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May 1, 2013

Executive Director
California Transportation Commission
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Re: May 7, 2013 Hearing re: Resolution of Necessity
Objection to Adoption of Resolution of Necessity
Parcels 79816-1.2.3.4 – Land Adjacent to 1000 – 1050 Lakes Drive, West Covina
City of West of Covina

To Honorable Director and Commission Members:

This office serves as legal counsel for the City of West Covina ("City") with respect to Caltrans' proposed acquisition by eminent domain of a portion of the above-referenced property for the 10 Freeway Widening Project ("Project"). Consideration of the proposed Resolution of Necessity is scheduled for public hearing on May 7, 2013 before a meeting of the California Transportation Commission ("Commission").

The City respectfully requests that the Commission consider this letter in considering whether to adopt the proposed Resolution of Necessity. The City objects to the adoption of the proposed Resolution of Necessity and formally requests that this objection letter be made part of the administrative record. The City's objections go towards the criteria set forth in California Code of Civil Procedure ("CCP") § 1240.303 based on the following points and authorities.

A. The City's leasehold interests

The City has a beneficial interest in the real property sought to be condemned as a leaseholder of property rights at the Lakes. The property assets at the Lakes Office development are comprised of two (2) parcels of approximately 4.16 acres in size and dedicated entirely for parking related improvements. The two parcels consist of surface parking spaces, one parking structure on each parcel (2 parking structures total), lighting, infrastructure, curb and gutter, landscaping and ingress and egress roads and driveways. The City constructed the improvements. The properties are subject to numerous agreements detailing the development and primarily providing for the development and reservation of a public parking facility to the general public and to patrons of Lakes Office Development, Edwards Theater, Edwards Entertainment Center restaurants and adjacent businesses ("Lakes Parking Facilities"). The agreements include Lease Agreements, Disposition and Development Agreements, Indenture of Trust Agreement, Reimbursement Agreement, Installment Agreement, Agreement of Sublease, Agreement Regarding Option,

Operating Agreement, reciprocal easement agreements, Implementation Agreements and subsequent numerous amendments.

The two (2) parcels were initially acquired and developed as a public parking facility by the Parking Authority based on a November 1, 1973 Parking Facilities Lease between the City and the Authority. The Parking Authority issued tax-exempt Certificates of Participation Bonds ("Bonds") to acquire and construct the improvements and the Bonds were later refinanced through a Lease Revenue Refunding Bonds by the former Community Development Commission of the City of West Covina (now Successor Agency to the Community Development Commission; hereinafter collectively referred to as the "CDC") on August 1, 1988. The CDC obtained ownership of the asset through lease revenue bond proceeds, which are secured by lease agreements.

On August 1, 1988, the CDC concurrently entered into a Lease Agreement with the City, whereby the City leased the Lakes Parking Facilities from the CDC for an initial 30-year term (through August 1, 2018) with eleven (11) additional five-year extensions (through the year 2073). Under the City's Lease Agreement, "the Project and the Site shall be used solely for the purpose of providing parking and related and incidental uses; and, in case of the portions of the project and the Site which are not subject to the Developer Sublease, for the purpose of providing parking which is available to members of the general public." Furthermore, under the City's Lease Agreement and the Indenture of Trust (between the City and Dai-ichi Kango Bank of California), the Bonds will be paid by the City from the lease payments to be made in accordance to the City's Lease Agreement. In the event of condemnation, the Indenture of Trust provides that all proceeds must be submitted to the Bond Trustee for replacement of parking or paying off Bond debt. The City's Lease confirms the use of the parking facilities as a public and governmental purpose.

