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Via Email

June 27, 2025

The Honorable City Council
Attention: Heleen Ramirez
Trade, Travel and Tourism Committee
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Email: heleen.ramirez@lacity.org

Re: City Council's July 1, 2025, hearing on a proposed resolution of necessity for partial condemnation of property located at 5928 West 96th Street (APN 4124-029-040) in connection with LAWA's Landside Access Modernization Program project and owners' objections to adoption of such a resolution of necessity

Agenda Item No. 4

Dear Ms. Ramirez:

This firm represents Bird Management Co., LLC, Allison and Jeffrey Mirkin LAX Property, LLC, On Sacred Ground LLC, and M.A.M. LAX Property, LLC, the owners of property located at 5928 West 96th Street, Los Angeles (Assessor's Parcel No. 4124-029-040), which is the subject of the City Council's notice of a July 1, 2025, hearing to adopt a resolution of necessity authorizing partial condemnation of a permanent street easement, a partial fee acquisition, access restrictions, and a three-year "temporary" construction easement on the owners' property in connection with LAWA's Landside Access Modernization Program project.

We submit this letter to document and preserve the owners' objections to the City Council's proposed resolution of necessity. Enclosed is the owners' objection letter sent to LAWA's Board prior to its consideration and adoption of the resolution of necessity. The owners make the same objections to the City Council's proposed resolution of necessity as they did to LAWA's resolution of necessity and incorporate those objections into this letter by reference.

The owners request that this objection letter be included in the record for Agenda Item Number 4 for the hearing for the City Council to consider adoption of a resolution of necessity.

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We request that copies of this objection letter be distributed to all City Councilmembers prior to their considering the adoption of any resolution of necessity.

For the reasons detailed in the enclosed letter, the owners respectfully request that the City Council (1) *not* proceed with the adoption of any resolution of necessity and instead direct LAWA (2) to obtain a new or updated appraisal that properly values the property and resultant severance damages and (3) to make a proper offer to purchase.

Very truly yours,



K. Erik Friess

KEF
Enclosure

April 15, 2025, Letter to LAWA re Objections to Proposed Resolution of Necessity

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Via Email/Fedex

April 15, 2025

Board Secretary
Board of Airport Commissioners
Department of Airports
City of Los Angeles
1 World Way, Room 115
Los Angeles, CA 90045

Office of the City Attorney
City of Los Angeles, Airport Division
1 World Way, Room 104
Los Angeles, CA 90045

Email: laxboac@lawa.org

Re: LAWA's April 17, 2025, hearing on a proposed resolution of necessity for partial condemnation of property located at 5928 West 96th Street (APN 4124-029-040) in connection with the Landside Access Modernization Program project and owners' objections to adoption of such a resolution of necessity

Agenda Item No. 26

Dear Board Secretary:

This firm represents Bird Management Co., LLC, Allison and Jeffrey Mirkin LAX Property, LLC, On Sacred Ground LLC, and M.A.M. LAX Property, LLC, the owners of property located at 5928 West 96th Street, Los Angeles (Assessor's Parcel No. 4124-029-040), which is the subject of the Board of Airport Commissioners' notice of an April 17, 2025, hearing to adopt a resolution of necessity authorizing partial condemnation of a permanent street easement, a partial fee acquisition, access restrictions, and a three-year "temporary" construction easement on the owners' property in connection with LAWA's Landside Access Modernization Program project.

We submit this letter to document and preserve the owners' objections to LAWA's proposed resolution of necessity. The owners request that this objection letter be included in the record for Agenda Item Number 26 for the hearing for the Board to consider adoption of a resolution of necessity.

We request that copies of this objection letter be distributed to all Board decision-makers prior to their considering the adoption of any resolution of necessity.

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OBJECTIONS

1. LAWA's inconsistent and inaccurate acquisition documentation.

LAWA's March 27, 2025, notice of hearing of adoption of a resolution of necessity notes that LAWA is seeking to acquire a 7,907-square-foot permanent street easement and a 2,408-square-foot "temporary" construction easement for 36 months. But LAWA's attachments do *not* match LAWA's notice.

The attached legal description and plat map for the permanent street easement identify the square footage to be acquired as 7,827, not 7,907.

