

Todd A. Amspoker  
Susan M. Basham  
Kristen M. R. Blabey  
Shannon D. Boyd  
Timothy M. Cary  
Melissa J. Fassett  
Ian M. Fisher  
Arthur R. Gaudi  
Cameron Goodman  
Christopher E. Haskell  
James H. Hurley, Jr.  
Eric P. Hvolbøll  
Mark S. Manion  
Steven K. McGuire

Our File Number:  
23042-1



## PRICE, POSTEL & PARMA LLP

*Counsellors at Law*

200 East Carrillo Street, Suite 400  
Santa Barbara, CA 93101-2190

Mailing Address: P.O. Box 99  
Santa Barbara, CA 93102-0099

[www.ppplaw.com](http://www.ppplaw.com)

Ph (805) 962-0011 Fax (805) 965-3978

E-mail: [taa@ppplaw.com](mailto:taa@ppplaw.com)

Timothy E. Metzinger  
Shereef Moharram  
Craig A. Parton  
Kenneth J. Pontifex  
Douglas D. Rossi  
Peter D. Slaughter  
David W. Van Horne  
C.E. Chip Wullbrandt  
Ryan D. Zick

### CAMERON PARK OFFICE

3330 Cameron Park Drive, Suite 100  
Cameron Park, CA 95682-7652  
Ph (805) 962-0011  
Fax (805) 965-3978

April 26, 2019

### VIA U.S. MAIL ONLY

City of Goleta  
Attn: City Clerk  
130 Cremona Drive  
Goleta, CA 93117

Re: Request to Appear and be Heard (C.C.P § 1245.235(b)(3)) at May 21, 2019  
Hearing re City of Goleta – Hollister Bridge and Ekwill Fowler Projects

To Whom It May Concern:

Pursuant to Code of Civil Procedure section 1245.235(b)(3), the following property owners and their legal counsel request to appear and be heard regarding the City of Goleta's May 21, 2019 Hearing on the proposed Resolution of Necessity authorizing eminent domain proceedings of real property related to the Hollister Bridge and Ekwill Fowler Projects:

- Newland Family Survivors Trust and Newland Family Credit Shelter Trust, with respect to Acquisition APNs 071-090-036; Site Address: 5544 Hollister Avenue, Goleta, CA 93117

Please contact the undersigned if you have any questions.

Very truly yours,

Todd A. Amspoker  
for PRICE, POSTEL & PARMA LLP



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E-mail: taa@ppplaw.com

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3330 Cameron Park Drive, Suite 100  
Cameron Park, CA 95682-7652  
Ph (805) 962-0011  
Fax (805) 965-3978

Our File Number:  
223333-3



April 26, 2019

**VIA U.S. MAIL ONLY**

City of Goleta  
Attn: City Clerk  
130 Cremona Drive  
Goleta, CA 93117

Re: Request to Appear and be Heard (C.C.P § 1245.235(b)(3)) at May 21, 2019  
Hearing re City of Goleta – Hollister Bridge and Ekwill Fowler Projects

To Whom It May Concern:

Pursuant to Code of Civil Procedure section 1245.235(b)(3), the following property owners and their legal counsel request to appear and be heard regarding the City of Goleta's May 21, 2019 Hearing on the proposed Resolution of Necessity authorizing eminent domain proceedings of real property related to the Hollister Bridge and Ekwill Fowler Projects:

- Bottiani Properties, a California General Partnership, with respect to the following properties:
  - o Acquisition APN 071-140-046; Site Address: 5551 Hollister Avenue, Goleta, CA 93117
  - o Acquisition APN 071-260-001; Site Address: 5553 Hollister Avenue, Ste A, Goleta, CA 93117-3826

Request to Appear and be Heard

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- Waters Land Surveying, Inc., with respect to Acquisition APN 071-260-007; Site Address: 5553 Hollister Avenue, Ste 7, Goleta, CA 93117-3837
- Bottiani Properties, a California General Partnership, and Kellogg Square, LLC, with respect to Acquisitions APNs 071-140-056 and 071-140-058; Site Address: 5555-5575 Hollister Avenue, Goleta, CA 93117

Please contact the undersigned if you have any questions.

Very truly yours,



Todd A. Amspoker  
for PRICE, POSTEL & PARMA LLP

2019 MAY -5 AM 9:30

GLENN L. BLOCK  
[GLB@CALEDLAW.COM](mailto:GLB@CALEDLAW.COM)  
DIRECT DIAL – 818-957-6577

May 2, 2019

**VIA OVERNIGHT MAIL**

City of Goleta  
Attn: City Clerk  
130 Cremona Drive  
Goleta, CA 93117

**Re: May 21, 2019 – City of Goleta**  
**Public Hearing considering adoption of Resolution of Necessity**  
**Hollister Bridge and Ekwill-Fowler Projects**  
**5580 & 5590 Hollister Avenue, Goleta, CA**  
**Assessor's Parcel Nos.: 071-090-89 and 071-090-063**  
**Owner: Santa Barbara Nissan, LLC**

To The Honorable Clerk and City Council:

We have been retained as eminent domain counsel to Santa Barbara Nissan, LLC ("SB Nissan") with respect to the City's proposed acquisition of portions of the above-referenced property ("Subject Property") for the Hollister Bridge and Ekwill-Fowler Projects ("Projects"). SB Nissan owns the Subject Property, on which it operates an automobile sales dealership.