The Lakes Office Development subleased the public parking facilities from the City under an Agreement to Sublease, dated August 1, 1988 under the same terms of the City's Lease with the CDC for an initial 30 year period with eleven (11) additional five-year extensions (through the year 2073). Under the Agreement to Sublease, the Sublessee leased 25% of all parking spaces for Lakes office use and manages the remaining 75% of parking under the Operating Agreement as a parking facility on a non-exclusive basis for the public and Edwards Entertainment Center (Theater and Restaurants). The local Federal Bureau of Investigation is also located at the Lakes Office development (1050 Lakes Drive, Suite 350) and utilizes public parking owned by the CDC, which reinforces that parking facilities are for public and governmental purposes.

Under the Amended and Restated Construction, Operation and Reciprocal Easement Agreement ("REA"), the CDC covenanted that Parking Structure 1 shall be available for use by the owners of the Watt Parcels and each of their Occupants and Permittees. The CDC further granted "nonexclusive easements in common with the general public without preference or priority, on, over and across Parking Structure 1 for (i) vehicular parking on and vehicular ingress to and egress from Parking Structure 1, and (ii) pedestrian access on, over and across Parking Structure

1, as reasonably necessary in connection with the forgoing vehicular parking and access easements." The CDC granted the owner of Watt Parcels and each of their Occupants and Permittees the same nonexclusive easements for Parking Structure II.

Although the numerous agreements encumber the properties as a public parking facility, the Lakes Office Development property owner maintains a right (but not obligation) to purchase the properties (Agreement Regarding Option) after the Bonds are paid in full for \$1,000 for the 25% leased area and full market value for the remaining 75% parking area based on the existing use as a public parking facility. The City's Lease survives and maintains public parking until 2073 regardless of whether the purchase option is exercised or not. The terms of the Lakes Office Development Sublease would also continue until 2073 if the option is not exercised. The Lakes Office Development is currently owned by Gateway Crescent LLC, which is completely owned by Los Angeles County Employee Retirement Association (LACERA).

Considering the numerous agreements that encumber the property, outstanding Bond payments, and the fact that the assets cannot be developed or sold for any other purpose other than a parking facility. Any disposition not approved by the related parties could diminish the rights and value of related agreements and further subject the CDC and its successors as well as the private parties to the numerous agreements to potential litigation.

The Lakes Office Development asset is a free public parking facility that was acquired and developed for the sole governmental purpose of providing free public parking to the Lakes Office Development, Edwards Theater, Lakes Restaurants and surrounding businesses. As the use of the land is restricted for public parking purposes and is subject to numerous existing agreements (including City's Lease), the properties should continue to be used for the intended goal of providing free public parking in accordance to existing agreements.

In preparing this matter to be heard before the Commission, Caltrans has not only failed to make an offer of just compensation to the CDC, but has not addressed the City's leasehold interests. Under CCP § 1263.310, just compensation must take into consideration, all damages to the remainder of the property where the property to be taken is only a portion of a larger parcel. There is an existing contractual relationship between the City, the CDC and the private parties to the numerous existing agreements. Pursuant to the numerous agreements, the City may receive reduced rent payments in the event of "substantial impact" to available parking. Caltrans has not considered the financial impacts under the City's Lease and Sublease. In addition, under the City's Lease Agreement and the Indenture of Trust (between the City and Dai-Ichi Kango Bank of California), the Bonds are paid by the City from the lease payments to be made in accordance to the City's Lease Agreement. However, in the event of condemnation, the City remains obligated to repay the Bonds. As such, the taking proposed by Caltrans could cause the City to default on the Bonds.

In adopting the proposed Resolution of Necessity, the CTC would interfere with the numerous existing agreements and the parties thereto including but not limited to violating the City's

leasehold right on the Lakes Parking Facilities and limiting the public and private parties' use and enjoyment of the Lakes Parking Facilities. Therefore, under CCP § 1240.030(B), there is an issue of whether the Project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury.

