



CONTRA COSTA TRANSPORTATION AUTHORITY

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July 18, 2007

Dear Colleagues:

On behalf of the Contra Costa Transportation Authority, I am writing to seek support for our effort to secure legislation to address a serious issue that has arisen as a result of the passage of SB 1210, dealing with eminent domain, last year. At the time, the bill was proffered as a more moderate approach to eminent domain reform than Proposition 90, an initiative on last November's ballot.

While the presumed objective of SB 1210 was to provide additional protections to property owners, it has had the unfortunate effect of adding time and a potentially costly element of uncertainty to the process whereby a public agency can gain entry onto, and take effective possession of, property being acquired by eminent domain to construct public works projects.

The new provisions are not just applicable in cases where a resident or business is being displaced from the property permanently—they also apply in cases where an agency requires only a temporary easement, a small slice of a parcel, or access to property prior to major construction to relocate utility lines or fulfill CEQA mitigation requirements.

Prior to the passage of SB 1210, once a resolution of necessity was adopted by a public agency, the agency could then file a legal action in court to acquire the property interests it needed for the project. At court, the project and the acquisition of property for that project, were presumed to be necessary and in the public interest. The court had only a very limited ability to overrule the public agency's decision to proceed with the project as planned. As a result, judicial alterations to a project or project schedule rarely occurred. Provided the public agency had the power of eminent domain and deposited the probable compensation for the property it was acquiring with the court, the agency could request, and the court was required to permit, early access to the property to begin construction. This procedure allowed public agencies to begin construction in a known time frame, with known costs, while allowing the jury trial on the issue of compensation to proceed at its own pace.

SB 1210 altered this process in a way that has the potential to cause significant time delays and increased costs in the delivery of public projects. Now, if a public agency requests early entry onto property to begin its work, a hearing is required at which the judge must balance the relative hardships between the public agency and the property owner and determine whether the hardship to the agency of not proceeding with the project "overrides" the hardship to the property owner. Rather than presuming the project is necessary and in the public interest, a judge is free to decide that the hardship to the property owner of granting early possession is greater than the hardship to the public of delaying the project schedule and, on that basis, deny access to the property pending trial. In this "worst case" scenario, an agency may be unable to advertise or award a construction contract for a year or longer, while it waits for a jury to decide the issue of compensation to the property owner or, possibly, appeal of the jury's decision.

While delays in project delivery are always problematic and costly, they could prove particularly critical in the case of Proposition 1B (bond) transportation projects, which are subject to very strict time frames as a condition of funding.

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The Authority has been working with the staff of other agencies to develop proposed legislative language to modify the existing law, and hope to be able to have a bill passed before the legislature adjourns for the year. In order to accomplish that, we will need the support of all agencies that will be affected by the existing provisions.

We urge you to review this summary and our supporting materials carefully to determine if the SB 1210 provisions (now existing law) could negatively impact your agency's ability to delivery projects in a timely fashion. If so, we urge you to communicate support for a timely change to your local legislators, with copies to the Governor's staff: Chris Kahn, Deputy Chief of Staff and Legislative Secretary at: chris.kahn@gov.ca.gov; Curt Augustine, Deputy Legislative Secretary at: curt.augustine@gov.ca.gov; and to the Authority's Director of Government and Community Relations at arielle@ccta.net.

Sincerely,



Robert K. McCleary
Executive Director