to preserve the patient exam rooms, offices, and the interconnectivity of the various processes that occur in different rooms. The building would have to be reconstructed in such a manner as to occupy a portion of the existing parking lot to prevent losing valuable square footage of the medical clinic. Set back requirements and safety matters would require construction of the building with at least the same set back square footage in the "after condition" as the building currently enjoys.

This, in turn, would bring the building's parking below the minimum requirements per use and zoning standards set forth by the City of Ontario. Proactive Engineering concludes that parking would not be impacted by the proposed part-take. On the contrary, a majority of the parking lot would be occupied by the newly constructed and reconfigured building. Again, this is not feasible since the parking minimums would be unable to be achieved as a result of the project as proposed.

As to the business and medical operations, it would be impossible to see patients during the acquisition and reconstruction and/or reconfiguration of the entire building if the front portion of the building is demolished for the project. The medical clinic would be forced to close and attempt to relocate even under a part-take scenario, as currently offered by SBCTA. Medical clinics serve limited geographic demographics. Once that clinic closes, patients simply find a different clinic to receive medical services. This would effectively result in a total loss of business goodwill, even if the clinic were to reopen after construction of the project and after the building is reconfigured and reconstructed.

A part-take is not feasible, and the effects would be virtually identical to a full acquisition, both to the business and to the real property and improvements. There is not a reasonable, practical, and economically sound means to prevent the property from becoming a noneconomic remnant. This must be a full take or no take at all.

Sincerely,

A handwritten signature in black ink, appearing to read "CP", with a stylized flourish extending from the end.

Chris Peterson

May 31, 2022

VIA E-MAIL (ClerkoftheBoard@gosbcta.com)

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 226, 228, 230 E. Holt Blvd.,
Ontario, California (Also Identified As Assessor Parcel Numbers
1049-063-05) by Eminent Domain for the West Valley Connector
Project**

Dear Clerk of the Board:

This firm represents **Lisa Castro Carvalho** (the "Owner"), owner of the above-referenced real property (the "Subject Property") portions of which SBCTA seeks to condemn for its bus rapid transit project.

Specifically, we have received 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 tomorrow, June 1, 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 Owner to the adoption of the resolution of necessity. **Accordingly, we request that this letter be included as part of the formal record on that agenda item. Please confirm receipt of this letter via email at abanker@palmierilawgroup.com.**

Marleana Roman

May 31, 2022

Page 2

The Owner 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:

1. 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 entire larger parcel or the impacts from both the construction and use of the Project as proposed to the commercial 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 Owner or considered, let, alone, analyzed as part of SBCTA's precondemnation offer.

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 precondemnation 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

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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 precondemnation 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 precondemnation 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 precondemnation offer. As such, SBCTA's precondemnation 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 including all of the improvements located thereon, in both the before condition and the after condition and make an appropriate revised precondemnation 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.

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].)

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2. 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 Owner cannot possibly accept because the offer does not account for the Project's true impacts to the larger parcel. 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.

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 Owner either "blindly" accept its precondemnation offer "as is" (without first providing the Owner with an opportunity to assess the adequacy of the offer) or be named as a defendant in a condemnation action.

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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 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 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.*)

3. 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 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

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(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 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

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

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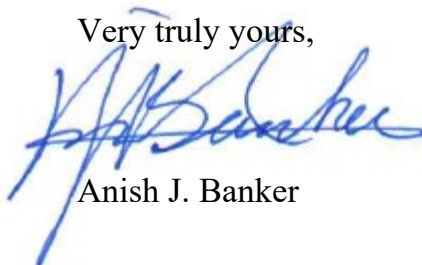
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The Owner also objects to the entire administrative hearing process as fundamentally unfair. The Owner has not been provided with any of the purported information that SBCTA's Board is allegedly considering prior to or even at the resolution hearing. Further, though the Board is ostensibly going to rely on various statements of fact asserted by either the agency's staff and/or consultants, no sworn testimony is being presented at the hearing. Likewise, the Owner has no opportunity to challenge any evidence being presented to the Board and/or cross-exam any witnesses for which the Board intends to rely upon. Much of the information (or "facts") that the Board will purportedly rely upon are unsupported allegations. Accordingly, the Owner reserves the right to conduct investigation and discovery in support of its right to take challenges and incorporate such newly discovered information into the administrative record on this agenda item.

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

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