As for the "temporary" construction easement, the deed identifies that it is for 24 months, not 36 months. And the legal description and plat map identify the square footage to be acquired as 2,243, not 2,408.

Before proceeding with this resolution of necessity hearing, LAWA needs to correct its notice to the owners and/or its legal descriptions, plat maps, and deed to correctly identify the property it seeks to acquire.

2. LAWA has not satisfied State-mandated prerequisites for adopting a resolution of necessity. More specifically, LAWA failed to make an offer of just compensation based on a valid appraisal of the property. Thus, LAWA cannot adopt a resolution of necessity.

Under California's Eminent Domain Law, a condemning agency must comply with several procedural prerequisites before adopting a resolution of necessity and instituting a condemnation action. Among other requirements, the condemning agency: (1) must appraise the fair market value of the property to be condemned; (2) must make an offer of just compensation reflective of that value; (3) must provide a written statement explaining the basis of the agency's determination of fair market value; and (4) must engage in good-faith negotiations before initiating a condemnation offer. (Gov. Code, §§ 7267.1, 7267.2; Code Civ. Proc., § 1245.230.)

LAWA has not completed the above-listed prerequisites for adopting a resolution of necessity to condemn the owners' property. LAWA is required to pay the owners the fair market value of the property that LAWA intends to take. (Cal. Const., art. I, § 19; Code Civ. Proc., § 1263.310.) Accordingly, LAWA's appraisal must accurately reflect the fair market value of the owners' property and take into account all relevant considerations.

But LAWA's appraisal is seriously defective, rendering it invalid, as detailed below. Because of these significant defects in the appraisal, LAWA has not properly made an offer under Government Code section 7267.2 and cannot make a finding that it has. Thus, LAWA cannot properly adopt a resolution of necessity.

LAWA's appraisal misses the proper value of the owners' property.

The owners' property is a nearly 8.4-acre property, located northwest of 98th Street and Airport Boulevard. The property is currently developed with several uses: (1) a Budget Car Rental facility that has vehicle storage and onsite maintenance and car washing (the property was previously used for customer-facing services, but those services have moved to the Consolidated Rent-A-Car Facility); (2) four billboards (two facing 96th Street and two facing Airport Boulevard); and (3) a liquor store.

As shown in the below ZIMAS image, the property currently has frontage and driveways connecting to three major streets (96th Street, Airport Boulevard, and 98th Street) and one connector street (96th Place). This gives the property ideal access and visibility from these streets.



Despite the property's being located in a competitive market for leasing to car-rental companies, LAWA's appraiser mistakenly concluded that the highest-and-best use of the property is future redevelopment of commercial or mixed use. Tellingly, LAWA's appraiser provides *no* analysis or discussion to support his highest-and-best use opinion.

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Even though the owners' property is improved, entitled, graded, and has utilities, LAWA's appraiser disregarded the improvements, which is improper. By defining the property as "land only," the appraiser excluded from the analysis various severance damages (as discussed below). No law allows LAWA to appraise an *improved* property using the fiction that it is *vacant*.

LAWA violated Government Code section 7267.2 by failing to appraise the owners' *improved* property. "A public agency may exercise the power of eminent domain only if it has adopted a resolution of necessity that meets the requirements of" the Eminent Domain Law. (Code Civ. Proc., § 1240.040.) If a public entity's resolution of necessity is defective, it *cannot* condemn private property. As the Law Revision Commission explained in its comments to section 1240.040: "If the public entity fails to adopt such a resolution [of necessity], or adopts a defective resolution, it may not condemn property." (Cal. Law Revision Comm. com., West's Ann. Cal. Code Civ. Proc. (2025 ed.) foll. § 1240.040; see also Code Civ. Proc., § 1245.220.)

The law requires that LAWA satisfy certain procedural prerequisites *before* adopting a resolution of necessity. A precondemnation offer under Government Code section 7267.2 is a procedural prerequisite of a resolution of necessity. The resolution of necessity must recite that the offer required by Government Code section 7267.2 has been made. (Code Civ. Proc., § 1245.230, subd. (c)(4).) But if a resolution of necessity contains inaccurate or insufficient information, the public agency *cannot* condemn the property. (See *City of Ontario v. We Buy Houses Any Condition, LLC* (2024) 103 Cal.App.5th 1212, 1217-1219 [failure to provide public project description in a resolution of necessity is a gross abuse of discretion]; *City of Stockton v. Marina Towers, LLC* (2009) 171 Cal.App.4th 93, 114-115 [vague project description in a resolution of necessity is a gross abuse of discretion]; see also *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005, 1011-1013 [failure to provide summary statement required by Government Code section 7267.2 renders resolution of necessity defective].) An inaccurate appraisal will derail the resolution of necessity, as described below.

