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September 10, 2012

RECEIVED
COUNTY CLERK RECORDER

SEP 10 2012

James Patterson, Chairman and
Members of the San Luis Obispo County
Board of Supervisors
County Government Center
1055 Monterey Street
San Luis Obispo, CA 93408

BY Anne Ramirez
DEPUTY

Re: Objection to Proposed Adoption of Resolution of Necessity for Acquisition of Real Property Located at the Southeast Corner of Main Street and Santa Rosa Creek Road, Cambria, California (Board of Supervisors Agenda - September 11, 2012 Item No. 20)

Dear Chairman Patterson and Members of the Board of Supervisors:

This firm represents the James and Janet Bahringer 2006 Trust ("Bahringers"), the owner of the real property located at the southeast corner of Main Street and Santa Rosa Creek Road, Cambria, California ("Property"). We have reviewed the San Luis Obispo County Board of Supervisors resolution of necessity authorizing the County of San Luis Obispo ("County") to condemn certain portions of the Property, as described in the resolution.

The Bahringers intend this letter to constitute a statement regarding -- and objections to -- the adoption of that resolution of necessity. Accordingly, we request that this letter be included as part of the formal record.

OBJECTIONS

The Bahringers object to the hearing regarding the intention of the County to adopt a resolution of necessity and to the County's adoption of such a resolution on the following grounds:

1. **The County Failed to Make an Offer of Just Compensation Based on a Proper Appraisal of the Property.** The Bahringers intend to develop the Property. The developability of the Property will be completely and adversely altered and diminished as a result of the County's proposed acquisition.

The Bahringers have provided the County with comparable sales data and financial projections on use of the Property for a farmer's market operation, which was not taken into

Item # 20 Meeting Date: Sept. 11, 2012

Presented by: Gregory Sanders

RECEIVED Prior to meeting At the Board meeting

Posted to web: Sept. 10, 2012

Day of or after meeting not posted

account by the County's appraiser. By any reasonable financial model, the Property's value is considerably greater than the County's appraiser has concluded. Further, the County's appraisal does not take into consideration the fact that the remnant of the Property will not be sufficiently large to accommodate a financially viable farmer's market operation or any other practical use.

Government Code section 7267.2 requires that the County make a legitimate offer of just compensation based upon an approved appraisal prior to initiating condemnation proceedings. The County's precondemnation offer is invalid because it was based upon an appraisal that did not address the considerable damages that will result from acquisition and construction of the project. Moreover, the law provides that "[p]rior to the commencement of an eminent domain proceeding, if the evidence presented by an owner . . . indicates the need for a new appraisal . . . , the public entity shall have its appraisal updated." (Cal. Code Regs., tit. 25, § 6182, subd. (i)(2), emphasis added.) As noted above, the County's appraisal was inaccurate and insufficient, and the County is required to re-appraise the Property before the County may adopt a resolution of necessity. (See Johnston v. Sonoma County Agricultural Preservation & Open Space Dist. (2002) 100 Cal.App.4th 973, 988 [explaining that "a good faith offer based on a fair appraisal [is] a prerequisite to adopting the resolution of necessity."].)

Because the County's appraisal of the Property fails to find adequate severance damages resulting from the Bahrings' inability to develop, or otherwise utilize, the entire Property the County's appraisal is deficient. The County cannot take any action toward condemning any portion of the Property until the County secures a corrected appraisal and makes a new offer to the Bahrings.

2. The Project is Not Planned or Located in the Manner that Will be Most Compatible With the Greatest Public Good and the Least Private Injury. A public agency may not exercise the power of eminent domain for a proposed project unless it establishes that "the project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury." (Code Civ. Proc., § 1240.030, subd. (b).) The County has not completed such an analysis.

As described above, the portion of the Property sought to be acquired by the County will significantly limit the Bahrings' ability to utilize the remaining property, effectively rendering the remainder useless. In addition, due to the Property's size, the permanent acquisition will adversely impact the highest and best use of the Property and its ultimate development potential because the Property remaining after acquisition is substantially smaller and adversely impacted in terms of development possibilities. Because the County failed to understand the impacts of its proposed acquisition, and the severance damages caused by the project, it will be impossible for the County to make the required "least private injury" determination. Indeed, the County could hardly make a finding on the degree of private injury without first properly evaluating that injury.

Until the County re-appraises the Property to understand the impacts and the severance damages resulting from the County project, the County cannot properly move forward with its

resolution of necessity. At the very least, the County should explore with the Bahrings alternative plans for the proposed project that do not unnecessarily impact the Property; its failure to do so precludes the County's planned condemnation.

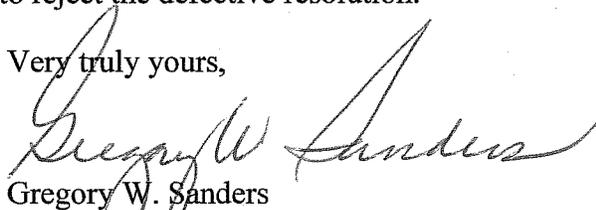
3. **The Property is Not Necessary for the Project:** A public agency may not exercise the power of eminent domain for a proposed project unless it establishes that "the property sought to be acquired is necessary for the project." (Code Civ. Proc., § 1240.030, subd. (c).) Given that there have been a number of iterations of the proposed acquisition, it is the Bahrings' belief that the County is seeking to condemn more property than is necessary for the proposed project, and therefore the Property is not "necessary for the project," and that there are other, more viable locations for the realignment on Main Street, if realignment is necessary at all.

4. **The County Cannot Make Legitimate CEQA Findings to Support its Action:** The County's fundamental misunderstanding concerning the impacts to the Property as a result of the proposed acquisition and construction of the project also means that the County will run afoul of the California Environmental Quality Act. More specifically, because the County's project will prevent any viable use of the Property, the County's environmental documents fail to consider the environmental impacts of preventing that development. For example, what will be the impact of eliminating a farmers market so close to the farms that grow the produce and to the customers that would purchase the produce? Where will that capacity be made up? How will traffic patterns be impacted? The County needs to evaluate these matters before it proceeds.

CONCLUSION

For the reasons set forth in this letter, the County cannot validly adopt the proposed resolution of necessity. The Bahrings therefore requests that the County not proceed with the hearing on the resolution or, if it proceeds, vote to reject the defective resolution.

Very truly yours,


Gregory W. Sanders
of Nossaman LLP

GWS/cjm