



Jim Mitrisin <jim.mitrisin@edcgov.us>

Opposition to RON Materials Submitted on Behalf of M.H. Mohanna at 4/23/19 RON Hearing

1 message

Kristen Renfro <krenfro@dnlc.net>

Tue, Apr 23, 2019 at 12:16 PM

To: "jim.mitrisin@edcgov.us" <jim.mitrisin@edcgov.us>

Mr. Mitrisin,

Attached, please find materials that will also be hand delivered at the 1:30 hearing this afternoon. This courtesy copy is provided electronically to ensure that the materials are accounted for and included in the official record of the proceedings.

Thank you,

Kristen

Kristen Ditlevsen Renfro | Attorney


Desmond Nolan Livaich & Cunningham

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2 attachments

 **20190423234230191.pdf**
428K

 **2019-03-27 Exh Showing Impacts to Mohanna Pcl w-IOD.pdf**
596K

DESMOND, NOLAN, LIVAICH & CUNNINGHAM

Attorneys At Law

April 23, 2019

*Hand Delivered to Board Members at Hearing
on Resolution of Necessity, with Copy Transmitted
By Email to Clerk*

Board of Supervisors
& James S. Mitrison
Clerk of the Board
330 Fair Lane
Placerville, CA 95667
jim.mitrison@edcgov.us

**Re: Written Summarization of Opposition to Adoption of Resolution of Necessity;
Submitted on Behalf of M.H. Mohanna, in conjunction with oral presentation in
opposition delivered by Kristen Renfro of Desmond, Nolan, Livaich & Cunningham
at 4/23/19 RON Hearing**

A public entity can take private property only under very limited circumstances. In order to initiate condemnation proceedings, it must find (1) the property is necessary for a public project; (2) the project is in turn necessary for a public purpose; and (3) the taking of the particular property is compatible with the greatest public good and the least private injury. (Code Civ.Proc., § 1240.030.)

Taking the Particular Property Proposed Is Not Compatible with the Greatest Public Good and Least Private Injury

The public good is no better served by the currently proposed alignment than it would have been by previously contemplated alignments. At best, it has been suggested that the currently proposed alignment will make it cheaper for the responsible developer to undertake site preparations for construction of the road. However, Mr. Mohanna already dedicated a portion of his property for the previously contemplated alignment. (See exhibit enclosed herewith.) A portion of the previously dedicated area will not be utilized under the current alignment, and more property is required to be taken from Mr. Mohanna than would have been for the previously contemplated alignment, at greater expense than is necessary. And, had consideration been given to aligning the roadway to conform more closely with the current City Lights roadway, Mr. Mohanna even extended an offer to dedicate the entire ROW at no cost at all.

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Gary Livaich
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Earl D. Desmond
(1895-1958)
E. Vayne Miller
(1904-1965)
Richard F. Desmond
(1923-2004)
William C. Livaich
(1950-2007)

With respect to private harm, Mr. Mohanna's injury will be the greatest, not the least, under the current proposed alignment because the alignment is detrimental to development of the Mohanna property. It will limit the property's utility, increase costs of development, and curtail development potential. And the only ostensible private injury avoided is temporary cost savings to the developer responsible for paying for the road's construction, until such time as that developer is reimbursed pursuant to relevant development agreements and fee programs. And, in fact, it will be Mr. Mohanna whose future development will supply a substantial portion of the fees that ultimately fund the project. So any suggestion that cost savings confer meaningful private benefit is quickly eroded.

Neither the public good is promoted, nor any private harm avoided, by forcing an alignment of the roadway that Mr. Mohanna will have no choice but to fight in court. The result will be substantial legal fees incurred by all concerned, and increased just compensation required to be paid as a result of unduly increased severance damages to the remainder of the Mohanna larger parcel. The July 27, 2018 funding agreement with Lennar Winncrest estimates acquisition costs for condemnation at \$256,100. We respectfully suggest the County has underestimated what the costs will be. We also submit that when total likely costs and expenses of condemnation are considered, including those to be incurred by Mr. Mohanna, it becomes painfully clear that the public good will not be promoted by the condemnation proposed.

The Particular Property Proposed to Be Taken Is Not Necessary

Alternative alignments are available. The currently proposed alignment is not necessary – merely advantageous in the short term to the developer who is footing the initial bill for the work.

The Amount of Property Proposed to Be Taken Is Not Necessary

More property than necessary is proposed to be taken because the current alignment does not match with the former alignment, for which Mr. Mohanna already previously dedicated a portion of his property. Had the alignment not been changed, less property would be required because the new ROW would connect to the previously dedicated ROW.

Failure to Comply with CEQA

The County is legally obligated to “prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that [it] intend[s] to carry out or approve which may have a significant effect on the environment.” (Pub. Resources Code, § 21151.) Among other things, an environmental impact report must include a detailed statement setting forth all significant effects on the environment of the proposed project and analysis of

alternatives to the proposed project. (Pub. Resources Code, § 21100.)

The County has failed to comply with these requirements.

