

April 20, 2012

BY EMAIL AND REGULAR MAIL
Mr. Andrew P. Nierenberg
State of California, Department of
Transportation
100 S. Main Street,
Los Angeles, CA 90012

Re: **07-LA-5-PM 5.3**
EA 215939
Project #0700001833
Parcel 79898-1, 2, 01-01 (APN 8082-001-003
Gregory S. Jones, Trustee of the Gregory Jones Revocable Trust, dated
October 11, 2011

Dear Mr. Nierenberg:

As you know, my firm and I represent *Gregory S. Jones, Trustee of the Gregory Jones Revocable Trust, dated October 11, 2011*, the owner of the subject property also described above. This is a reply to your letter of March 22, 2012, in regard to the above-entitled matter and the hearing on the resolution of necessity which (per a letter dated March 23, 2012 from Mark A. Zgombic) has been continued to an as yet undetermined date and time on April 25-26.

Your letter references *Redevelopment Agency v. Thrifty Oil* (1992) 4 Cal.App. 4th 469, and states that deduction of remediation costs for contamination is "the only approach accepted in the published cases thus far." That is a gross and egregious misstatement. *Thrifty* is the only published case in California on the issue, but all it holds is that it was proper to consider remediation costs in determining value when both sides' appraisers did so. Please remember that:

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(a) Caltrans' ridiculous offer of \$1000 for the property is less than the MONTHLY rent received from it and is less than the ANNUAL property tax payment for it. The assessment for property taxes (itself based on purchase long ago) is FAR higher than the offer. Therefore, the offer does NOT at all reflect fair market value. Again, it is theft, not eminent domain.

(b) Nor has Caltrans provided, as required by law, AN APPRAISAL reflecting that the \$1000 is fair market value. On the contrary, Caltrans has just simply deducted an estimate of clean up of the entire area which was prepared by somebody else from its appraisal. We have repeatedly asked about this and your letter ignores the entire issue.

(c) Even if *Thrifty* was applicable, it would represent only the decisional law of a lower, state appellate court. Both the California and United States Constitutions require payment of Just Compensation equal to fair market value when property is acquired for public use through the power of eminent domain. However, state case law and statutory law are subject and subordinate to constitutional law in this area:

it has been the law in California that state statutory provisions must fail if they conflict with this constitutional requirement: "This element of 'just compensation' is constitutionally required and 'cannot be made to depend upon state statutory provisions.' "

(*Community Redevelopment Agency v. Force Electronics* (1997) 55 Cal.App.4th 622, 633.)

Therefore, if the resolution of necessity is passed on this flimsy premise, we will challenge Caltrans' right to take in court.

Please make sure that this letter is given to the Commission in regard to the above-described Resolution of Necessity hearing and made part of the file and record of proceedings. Please confirm that this has been done by return email.

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Regards,



JOSEPH S. DZIDA
CALLANAN, ROGERS & DZIDA, LLP

JSD/cy

Cc: Steve Johnson (by email)

Mark Zgombic (by email)

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