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David A. Robinson  
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April 13, 2018

**VIA OVERNIGHT DELIVERY**

CAMM N/A  
 Acctg N/A  
 Capital Prog X  
 Gen Counsel X

Laurena Weinert, Clerk of the Board  
 Orange County Transportation Authority  
 500 South Main Street  
 P.O. Box 14184  
 Orange, CA 92863-1584

Re: Request to be Heard & Request to Further Address Onsite Drainage Issues  
 Resolution of Necessity for the I-405 Improvement Project  
 5400-5440, 5772 & 5880 Garden Grove Boulevard, Westminster, CA 92683  
 Orange County Assessor's Parcel Nos.: 203-071-22, 203-102-01, 203-102-02,  
 203-071-23 & 203-102-03  
 Caltrans Parcel Nos.: 103313-1 & 103312-1

Dear Ms. Weinert:

By this letter, and in response to your letters dated March 30, 2018, M. Westland, LLC, Land Partners Co. and Dorothy Sublett Miller and Walter J. Miller, Successor Trustees of the Miller Family Trust, (the "Owners"), including their agents Brad Sublett, Dorothy W. Miller-Sublett and Enterprise Counsel Group ALC, request the opportunity to appear and be heard at the hearing presently scheduled for May 14, 2018 regarding the above-referenced matters.

**In addition to requesting the opportunity to appear and be heard, we further ask that the OCTA address onsite drainage issues that will be impacted by the I-405 Improvement Project.**

On January 23, 2018 and February 6, 2018, Overland, Pacific & Cutler, LLC ("Overland") sent letters to the Owners, offering to purchase temporary construction easements in connection with the I-405 Improvement Project. In response, I sent the enclosed letter dated March 23, 2018. As explained in the March 23 letter:

[W]ith respect to the properties located at 5772 and 5880 Garden Grove Boulevard (the "Mobile Home Park"), there is a sewer and storm drain located within the temporary construction easement. **Historically, improvements and utilities on the Mobile Home Park have been significantly damaged due to**

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**flooding that occurs during periods of heavy rain. The sewer and storm drain within the easement are critical in avoiding catastrophic flooding. Without those drains, there are no other flood control devices sufficient to prevent widespread water damage.** Thus, to adequately address the potential for the freeway widening project to interfere with those drains, the owners would like to engage in a discussion with your engineers. By addressing this issue now, our aim is to arrive at a satisfactory mutual resolution that ensures neither the mobile home park nor the I-405 Improvement Project are negatively impacted by flooding.

(Bold added.)

In other words, the catastrophic flooding issue discussed in the March 23 letter is directly related to whether the I-405 Improvement Project “is planned or located in the manner that will be most compatible with the greatest public good **and the least private injury,**” a finding that, as you have acknowledged in your March 30 letters, must be made by the OCTA pursuant to Code of Civil Procedure section 1245.230(c)(2). (Bold added.) **If the OCTA fails to resolve this issue, the likelihood of widespread flooding occurring on the subject property during the 24-month temporary construction easement is a near certainty.** I am concerned this issue will not be appropriately addressed because I have not received a substantive response to my March 23 letter.

On April 5, 2018, OCTA representative Joey Mendoza emailed me stating, “We are in the process of providing a response to your questions but would like your assistance regarding the onsite drainage concern.” My office responded to Mr. Mendoza that same day, requesting clarification as to whether the deadline to obtain the incentive payments described in Overland’s January 23 and February 6 letters would be extended. However, I have yet to receive any further response from Mr. Mendoza. I hope the request for an extension to the incentive payment deadline has not caused the OCTA to ignore my March 23 letter.

The only information I have received from the OCTA since Mr. Mendoza’s email is a copy of your March 30 letters notifying the Owners of the OCTA’s intent to adopt a Resolution of Necessity. However, we remain hopeful the OCTA will respond to my March 23 letter prior to the presently scheduled May 14 hearing. If so, perhaps we can resolve the issue of catastrophic flooding, and the acquisition of the temporary construction easement, without the necessity of a hearing let alone any further formal eminent domain proceedings.

In any event, it is the OCTA’s obligation to discuss the flooding issue with the Owners prior to the hearing. Otherwise, the OCTA will not have sufficient evidence to support any conclusion as to whether the I-405 Improvement Project is “most compatible with the greatest public good and the least private injury.” This would be critically problematic because the California Court of

Appeal has held a condemnor is prohibited from irrevocably committing itself to a taking regardless of the evidence presented at the administrative hearing. (*Santa Cruz County Redevelopment Agency v. Izant* (1995) 37 Cal.App.4th 141, 149.) The OCTA cannot simply ignore the drainage issue because it wants to widen the I-405. Moreover, if the upcoming hearing is such an ends-driven endeavor, the Owners would be forced to seek immediate judicial review of such a hearing pursuant to Code of Civil Procedure section 1245.255.