Government Code section 7267.2 requires that the *actual* property sought to be condemned be appraised. If property is *improved*, an appraisal of *vacant* land is *not* an appraisal of the property actually being taken. Before adopting a resolution of necessity, the condemning agency must extend an offer of just compensation based on an appraisal reflecting the fair market value of the *actual* property that is to be condemned; the appraisal must accurately identify and describe the *actual* property sought for condemnation. (Code Civ. Proc., §§ 1240.040, 1245.230, subd. (c)(4); see also Evid. Code, § 816 [a "comparable sale" property "must be sufficiently alike in respect to character, size, situation, usability, and improvements, to make it clear that the property sold and the property being valued are comparable"]; 25 Cal. Code reg., § 6182, subd. (c)(1) [compensation shall be based on "the real property being acquired"]; *The Appraisal of Real Estate* (Appraisal Institute, 15th ed. 2020), pp. 41-42 [explaining that one of the first steps in the appraisal process is determining the property's characteristics, including its location and physical characteristics]; Uniform Standards of Professional Appraisal Practice, Standards Rule 1-2(e) [in preparing an

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appraisal, an appraiser must identify the property's characteristics]; Uniform Standards of Professional Appraisal Practice, Standards Rule 1-1(b) [in preparing an appraisal, an appraiser "must not commit a substantial error of omission ... that significantly affects an appraisal."].) Accurate identification of property sought to be condemned is integral to a property owner's right to procedural due process.

The appraisal cannot be of a *hypothetical, nonexistent* property – it must be for the *actual* property being acquired. (See Gov. Code, § 7267.2, subd. (b)(3) ["the just compensation *for the real property acquired* ..."]; see also 25 Cal. Code reg., § 6182, subd. (c)(1) [the determination of just compensation must be based on consideration of "*the real property being acquired*"].) Prior to initiating negotiations with the property owner, a condemning agency is required to: "Establish an amount it believes to be just compensation for the property, which amount shall, in no event, be less than the public entity's appraisal of the fair market value of *the property as improved*." (25 Cal. Code reg., § 6182, subd. (b)(3), *emphasis added*.)

No statute, regulation, or case authority allows LAWA to appraise the owners' improved property as hypothetical, vacant land. The applicable statutes and regulations indicate that LAWA's appraisal must be of *improved* property since the property being appraised for acquisition is improved. LAWA made a precondemnation offer based on an appraisal of a completely different property, *not* the property LAWA seeks to acquire.

LAWA's appraisal ignored the income-producing nature of the owners' property.

LAWA's appraiser used only the sales-comparison approach to value the owners' property. LAWA's appraiser ignored that the owners' property is income-producing. So LAWA's appraiser should have also used the income-capitalization approach to value the owners' property. This is a significant omission.

The Appraisal of Real Estate identifies that any property "that has the potential to generate income can be valued using the income capitalization approach." (The Appraisal of Real Estate (Appraisal Institute, 15th ed. 2020), p. 414.) The Appraisal of Real Estate specifies that the income-capitalization approach should be given "greater weight" than the other valuation approaches (e.g., sales-comparison approach) in determining an income-generating property's value. (*Id.* at pp. 414-415.)

Here, the owners provided LAWA a copy of its lease with its long-term tenant, Budget Rent A Car, and demanded that LAWA also appraise the property using the income-capitalization approach. Despite the owners' providing this lease information to LAWA and the owners' request to use the valuation approach that considers the income-producing nature of the property, LAWA's appraiser failed to consider this lease information and did not use the income-capitalization approach.

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LAWA's appraisal used non-reflective and outdated comparable sales.

To determine land value, LAWA's appraisal includes 11 "comparable" land sales. Many of these "comparable" sales were located in different cities from the owners' property, with some properties miles away.