The currently proposed alignment has not been formally studied. No analysis of specific alternative alignments has ever been undertaken. And, to the extent a conceptual realignment has been assumed and studied at all, the conceptual realignment differed from what is currently proposed. The current alignment is substantially closer to sensitive habitat and compromises utility of the Mohanna property.

Failure to Comply with Government Code Section 7267.2

The County has failed to fully comply with requirements of Government Code section 7267.2 because its commissioned appraisal and the summary statement of appraisal are deficient in their consideration of explanation concerning potential severance damages and any offsetting benefits. Only the most superficial and speculative conclusions concerning severance damages and benefits are addressed in the appraisal report provided to Mr. Mohanna. This results in not only a missed opportunity for private injury to Mr. Mohanna to be fairly evaluated, but also means that the County has failed to satisfy a mandatory requirement that must be observed by a public entity prior to initiating eminent domain proceeding through adoption of a RON.

Gross Abuse of Discretion Will Undermine the Conclusiveness of the Board's Findings

This Board is not in the position to engage in a good faith, judicious consideration of all relevant pros and cons to be buttressed by substantial evidence of the necessary findings concerning public good, private injury, or necessity as to the particular property interests sought to be taken.

This hearing is, with all due respect, a sham. It is purported to be a hearing to determine whether to adopt the proposed RON or not. The County committed itself to carrying out a taking on Lennar Winncrest's behalf by executing the July 27, 2018 funding agreement that is referenced in the proposed RON. So it's clear that the Board will be doing nothing today but rubber stamping a predetermined result. The alignment currently proposed serves no one but Lennar. Lennar says this is the cheapest alignment to implement, and Lennar is fronting the funds. Therefore, regardless of the harm suffered by Mohanna, regardless of damage caused to Mohanna's remainder, regardless of unstudied risks to the environment, the County is going to sign off.

The proposed RON's statement that Lennar has been unable to secure ROW for the project is untrue. Mr. Mohanna has not refused to negotiate – he just hasn't been willing to accept an

April 23, 2019

Page 4

alignment that doesn't strike a fair and reasonable balance between his interests and Lennar's. Mr. Mohanna was willing to outright dedicate an alternative alignment at no cost, and he has been engaged in earnest efforts to resolve this matter with the County. It is untrue that the parties are at an impasse in negotiations, as Mr. Mohanna has been actively in negotiations with the County, submitting an outstanding partial settlement proposal as recently as last week.

If the Board proceeds to adopt the RON and condemn as proposed, it will be transparently playing favorites – preferentially treating Lennar to the detriment of Mr. Mohanna. And its actions will be bought and paid for by Lennar, as the County is paying nothing and has nothing to lose: it is being financed and indemnified by Lennar.

We urge the Board not to do this. We urge the Board to put on the breaks. To come back to the table. To engage with Mr. Mohanna, who remains committed to finding a way forward that respects the important public project that the community needs, but also his private property rights.

DESMOND, NOLAN, LIVAICH & CUNNINGHAM



Kristen Renfro

Enclosure:

Exhibit Showing Impacts of the Proposed Country Club Driveway Realignment on APN: 119-080-23, prepared by Lebeck Young Engineering, Inc.

- 1 ALIGNMENT 1**
 - 1992 EIR - BASS LAKE ROAD STUDY AREA, CIRCULATION & PUBLIC FACILITIES MASTER PLAN.
- 2 ALIGNMENT 2**
 - 1995 EIR - BASS LAKE HILLS SPECIFIC PLAN, CIRCULATION PLAN, FIGURE 4-1.
 - 2008 I.O.D. - ROAD RIGHT OF WAY AND TEMPORARY EASEMENT TO EXISTING CITY LIGHTS DRIVE R/W, EXHIBIT 'B' (GRANTED BY MOE MOHANNA)
 - 2016 EIR - ADDENDUM TO BASS LAKE HILLS SPECIFIC PLAN, FIGURE 4.
- 3 ALIGNMENT 3**
 - 2018 - ALIGNMENT PER CURRENT IMPROVEMENT PLANS FOR COUNTRY CLUB DRIVE RE-ALIGNMENT RECEIVED NOVEMBER 2018. NO EIR DOCUMENT FOR NEW LOCATION AND PROXIMITY TO EXISTING CREEK.

