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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
Easement Holder: Wopumnes Nisenan-Mewuk Tribe of El Dorado County**

To The Honorable Clerk and Board of Supervisors:

We have been retained as eminent domain counsel for the Wopumnes Nisenan-Mewuk Tribe of El Dorado County (“Tribe”), 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”).

The Tribe 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.

The Tribe 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 THE COUNTY HAS FAILED TO MAKE 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 the Tribe is entitled to for the acquisition of portions of the Subject Property. The Tribe 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.

The Tribe 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; and that the initial appraisal was deficient as it was more than a year old. As a result of the Tribe'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 the Tribe to purchase its easement interest in the Subject Property under the guise that it obtained an updated appraisal. Interestingly, despite having made adjustments in appraisal of the underlying property owned by Ms. Nage, the County's offer to the Tribe remained at \$1,000, indicating the County did not re-evaluate the Tribe's easement on the Subject Property. The County's actions are implicit of the fact that it does not respect the Tribe's immense and rich history in El Dorado County or its tribal traditions and customs. As such, the County's offer does not reflect just compensation as required under Cal. Code of Civ. Proc. §1263.320

Furthermore, the County's updated appraisal fails entirely to consider the substantial impact of the taking and Project on the Tribe's use of their easement. The taking and Project will impede and preclude the Tribe's full use and enjoyment of its right under the easement, including without limitation the Tribe's sacred site activities, maintenance and cultivation of the vegetative landscape; further environmental, biological, and archaeological study; and to conduct sacred Tribal Ceremonies. The County's actions will eliminate these uses, depriving the Subject Property of its culturally rich and historic characteristics at the expense of the Tribe. These important considerations are completely ignored; thus, the County's appraisal is legally deficient.

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. THE COUNTY HAS NOT MADE AN OFFER OR ATTEMPTED TO NEGOTIATE ACQUISITION OF THE TRIBE’S EASEMENT ON THE BROWN PROPERTY.

Additionally, in regards to the County’s right of way acquisition of the property located at 4901 Newtown Road, Placerville, CA (APN: 077-431-014) (“Brown Property”), on December 17, 2018, an easement agreement was recorded with the County of El Dorado that granted a conservation easement to the Tribe. Initially, the County recognized the Tribe’s conservation easement on this parcel and on September 25, 2020, made an offer to purchase the Tribe’s interest.

Recently, the County indicated that it is no longer seeking an agreement to purchase the Tribe’s interest on the Brown Property as the County contends it has acquired “all of the necessary right of way from the owner,” Mr. Brown. However, while the County may have acquired Mr. Brown’s interest, the County has not sought nor acquired the Tribe’s easement interest in this property. Moreover, according to the County’s Project Map – entitled “Newtown Road at South Fork Weber Creek Bridge Replacement Map” and dated August 4, 2021, the County clearly identified that a **“Portion of Tribal Easement Per Doc. 2018-0047623 To Be Quitclaimed 44,329 S.F. (1.02 Ac).”** Thus, the County clearly acknowledges that the Tribe has easement rights which must be acquired in order to proceed with the Project. As of this date, it’s the County has yet to seek or acquire the Tribe’s easement interest in the Brown Property.

4. CONCLUSION

For the foregoing reasons, among others, the Tribe respectfully object 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

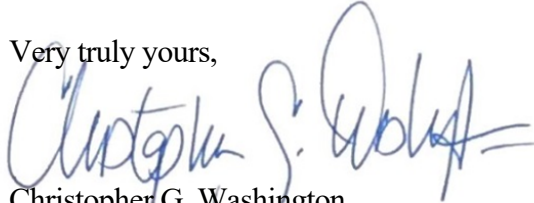
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Civil Procedures. Furthermore, the County has failed to satisfy Cal. Code of Civ. Proc. §1263.320, as the County has failed entirely to consider the actual Project impacts or made a proper offer reflecting the fair compensation to which the Tribe is entitled for its valuable easement interests in the Nagel & Brown properties – and the taking of the Tribe’s sacred cultural rights 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 the Tribe’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.

The Tribe 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: The Wopumnes Nisenan-Mewuk Tribe of El Dorado County (via email)
Wanda Nagel (via email)