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June 22, 2022

VIA OVERNIGHT MAIL and E-MAIL [edc.cob@edcgov.us]

El Dorado County Department of Transportation
Clerk of the Board of Supervisors
330 Fair Lane
Placerville, California 95667

**Re: July 19, 2022 – El Dorado County Department of Transportation
Public Hearing considering adoption of Resolution of Necessity
Newtown Road at Weber Creek Bridge Replacement Project
Assessor’s Parcel No.: 077-431-062
Owner: Wanda Nagel**

To The Honorable Clerk and Board of Supervisors:

We have been retained as eminent domain counsel for Wanda Nagel (“Ms. Nagel”), with respect to the El Dorado County Department of Transportation’s (“County”) proposed acquisition by eminent domain of portions of the above-referenced property (“Subject Property”) for the County’s replacement of the Newtown Road Bridge over South Fork Weber Creek (“Project”).

Ms. Nagel strongly objects to the County’s consideration of adopting the above-referenced Resolution of Necessity and requests the opportunity to be heard at the public hearing on July 19, 2022.

Ms. Nagel hereby objects to the adoption of the proposed Resolution of Necessity on, without limitation, the following grounds:

- 1. CONSIDERATION OF THE PROPOSED RESOLUTION OF NECESSITY IS PREMATURE BECAUSE COUNTY HAS NOT MADE A LEGALLY SUFFICIENT OFFER AS REQUIRED BY CAL. GOVT. CODE 7267.2, ET SEQ.**

The County’s second offer of compensation again fails to meet the legal requirements of “just compensation” to which Ms. Nagel is entitled to for the acquisition of portions of the Subject Property. Ms. Nagel 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. Accordingly, the

County has not made an offer that complies with California Government Code §7267.2 so consideration of a Resolution of Necessity at this time is premature.

Ms. Nagel successfully objected to the County's prior consideration of a Resolution of Necessity back in October 2021 on grounds that the County had not properly appraised the Subject Property because design and construction plans were incomplete; that the County failed to properly consider the impact and extent of construction on the property, including failing to consider the destruction of dozens of Ms. Nagel's trees; and impaired access to the property during construction. As a result of Ms. Nagel's objection, the Resolution of Necessity hearing was vacated.

These same deficiencies appear in the County's updated appraisal/offer in January 2022 and have still not been resolved. On January 27, 2022, the County made a second offer to Ms. Nagel to purchase her property interest in the Subject Property under the guise that it obtained an updated appraisal that took into account compensation for thirteen trees that were not considered in the initial appraisal. Interestingly, its appraisal of the thirteen oak trees of various sizes and ages were only valued at \$6,500 (or \$500/tree). First, there is no information provided indicating the basis for this valuation contrary to the legal requirement that the County provide such information. Furthermore, the County's appraisal values the property as undeveloped land, contrary to the fact that the property is an improved rural residential property with multiple residential buildings. Thus, the appraisal fails to properly take into account the existing improvements on the property. As such, the County's offer does not reflect just compensation as required under Cal. Code of Civ. Proc. §1263.320.

Moreover, the County's updated appraisal completely fails to recognize or consider the substantial impact and extent the Project and construction will have on Ms. Nagel's property. The County's proposed removal of trees from Ms. Nagel's property will eliminate the beauty and privacy the trees provide to the property and her home. Additionally, for approximately 3 years, the property will be subject to the County's construction project – eliminating the natural quiet and serenity the property enjoys – severely and detrimentally impacting any peaceful use and enjoyment of the property. In particular, the County's construction vehicles and equipment traversing her front yard will impair the property's privacy and residential use. Likewise, the proposed 14-foot Temporary Emergency Fire Access Road that is designed to cross over Weber Creek from Newtown Road onto Ms. Nagel's property will not only invade her privacy, but along with the other construction vehicles and equipment on her property, will obstruct her quiet and peaceful enjoyment of her land. In addition, the County's easements encompass the only driveway through which the Subject Property is accessible. As a result, construction on or around the driveway will impair access to the Subject Property during the Project. The County's offer and appraisal fails entirely to give any consideration to these factors. In fact, it appears that the County's appraisal did not give any consideration to the Project or the County's preliminary construction plans.

These important considerations are completely ignored; thus, the County's appraisal is legally deficient. As such, the County's offer does not reflect just compensation as required under Cal. Code of Civ. Proc. §1263.320.

Because the County failed to properly consider the impact and extent of construction on the property in its offer appraisal and does not accurately reflect current fair market value, it has not made a legally sufficient offer.

The eminent domain law clearly requires that before a Resolution of Necessity can be adopted, an offer must be made representing fair compensation. Here, the County made no such offer. Thus, the County cannot proceed with adopting a Resolution of Necessity.

**2. ADOPTION OF THE PROPOSED RESOLUTION OF NECESSITY IS
PREMATURE AS THE CONSTRUCTION PLANS FOR THE PROJECT ARE
INCOMPLETE**

California Code of Civil Procedure §1245.230 mandates that before a public agency may adopt a Resolution of Necessity, it must find, among other things, that substantial evidence supports a finding that the requirements of Cal. Code of Civ. Proc. §1240.030 have been met. This includes the County making the necessary findings that the project is within the public interest and necessity; planned consistent with the greatest public good and least private injury; and that the property interests to be acquired are necessary for the project. Cal. Code of Civ. Proc. §1240.030 (c).

To date the County has yet to finalize their construction plans for the Project. Without complete plans the actual requirements for the Project are unknown. Accordingly, it is premature for the County to consider adopting a Resolution of Necessity before the plans are complete. As it stands, without a complete construction plan, the County has insufficient evidence to support the required findings of Cal. Code of Civ. Proc. §1240.030 and, for this reason alone, the Board cannot adopt a Resolution of Necessity.

3. CONCLUSION

For the foregoing reasons, among others, Ms. Nagel respectfully objects to the County's consideration of adoption of the proposed Resolution of Necessity on July 19, 2022.

The evidence presented herein clearly shows that the County cannot establish that it meets the elements required to satisfy §1240.030 and §1245.230(c) of the California Code of

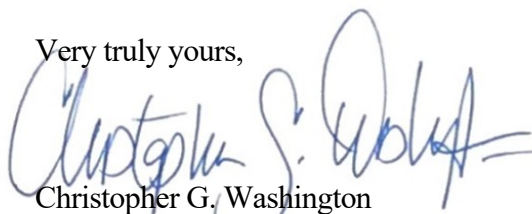
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Civil Procedures. Furthermore, the County has failed to satisfy Cal. Code of Civ. Proc. §1263.320, as the County has failed entirely to consider the actual Project impacts or made a proper offer reflecting the fair compensation to which the Ms. Nagel is entitled for her valuable property interests in this land.

Accordingly, the County's adoption of the proposed Resolution of Necessity is not justified or supported. Adoption of the Resolution of Necessity contrary to Ms. Nagel's objections would constitute a gross abuse of discretion. Adoption of the proposed Resolution of Necessity is not supported by substantial evidence and would be arbitrary and capricious.

Ms. Nagel requests the opportunity to appear before the Board of Supervisors with their counsel to be heard with respect to their objections to the proposed Resolution of Necessity. Please also ensure that this letter and accompanying documents are presented to the Board of Supervisors 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: Wanda Nagel (via email)
The Wopumnes Nisenan-Mewuk Tribe of El Dorado County (via email)