Nine of the "comparable" land sales are zoned for multifamily residential. None of the "comparable" sales are mixed use. Two "comparable" sales are zoned industrial. It is unclear why LAWA's appraiser selected industrially zoned land sales when the appraiser's highest-and-best use conclusion is residential or mixed use. These industrial-land sales were considered "far inferior" to the owners' property and significantly drove down the valuation range for the owners' property.

LAWA's appraiser did not indicate whether the "comparable" land sales were put under contract at *unentitled* values. There was no discussion or analysis of the properties' entitlement status. This is a significant miss as buyers often seek residential entitlements *after* the properties are put under contract, thereby locking in *lower* prices per square foot.

The non-reflective, unentitled "comparable" land sales used by LAWA's appraiser drove down the value conclusion for the owners' property. And LAWA's appraiser chose a price per square foot in the *middle* of the range of the "comparable" sales. At a minimum, the owners' price per square foot should have been at the top of the range.

Additionally, LAWA's appraiser used extremely dated sales. Most of the sales were from 2023. But some sales were as far back as September 2021 and September 2022. There was only one sale from 2024. LAWA's appraiser's outdated "comparable" sales do not reflect fair market value in this rapidly escalating real-estate market. This should be reflected in LAWA's appraisal.

LAWA's project is not planned or located in a 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).) LAWA's project is *not* planned to create the least private injury to the owners. LAWA has failed to provide any documentation that demonstrates the project results in the least private injury to the owners. In fact, LAWA has provided *no* documents that show that LAWA even considered the owners' injury.

One of the most significant private injury concerns is the property's security. Even though the owners' indicated to LAWA that there are serious security issues with the removal of permanent fencing during the "temporary" construction easement period (i.e., cars can be easily stolen if LAWA merely installs a chain-link fence), LAWA failed to alleviate (or even address) these

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security concerns. LAWA failed to consider the owners' private injury if it cannot adequately maintain security during LAWA's "temporary" construction period.

Additionally, part of one of the billboards currently on the property along Airport Boulevard will be encroaching into the proposed right-of-way. LAWA's appraiser assumes (without documentary support) that the owners will receive an encroachment permit allowing this billboard to remain as-is. LAWA failed to consider the owners' private injury if the owners are unable to secure an encroachment permit.

LAWA's appraisal grossly underestimates the owners' devastating severance damages, both for physical changes caused by LAWA's project and impacts to parking and circulation.

LAWA's project permanently eliminates 15 to 20 feet along the property's eastern boundary with Airport Boulevard. The following is an aerial depicting the location of the permanent street easement and the temporary construction easement:



The property's striping and circulation, particularly along Airport Boulevard, is negatively impacted by LAWA's project. LAWA's appraiser fails to address interior striping and circulation, which may need to be redone *twice* (once to accommodate LAWA's three-year temporary

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construction easement and then after the temporary construction easement expires). LAWA's appraiser provides *zero* compensation for this restoration work. And LAWA's appraiser fails to consider severance damages resulting from the significant acquisition along the property's boundary with this major thoroughfare.

LAWA's taking will also impact the availability of parking space at the property. Yet LAWA's appraiser fails to consider parking impacts in the appraisal.

LAWA's appraiser notes that three large business signs that are located within the street easement are *not* included in the appraiser's calculation of compensation. LAWA's appraiser notes in the appraisal summary that the "value of said signs will be negotiated directly with the property owner." But LAWA has failed to offer *any* compensation to the owners for these signs. With no offer from LAWA for this acknowledged taking, LAWA cannot proceed with condemnation.

Despite the significant impacts of LAWA's acquisitions (detailed throughout this objection letter), LAWA's appraisal identifies *zero* severance damages. This is a preposterous position.

LAWA's appraisal missed impacts to the owners' income-generating billboards on the property.

The property has four outdoor billboards, which generate income for the property. Two billboards face Airport Boulevard and two billboards face 96th Street.

LAWA's appraiser acknowledges that the billboard sign at the northeast corner of the property (along Airport Boulevard) is partially located within the proposed street easement. LAWA's appraiser states in the appraisal summary that "it is understood that said billboard sign will be permitted to remain in place, and will not be affected by the proposed street easement." There is no explanation or support for this conclusory assertion. There is no mention of LAWA's securing an encroachment permit for the billboard to remain in place. There is no guarantee that the City of Los Angeles will allow the to-be-encroaching billboard to remain. Without these assurances, LAWA's appraiser should have quantified impacts for the loss of this billboard and the income it generates.