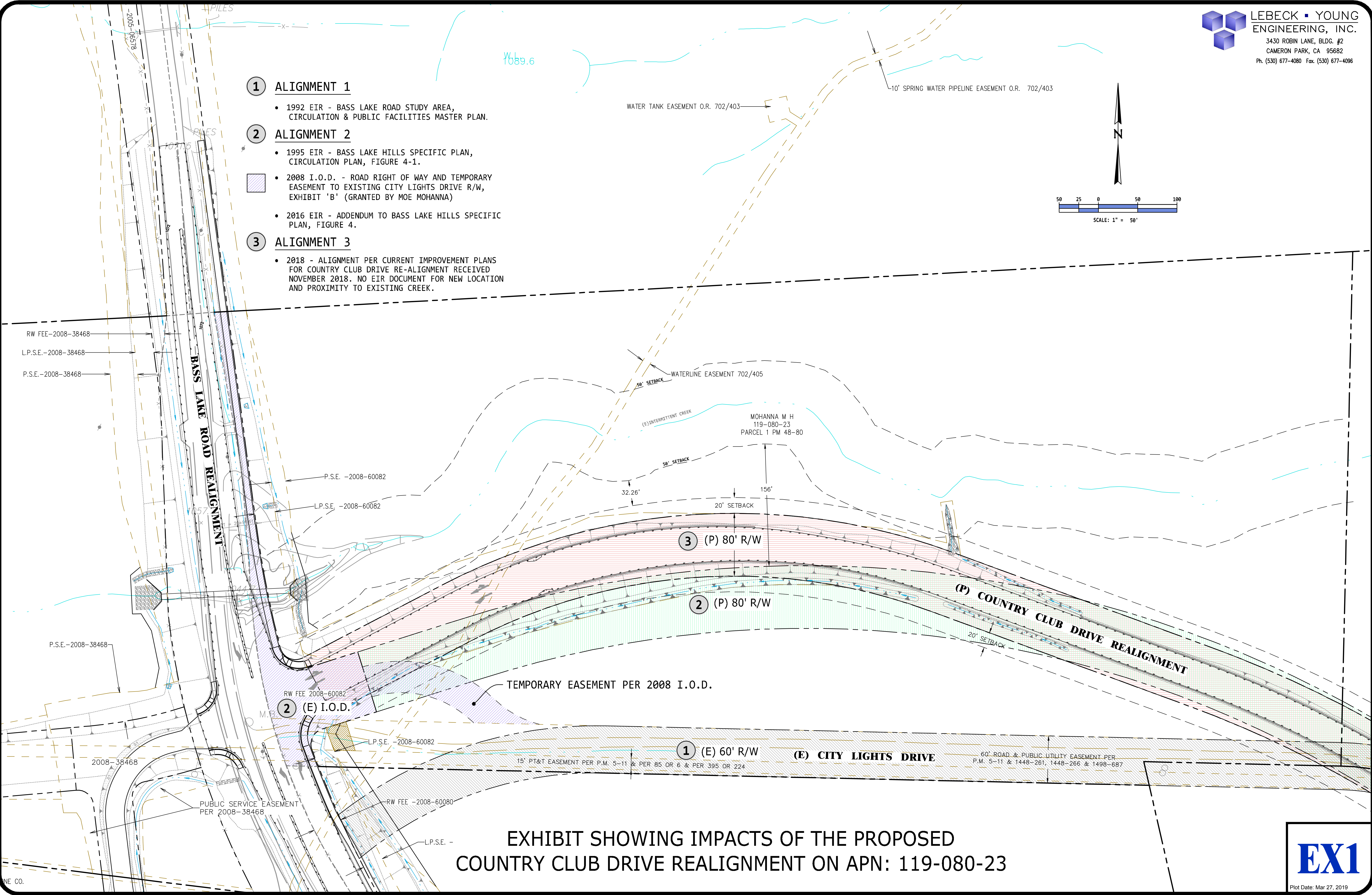
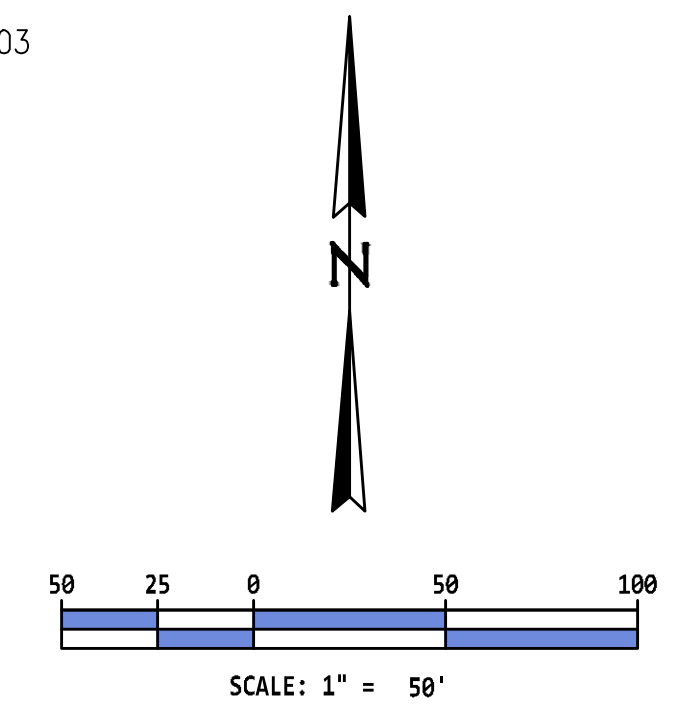


EXHIBIT SHOWING IMPACTS OF THE PROPOSED COUNTRY CLUB DRIVE REALIGNMENT ON APN: 119-080-23