SB Nissan objects to the City's consideration of the above-referenced Resolution of Necessity at this time and, if the hearing proceeds, we request the opportunity to be heard on such objections at the public hearing on May 21, 2019.

SB Nissan respectfully requests that the City remove this matter from consideration at the May 21, 2019 meeting in order to provide the parties an opportunity to meet to review and discuss: (1) the City's design and planning for the Projects generally, and specifically as it relates to the Subject Property; (2) the substantial injuries the takings and Projects will cause to the Subject Property; and, (3) the necessity of the City's proposed acquisition of portions of the Subject Property for the Projects, and the nature and extent of any such acquisition.

Unless and until such Condemnation Evaluation and Panel Review meetings are scheduled and conducted, it is premature for the City to consider adoption of a Resolution of Necessity to take portions of SB Nissan's property. Furthermore, after such meetings, the City is obligated to afford a reasonable opportunity for the parties to engage in good faith negotiations regarding the acquisition of the property interests, if any, required for the Projects.

In the event the City denies SB Nissan's request to remove this matter from consideration on May 21, 2019, and the City proceeds with the public hearing for consideration of a Resolution of Necessity to acquire portions of the Subject Property, SB Nissan objects on several grounds, as discussed below:

**1. THE PROJECTS ARE NOT PLANNED OR LOCATED IN THE MANNER COMPATIBLE WITH THE GREATEST PUBLIC GOOD AND LEAST PRIVATE INJURY; AND, THE SUBJECT PROPERTY IS NOT NECESSARY FOR THE PROJECT.**

The City cannot establish the requisite findings to properly support adoption of a Resolution of Necessity.

**a. The Projects are Not Designed to Accomplish the Greatest Public Good and Least Private Injury**

The Projects are not planned or located in a manner consistent with the greatest public good and least private injury. Here, the City already holds easements on the Subject Property sufficient to accomplish the Projects without the necessity of taking more property. Accordingly, the Projects – *the same public good* – could reasonably be accomplished within the easements the City already holds without acquiring additional interests in the Subject property – *with less private injury*.

Here, the easterly portion of the Subject Property is presently encumbered by an existing flood control easement. Moreover, the easterly portion of the Subject Property is also encumbered by public trail easements – one of which was conveyed by SB Nissan to the City just a few years ago in 2011. Presently, the City holds a flood control easement (at least 80' wide) and two public trail easements (totaling 30' wide) across the Subject Property. Thus, the Subject Property already contributed more than its fair share of private property for public use.

Despite the fact it already holds substantial easements across the Subject Property, the City now seeks an additional 50' wide permanent easement *for identical purposes* – flood control and a public trail. The City already holds sufficient easement rights within which to construct the necessary flood control and trail improvements. Thus, City could design the Project to accomplish the same public good with significantly less private injury by not acquiring a further permanent easement across the Subject Property.

Moreover, it does not appear that the City properly considered reasonable design alternatives to accomplish the Projects within the City's existing easements, without the

necessity of acquiring further interests in the Subject Property. Accordingly, it appears that the Projects are designed by the City in a manner that exacerbates, rather than minimizes, private injury.

Having failed to properly consider reasonable alternatives for the Projects within the City's existing easements on the Subject Property, the City cannot establish by substantial evidence that it planned or located the Projects consistent with the greatest public good and least private injury. Accordingly, adoption of a Resolution of Necessity to acquire the proposed Permanent Easement on the Subject Property is not proper.

**b. The Subject Property is Not Necessary for the Projects.**

As set forth above, the City already holds substantial rights on the Subject Property for flood control and public trail purposes within which the Projects could be constructed. There is at least one other reasonable alternative design that accomplishes the same public good, without the necessity of the City acquiring the extent of property interests sought. Thus, the Projects could be completed without acquiring an additional permanent easement as proposed. Accordingly, the City cannot establish by substantial evidence that acquisition of the proposed permanent easement is necessary for the Projects.

For the foregoing reasons, adoption of a Resolution of Necessity at this time is improper as the City cannot establish either: (i) that the Projects are planned in a manner that is compatible with the greatest public good and least private injury; or, (ii) that the taking of portions of the Subject Property is necessary for the Projects.