Additionally, the property's billboard signs along 96th Street may need to change orientation. There is no guarantee that the City of Los Angeles will allow the orientation of these billboards to change. Without these assurances, LAWA's appraiser should have quantified impacts of the loss of these billboards as well.

And 96th Street is anticipated to become a much smaller, "private street." So even if the orientation of these billboards along 96th Street are changed, the altered character of the street will substantially reduce the rental potential and value of these two billboards.

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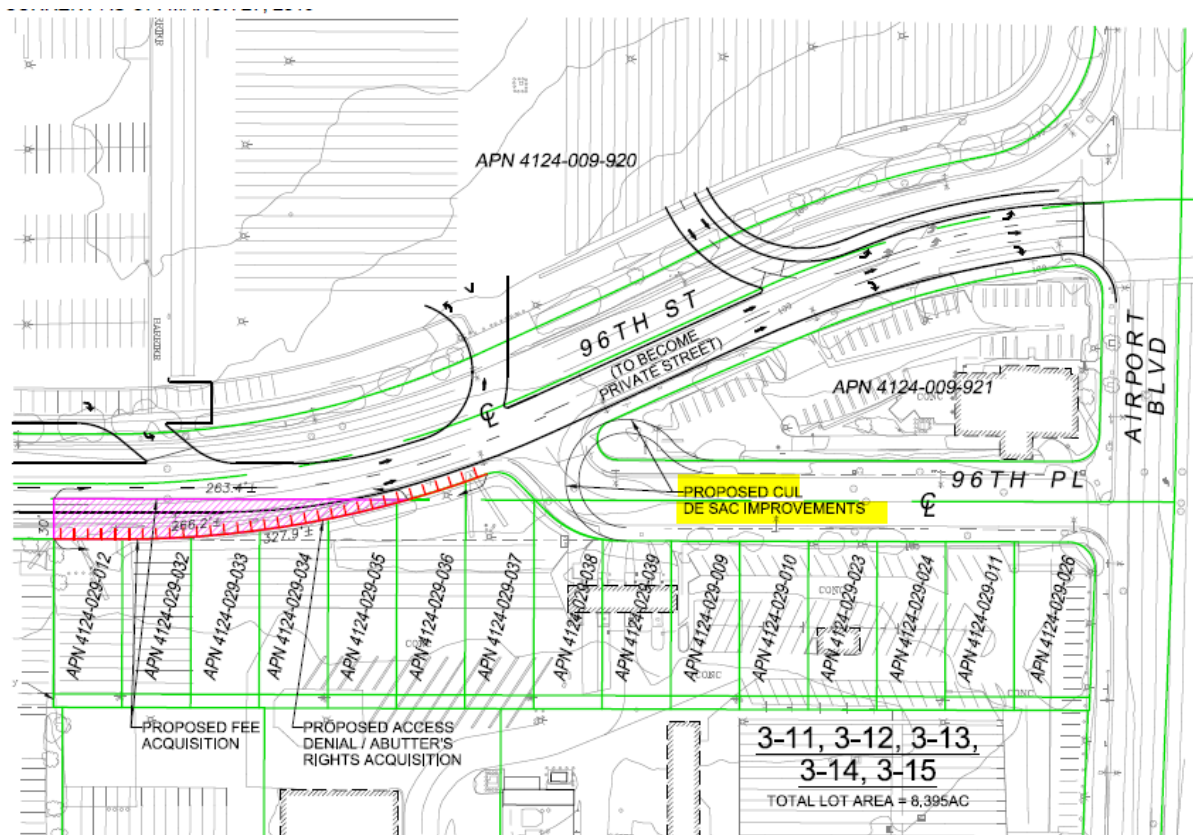
LAWA's appraisal missed severance damages resulting from the permanent acquisitions along 96th Street and its detrimental impacts on future redevelopment of the property.

LAWA seeks to acquire a partial fee interest along and abutter's rights of access to 96th Street. This will landlock the property's northwestern quadrant and will prevent any future redevelopment potential that would involve orienting commercial or other uses towards 96th Street. Despite these significant impacts, LAWA's appraiser opines to nominal values (i.e., \$2,500) for the fee acquisition underlying 96th Street and for abutter's rights of access to 96th Street.