B. Caltrans has failed to meet the City's Public Works and Planning Requirements

In addition, the City has serious concerns with the adoption of the proposed Resolution of Necessity on the grounds that several issues relating to Public Works and Planning which have been neglected to be addressed and/or resolved to the satisfaction of the City. The items that Caltrans has failed to address include, but are not limited to the following:

1. The Lakes

The plans submitted by Caltrans thus far are conceptual and lack detail and accuracy. The Plans do not appear to comply with City code and adopted parking regulations. Caltrans has not submitted a detailed, dimensioned, scaled plan showing the final configurations of all parking lanes, parking, planters, trees, parking lot lighting, irrigation, all public and private utilities, and storm drains etc. Caltrans has not submitted the foregoing plan to the City's Planning Department in an application.

Also in regards to the location of the sewer, the City requires evidence that the proper easements will be obtained for the sewer relocation.

2. Westfield

Caltrans has not submitted a detailed, dimensioned, scaled plan showing the final configurations of the ring road, California Avenue and the adjacent affected parcels. Caltrans has not submitted an application to Planning Department for the ring road, California Avenue and the adjacent affected parcels.

The two issues relating to Public Works and Planning which have been neglected to be addressed and/or resolved are matters that should be taken into careful consideration of the weighing whether the Project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury. The City would submit that the Commission would be remiss if it did not consider the City's points.

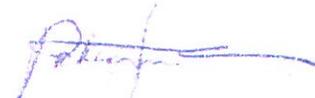
In conclusion, the City takes the position that the Commission must consider the points and authorities raised in this letter and in doing so must decide that the conditions of CCP §1240.030 have not been met concerning the Project's impact on the property interests sought to be taken. Based on all of the foregoing, the City formally requests to appear and be heard at the hearing on the proposed Resolution of Necessity. Please consider this letter as the City's written notice and

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objection. The City looks forward to the Commission's full and fair review of the matters stated in this letter.

Respectfully submitted.

ALVAREZ-GLASMAN & COLVIN



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May 2, 2013

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- Re: May 7, 2013 – California Transportation Commission’s Hearing re: Resolution of Necessity**
- 1. Land Adjacent to 100 and 110 S. California Ave., West Covina [Caltrans Parcels 79816-1, 2, 3, 4]; and,**
 - 2. Land Adjacent to 1000-1050 Lakes Dr., West Covina [Caltrans Parcels 79820-1,2]**

To Honorable Director and Commission Members:

We have been retained as eminent domain counsel to the Successor Agency to the West Covina Community Development Commission (hereinafter referred to as “Successor Agency”) with respect to the State’s proposed acquisition by eminent domain of a portion of the above-referenced properties (“Subject Properties”) for Caltrans Interstate 10 HOV Lane Project (“Project”). The Successor Agency holds title to the real property by operation of law.

Consideration of the proposed Resolution of Necessities, referenced above, is presently scheduled for the public hearing at the May 7, 2012 California Transportation Commission (“Commission”) meeting.

The Successor Agency respectfully requests that the Commission consider this letter and the objections contained herein when considering adoption of the proposed Resolution of Necessity. Please ensure that this letter is included in the administrative record pertaining to the hearing on this matter.

The Successor Agency previously sent correspondence setting forth objections to the adoption of a Resolution of Necessity with respect to the initially scheduled public hearings that did not go forward: (1) with respect to Parcel 79816 - 1, 2, 3 & 4 the prior hearing was set for the June 27-28, 2012 CTC Meeting; and, (2) with respect to Parcel 79820 – 1 & 2 the prior hearing was set for the December 14-15, 2011 CTC Meeting.

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Copies of the Successor Agency's prior correspondence, dated November 2, 2011 (Parcel No. 79820 - 1,2) and May 29, 2012 (Parcel No. 79816 - 1, 2, 3 & 4), are apparently already included in the record as part of the California Department of Transportation's Condemnation Review Panel's Reports (pursuant to Mr. Mark A. Zgombic's April 24, 2013 letter to me).

