

DEPARTMENT OF TRANSPORTATION

LEGAL DIVISION – MS 130

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March 26, 2012

Sent by Facsimile (714-513-5130) & U.S. Mail

Sean P. O'Connor, Esq.
Sheppard Mullin Richter & Hampton, LLP
650 Town Center Drive, 4th Floor
Costa Mesa, CA 92626-1993

RE: Chevron U.S.A.'s Objection to the Proposed Adoption of a Resolution of Necessity for Parcel 102499

Dear Mr. O'Connor:

The California Department of Transportation (Department) has received and reviewed your letter dated March 23, 2012, in which you raise certain objections to the proposed adoption of a resolution of necessity by the California Transportation Commission (Commission). The proposed resolution would affect property owned by your client, Chevron U.S.A., and is identified as parcel 102499.

This letter represents the Department's response to the objections you have raised. For convenience, each of your objections will be addressed in the order in which you originally raised them.

No. 1 - Objection to Precondemnation Offer.

You have objected to the Department's precondemnation offer of just compensation because the amount offered reflects a deduction from fair market value taken for the estimated cost of remediating hazardous waste on the property. You state that this is improper. The Department respectfully disagrees with your objection.

This parcel has been operated as a gasoline station for several years. It is currently subject to a cleanup and abatement order issued by the State Regional Water Quality Control Board due to the release of hazardous materials. Under California law, it is proper to deduct the cost to remediate contamination on a property from the parcel's otherwise "clean" fair market value in order to arrive at a value representing just compensation. (*Redevelopment Agency v. Thrifty Oil Co.* (1992) 4 Cal. App. 4th 469, 473-474.)

Here, the Department retained a well-respected outside consultant, Ninyo & Moore Geotechnical and Environmental Sciences Consultants, to investigate the parcel and to provide an estimate for remediating any contamination on the property. The consultant estimated that it would cost \$2,480,000 to remediate contamination on the parcel. Consistent with the *Thrifty Oil* decision, the Department's real estate appraiser then deducted that amount from the parcel's "clean" fair market value.

We recognize that there will be debate in the eminent domain litigation about the extent and cost of remediating contamination on the parcel. However, that debate is best reserved for the court system, not this proceeding before the Commission. This is especially true given your client's right to seek to increase the deposit of probable compensation under Code of Civil Procedure section 1255.030 once the case is filed.

In conclusion, the deduction taken for the cost to remediate was not done arbitrarily, and it is consistent with California law.

No. 2 - Objection over Good Faith Negotiations.

Your second objection is based on the assertion that the Department did not meet its obligation to negotiate in good faith with Chevron U.S.A. We respectfully disagree with this objection.

As an initial matter, this objection is largely based on the same set of circumstances as your first objection: i.e., the contention that it was improper for the Department to take a deduction reflecting the estimated cost to remediate the parcel. As we have already noted, however, the deduction was lawful and based on an expert's opinion. More to the point, Department representatives have been in contact with you over the last several months to attempt to negotiate a resolution of this matter in order to forestall the eminent domain process. To this point however, I believe that we are still waiting for Chevron to make any type of counteroffer on this parcel for the Department to consider.

In sum, the Department has negotiated in good faith, and will continue to do so in order to attempt to reach an equitable resolution to this matter.

No. 3 - Objection to Project based on Plan and Location.

Your third objection is based on the assertion that the Department did not meet its obligation to plan and locate the project in a manner that is most compatible with the greatest public good and least private injury. We respectfully disagree with this objection.

Your client's property is necessary to complete the Interstate 5/State Route 74 interchange project. As part of the overall interchange project, a local street (Del Obispo) on the west side of the freeway is also being realigned for operational and safety concerns. As a result, the whole of your client's property must be acquired for the project because it is located between the freeway

onramp that will be widened, and the local street that will be realigned as part of the overall project.

In conclusion, the Department has planned and located the project in a manner that is most compatible with the greatest public good and least private injury.

No. 4 - Objection to Project based on California Environmental Quality Act.

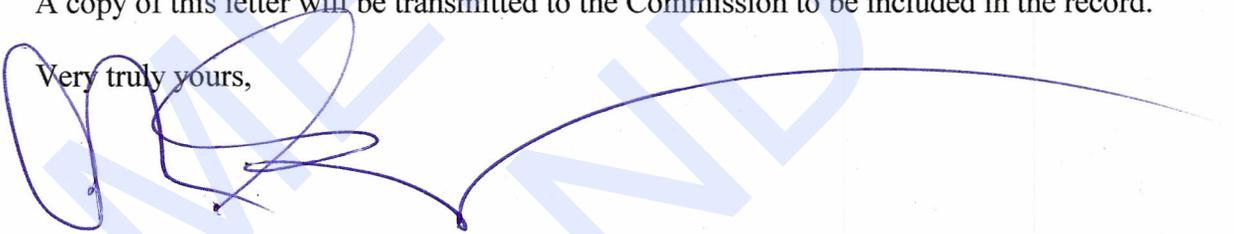
Your final objection is based on the assertion that the Department did not meet its obligations under the California Environmental Quality Act (CEQA) because it has piecemealed or segmented the project. We respectfully disagree with this objection.

A full Environmental Impact Report for this project was completed in April 2009. That report addresses each of the issues identified in your letter (i.e., traffic, air quality, etc.), nothing was left out. More importantly, the scope of the environmental document—i.e., the “project” for which the report was done—is the entire Interstate 5/State Route 74 interchange as a whole, not “pieces” or “segments” of the same. All four quadrants of the interchange were analyzed; all four quadrants will be improved with this regionally important transportation project.

Accordingly, your objection that the Department has not met its obligations under CEQA is not accurate. The Department has met its obligations.

A copy of this letter will be transmitted to the Commission to be included in the record.

Very truly yours,



JOHN FREDERICK SMITH
Assistant Chief Counsel

c: Ms. Bimla Rhinehart, California Transportation Commission
Mr. Andre Boutros, California Transportation Commission
Mr. Stephen Maller, California Transportation Commission
Mr. Brent Green, Caltrans