The property has frontage and driveways connecting to *three* major streets, including 96th Street. This gives the property ideal access, visibility, and flexibility. Access to and from several streets provides much more flexibility for the property's future redevelopment (and for the property's current use). Having more access is more valuable than no or limited access. By losing *all* access to 96th Street, the property has fewer redevelopment options. Clearly loss of access to a major street will have some impact on the property's value. Even a 2% impact to the property's value due to loss of access to 96th Street would result in a loss of over \$1.8 million (using LAWA's appraisal).

LAWA's appraisal missed the severance damages resulting from eliminating through traffic on 96th Place.

LAWA plans to convert 96th Place to a cul-de-sac, thereby cutting off access from 96th Place to 96th Street. The following is LAWA's proposed project plan depicting the cul-de-sac:



The cul-de-sac eliminates the corner-status access and street exposure that 96th Place confers on the property by its connection to 96th Street. This eliminates one of the property's two valuable street-corner frontages. In other words, with 96th Place directly connecting to 96th Street, the property currently is a corner lot at a major intersection. And LAWA's taking will eliminate this as a significant corner. LAWA's appraiser missed this in his appraisal.

LAWA's appraisal missed security and restoration costs to accommodate its three-year "temporary" construction easement and permanent street easement.

LAWA's appraisal missed the restoration costs needed to address the negative impacts of its project.

LAWA's project proposes to remove the permanent block fence and other security improvements along Airport Boulevard to accommodate its takes. But LAWA fails to address the interim condition of the property. LAWA fails to provide sufficient security and fencing during the duration of its three-year temporary construction easement. A chain-link is insufficient to maintain the security of the property and the hundreds of vehicles stored and maintained on the property.

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The owners will need to install secure fencing, bollards, spike strikes, lighting, signage, and other improvements to accommodate LAWA's temporary construction easement.

Then, when LAWA's temporary construction easement expires, the owners will need to remove and reinstall a permanent, secure wall or fence and other improvements to accommodate LAWA's street easement. LAWA's appraiser fails to consider these costs in his appraisal – another significant omission.

LAWA's appraisal used a low annual rate of return to value the temporary construction easement.

LAWA's appraiser selected a low annual rate of return to value the temporary construction easement: 9%. No analysis or reasoning is provided to explain LAWA's appraiser's seemingly arbitrary selection of 9%. Rates of return for temporary construction easements are typically several percentage points higher.

LAWA's appraisal missed construction impacts to the owners' property.

The owners will need to address and manage tenant issues and other inconveniences during LAWA's years-long construction period. Increased noise, dust, debris, vibrations, security issues, and other disruptions caused by construction may impact the owners' tenants. The owners may be forced to offer rent reductions and concessions to try to minimize the loss of tenants, and may need to offer significant incentives to attract prospective tenants.

3. Conclusion.

Because the evidence presented in these objections establishes that LAWA's appraisal is fundamentally flawed, LAWA *must* commission a new appraisal that properly assesses the owners' property, and LAWA *must* make a new offer before proceeding with a resolution of necessity. (See Cal. Code Regs., tit. 25, § 6182, subd. (i)(2).) The requirement to update the appraisal is *not* discretionary; California Code of Regulations section 6182 states that LAWA "shall" update its appraisal in this circumstance. (*Ibid.*) LAWA must correct the fundamental issues with its appraisal so the parties can engage in good-faith negotiations and increase the likelihood of avoiding litigation. (See Gov. Code, § 7267.1, 7267.2.)

Public agencies have a "high order" duty to look out for the property owner's interests and ensure that just compensation is paid. (See *City of Los Angeles v. Decker* (1977) 18 Cal.3d 861, 871.) Since the owners have made LAWA aware of the fundamental defects, mistakes, and omissions in its appraisal, LAWA cannot fulfill its "high order" duty without correcting its appraisal and making a new offer to the owners.

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

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The owners therefore respectfully requests that LAWA (1) *not* proceed with the adoption of any resolution of necessity and that LAWA instead (2) obtain a new or updated appraisal that properly values the property and resultant severance damages and (3) make a proper offer to purchase.

Very truly yours,



K. Erik Friess

KEF

cc: David Graeler (DGraeler@nossaman.com)