The following is a discussion of the grounds on which the Successor Agency objects to the CTC's adoption of the above-referenced Resolutions of Necessity. Each property is discussed separately below:

1. LAND ADJACENT TO 100 AND 110 S. CALIFORNIA AVENUE, WEST COVINA - CALTRANS PARCELS 79816-1, 2, 3 AND 4 (WESTFIELD MALL)

A. CALTRANS HAS NOT MADE A PROPER OFFER AS REQUIRED BY GOVERNMENT CODE §7267.2; ADOPTION OF THE PROPOSED RESOLUTION OF NECESSITY WOULD VIOLATE CODE OF CIVIL PROCEDURE §§1245.230 AND 1263.410.

Simply put, Caltrans is lowballing the Successor Agency by utilizing an old appraisal that (more than a year old) at only 10% of the amount of its initial appraisal (\$3.60/sf of land vs. initial appraisal of \$36/sf), and only about 5% of its most recent appraisal (\$3.60/sf vs. recent appraisal at \$68/sf land). Not only has Caltrans failed to comply with the requirements to make a proper offer in accordance with Cal. Govt. Code §7267.2, it is apparently attempting to strong-arm another public agency.

California Code of Civil Procedure §1245.230 provides that before a public agency may adopt a Resolution of Necessity, it must find, among other things, that an offer consistent with California Government Code §7267.2 has been made. California Government Code §7267.2 requires that the government must obtain an appraisal of the property to be condemned in order to determine just compensation, and make an offer of just compensation to the owner in the "full amount" so determined. "*The amount shall not be less than the public entity's approved appraisal ...*" (Cal. Govt. Code §7267.2 (a)(1)).

Here, Caltrans obtained *two* conflicting approved appraisals of the Subject Property and then obtained a *third* appraisal by an independent appraiser (Mr. Douglas Edwards, Flavell, Tannenbaum and Edwards). An offer based on the first appraisal (concluding at a land value of \$36/sf) was made on or about June 22, 2011 – *nearly two years ago*. Thereafter, notwithstanding the mandate of Government Code §7267.2, another lower offer based on the second appraisal (at \$3.60/sf), was made on or about February 1, 2012 – *more than a year ago*. *Thus, by supplanting its original offer with a new, lower, offer, Caltrans is in direct violation of*

Government Code §7267.2, and the CTC cannot make the requisite finding that an offer in compliance has been made.

Moreover, Caltrans then obtained a *third* appraisal, prepared by Douglas Edwards, dated June 12, 2012. Caltrans' *third* appraisal concluded that the value of the land is \$68/square foot. This appraisal, however, was apparently never "approved."

There are several inconsistencies and discrepancies between Caltrans' *first* and *second* appraisals. Apparently, based on the Panel Review Reports, Caltrans is relying on the offer based on the *first* appraisal (June 2011). *However, the description of the four parcels to be acquired is different than the parcels appraised in the first appraisal. Thus, if Caltrans is relying on the offer based on the first appraisal, it has not made an offer in compliance with Government Code §7267.2 because the first appraisal valued only 3 parcels and the parcel sizes are different than the parcels described in the Resolution of Necessity.* Because of these inconsistencies, the CTC cannot make the requisite finding that Caltrans has made an offer in compliance with Government Code §7267.2.

The following are inconsistencies identified by the Successor Agency:

- Discrepancy in Number of Parcels – With respect to the parcels to be acquired (excluding a potential "excess parcel"), Caltrans' *first* appraisal identified **three** parcels to be acquired: a fee parcel (79816-1) and two temporary construction easement parcels (79816-2, 3). However, Caltrans' *second* appraisal identified **four** parcels to be acquired – the three identified in the first appraisal, plus an additional temporary demolition easement (79816-4).

While the Notice of Intent to Adopt a Resolution of Necessity identifies **four** parcels, only Caltrans' *second* appraisal valued all **four** parcels. Yet, Caltrans' appraisal of all **four** parcels (the February 2012 appraisal) is *less than* its appraisal of just three of the **four** parcels (the June 2011 appraisal). While Caltrans is relying on the June 2011 offer, that offer is not based on the **four** parcels identified in the Resolution of Necessity. This is improper.