Perhaps I have received no substantive response to my March 23 letter owing to a "tyranny of the urgent" as the OCTA nears deadlines necessary to keep the I-405 Improvement Project running on schedule. However, that is all the more reason to meet with the Owners now so that we can resolve the widespread flooding issue that the OCTA is required by law to address.

We look forward to the OCTA's reply to my March 23 letter. If we are not able to resolve all issues with respect to the subject property, this letter, again, requests the opportunity to appear and be heard at the May 14, 2018 hearing before the OCTA.

Very truly yours,

ENTERPRISE COUNSEL GROUP  
A Law Corporation



David A. Robinson

Enclosure

DAR:mmw



David A. Robinson  
[drobinson@ecg.law](mailto:drobinson@ecg.law)

March 23, 2018

**VIA HAND DELIVERY**

Orange County Transportation Authority  
c/o Daniela Borbe & Mona Montano  
Overland Pacific & Cutler, LLC  
1 Jenner, Suite 200  
Irvine, CA 92618

Re: Offers to Acquire Property Rights  
I-405 Improvement Project  
5400-5440, 5772 & 5880 Garden Grove Boulevard, Westminster, CA 92683  
Orange County Assessor's Parcel Nos.: 203-071-22, 203-102-01, 203-102-02,  
203-071-23 & 203-102-03  
Caltrans Parcel Nos.: 103313-1 & 103312-1

Dear Ms. Borbe and Ms. Montano:

My office represents the owners of the above-referenced properties with respect to your office's letters dated January 23, 2018 and February 6, 2018 offering to acquire temporary construction easements in furtherance of the I-405 Improvement Project. I am in receipt of those letters, and the associated enclosures raise three issues that, out of an abundance of caution, we would appreciate your clarification on.

First, we suspect that per Section 7 of the "Right-of-Way Contract," OCTA is asking the property owners to provide assurances that they will bear responsibility for any losses and expenses resulting from the mere presence of any lease exceeding a period of one month, but not more broadly for a tenant's maintenance of a tort action arising out of the I-405 Improvement Project. In other words, that OCTA is not asking the property owners to provide assurances regarding any claim a tenant might make that the construction work constitutes a nuisance or has otherwise harmed the tenant (*e.g.*, by the operation of loud equipment; the existence of noxious substances such as smoke, hazardous chemicals and dust; the use of bright lights at night; etc.). Please confirm whether our understanding is correct.

Next, with respect to the properties located at 5772 and 5880 Garden Grove Boulevard (the "Mobile Home Park"), there is a sewer and storm drain located within the temporary construction easement. Historically, improvements and utilities on the Mobile Home Park have been significantly damaged due to flooding that occurs during periods of heavy rain. The sewer

and storm drain within the easement are critical in avoiding catastrophic flooding. Without those drains, there are no other flood control devices sufficient to prevent widespread water damage. Thus, to adequately address the potential for the freeway widening project to interfere with those drains, the owners would like to engage in a discussion with your engineers. By addressing this issue now, our aim is to arrive at a satisfactory mutual resolution that ensures neither the Mobile Home Park nor the I-405 Improvement Project are negatively impacted by flooding.

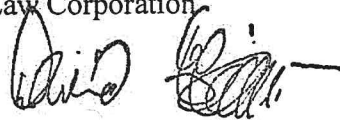
The attachment to the legal description of the temporary construction easement burdening the Mobile Home Park states: "OCTA's use and occupancy of the [temporary construction easement] will be exclusive, subject to the rights and limitations set forth below." One of the rights and limitations identified is: "Reasonable pedestrian and vehicular access to the property shall be maintained at all times." Further, Section 12 of the "Right-of-Way Contract" reads, in relevant part: "Grantor agrees to keep the Temporary Construction Easement area free and clear of all ... debris during the [forty-eight (48) month term]." It is our understanding that these provisions enable the property owner to have complete and unfettered access to the sewer and storm drain to prevent widespread flooding. However, we would like to discuss this issue with your engineering team now to avoid any future potential for damage to the Mobile Home Park or delay to the freeway construction.

Lastly, the letter and enclosures regarding the Mobile Home Park reference "5772 and 5830 Garden Grove Boulevard, Westminster, CA 92683," and Assessor's Parcel Numbers ("APN") 203-071-23 and 203-102-03. However, APN 203-071-23 and 203-102-03 are associated with 5880 Garden Grove Boulevard and 5772 Garden Grove Boulevard, respectively. Consequently, we expect all references to "5830 Garden Grove Boulevard" are in error, and that OCTA meant to identify 5880 Garden Grove Boulevard as the relevant street address. Kindly let us know if that is the case.

In order to provide both parties with sufficient time to address these issues, we request a 30-day extension—beginning from the date of receipt of the extension—to the deadline to respond to the incentive payment offers provided in the above-described letters. Thank you for your time and consideration and we look forward to hearing from you soon.

Very truly yours,

ENTERPRISE COUNSEL GROUP  
A Law Corporation



David A. Robinson

DAR:mmw