**2. IT IS IMPROPER FOR THE CITY TO PROCEED WITH A HEARING ON A RESOLUTION OF NECESSITY UNTIL THE CITY COMPLIES WITH GOVERNMENT CODE §7267.1 AND "MAKE[S] EVERY REASONABLE EFFORT" TO ACQUIRE SB NISSAN'S PROPERTY BY NEGOTIATION.**

California Government Code §7267.1<sup>1</sup> requires the City to "make every reasonable effort to acquire expeditiously real property by negotiation." Here, the City has not complied with this requirement because it has not made a legally sufficient offer, and has not engaged in substantive negotiations.

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<sup>1</sup> In addition to the California Government Code, the City is also subject to State and Federal acquisition regulations which impose similar requirements to make every reasonable effort to acquire property by negotiation. See Title 24 Code of Federal Regulations §24.102(a) and Title 25 California Code of Regulations §6182(a).

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City of Goleta  
Attn: City Clerk  
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Here, the City clearly failed to comply with this requirement because it rushed scheduling of the hearing to consider adoption of a Resolution of Necessity before providing SB Nissan any opportunity to even respond to the City's revised offer.

The City's scheduled hearing (May 21, 2019) is only 46 days after the revised offer was mailed (April 5, 2019), and notice of the hearing was mailed only *two weeks* after the revised offer (April 19, 2019). In other words, ***the City made its decision to move forward to acquire the property by force less than two weeks after making a revised offer.*** As discussed below, in addition to violating Cal. Govt. Code §7267.1, the City's actions are coercive and in violation of other applicable State and Federal regulations.

In and of itself, 46 days is an insufficient and unrealistic timeframe for a property owner to properly evaluate the City's offer (including the real estate appraisal on which it is based), let alone sufficient time for a property owner to obtain an independent appraisal and engage in substantive negotiations. As such, the City is in clear violation of its obligations to "make every reasonable effort" to acquire the property by negotiation under Cal. Govt. Code §7267.1.

While there is no specific statutory or regulatory requirement describing an acceptable timeframe for pre-condemnation negotiations, or what constitutes "every reasonable effort" to acquire property by negotiation. However, 45 or even 60 days is clearly an insufficient amount of time. Here, it took about 66 days for the *City's appraiser* to complete his revised appraisal report (the appraiser inspected the property on January 24, 2019 and issued his revised report on April 1, 2019) – and that was after having previously completed his initial appraisal of the property. Accordingly, SB Nissan should be afforded at least a couple months to obtain an independent appraisal and engage the City in substantive negotiations.

The City's threat to quickly adopt a Resolution of Necessity and file an eminent domain lawsuit violates Federal and State prohibitions against coercive actions by a public agency. "The Agency shall not advance the time of condemnation ... or take any other coercive action in order to induce an agreement on the price to be paid for the property." [Title 24 Code of Federal Regulations §24.102(h); see also similar California provision in Title 25 California Code of Regulations §6182(j)(1).]

Here, because of the extraordinarily short period of time between the City's revised offer and its Notice to adopt a Resolution of Necessity, the City's actions constitute coercive efforts to compel SB Nissan to agree to sell its property before the City files a lawsuit to take the property by force.

These same principles of justice and fairness have long been recognized by the California Supreme Court which stated, "The condemnor acts in a quasi-judicial capacity and

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City of Goleta  
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should be encouraged to exercise his tremendous power fairly, equitably and with a deep understanding of the theory and practice of just compensation.” City of Los Angeles v. Decker (1977) 18 Cal. 3d. 861. The City’s actions here clearly fail to meet this established standard of fairness and equity.

Yet, instead of simply making a *reasonable effort* to negotiate with SB Nissan – let alone making “every reasonable effort” to negotiate, as mandated by law – the City has threatened filing a lawsuit before negotiations are even initiated.

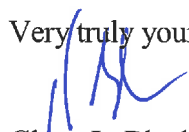
Unless and until the parties have the opportunity to freely and reasonably engage in good-faith negotiations, consideration of a Resolution of Necessity to initiate an eminent domain lawsuit and litigate this matter is premature and improper.

### 3. CONCLUSION.

For the foregoing reasons, among others, SB Nissan respectfully submits that the City should not consider adoption of the proposed Resolution of Necessity on May 21, 2019. Instead, the City should first meet with SB Nissan to discuss the project design and explore potential alternatives within the City’s existing easements. Then, if the City determines that reasonable design alternatives are not viable, the City should provide a reasonable opportunity for SB Nissan to respond to the City’s offer and engage in good faith negotiations.

In the event that the public hearing proceeds on May 21, 2019, SB Nissan requests the opportunity to appear before the City Council and be heard with respect to its objections to the proposed Resolution of Necessity. Please also ensure that this letter is presented to the City Council for consideration and included in the public record for this matter.

Very truly yours,



Glenn L. Block  
California Eminent Domain Law Group,  
a Professional Corporation

cc: Mr. Doug Connor, Santa Barbara Nissan, LLC (via email)  
Mr. David Jewell, Hamner, Jewell & Associates (via email)