- Discrepancy in Parcel Sizes – Caltrans' *second* appraisal (February 2012) references different areas for each of the **three** parcels appraised in the *first* appraisal:

	<u>First Appraisal (6/11)</u>	<u>Resolution of Necessity/ Second Appraisal (2/12)</u>
Parcel 79816-1	24,088sf	24,238sf
Parcel 79816-2	5,439sf	5,551sf
Parcel 79816-3	722sf	779sf

Apparently, Caltrans is seeking a Resolution of Necessity to acquire the parcels based on the sizes referenced in the *second* appraisal (February 2012) – which are different from the sizes referenced in the *first* appraisal (June 2011). This is improper.

- Inconsistent Valuations of Land Taken – There is a huge variance in the valuations between the *first* and *second* and *third* appraisals. The *first* appraisal valued the fee parcel (79816-1) at \$36/sf, but the *second* appraisal values this identical parcel at \$3.60/sf – **only 10% of the first appraisal**. Moreover, the *first* appraisal valued the 56 month temporary construction easements (79816-2 and 3) at more than \$100,000, but the *second* appraisal values these interests, as well as the temporary demolition easement (79816-4) for a total of \$2,500 – **this is merely 2% of the first appraisal**.

And, the *third* appraisal values the fee parcel at \$68/sf, the temporary construction easement at \$159,827 and the temporary demolition easement at \$14,459. These inconsistent valuations raise substantial questions of the manner in which Caltrans is handling this case – *and whether Caltrans is acting in good faith*.

- Inconsistent Valuations of Site Improvements Taken – The identified site improvements include paving, landscaping, lighting and other parking lot improvements. In the *first* appraisal, Caltrans' valued the site improvements at \$97,574.80. However, in the *second* appraisal, the valuation **does not include any compensation for the site improvements**. (The alternate valuation in the *second* appraisal, with consideration of the "excess" parcel, includes a valuation of the improvements at \$89,800 – about \$8,000 less than the first appraisal.) Obviously, if there are improvements within the area to be acquired, they must be compensated.

Moreover, the *third* appraisal obtained by Caltrans values the improvements at \$267,000. Again, these inconsistent valuations raise substantial questions of the manner in which Caltrans is handling this case – *and whether Caltrans is acting in good faith*.

These discrepancies/inconsistencies raise additional issues. If Caltrans' intended that the *first* appraisal was to be considered the pre-litigation offer required by California Government Code §7267.2, it is clearly deficient because it does not include compensation for Parcel 79816-4 (the temporary demolition easement of 5,368sf). Moreover, if the parcel sizes in either appraisal are not accurate, the offer is deficient because it does not reflect the proper valuation based on the actual parcels to be acquired.

If Caltrans' intended that the *second* appraisal was to be considered the pre-litigation offer required by California Government Code §7267.2, it is deficient because the valuation is significantly lower than the first appraisal. Thus, it does not comply with the requirement that, "*The amount [of the offer] shall not be less than the public entity's approved appraisal of the fair market value of the property.*" (Cal. Govt. Code §7267.2(a)(1)) Here, the value of the fee parcel in the second appraisal is only 10% of the amount of the first appraisal, and the value of the temporary easements is only 2% of the first appraisal.

Caltrans failure to comply with its legal mandate is exacerbated now that it obtained a *third* appraisal valuing the property at \$68/sf – almost *double* Caltrans' initial appraisal, and nearly *twenty times* Caltrans' second appraisal.

For the foregoing reasons, the CTC cannot make the requisite finding that Caltrans has made an offer in compliance with the mandate of Government Code §7267.2. *The appraisals on which the prior offers were made are now one and two years old; moreover, there are a variety of inconsistencies between and among the three appraisals it has obtained.*

In order to comply with its legal obligations, Caltrans must obtain a current appraisal of the actual interests it seeks to acquire *prior to* the CTC considering adoption of a Resolution of Necessity. The Successor Agency respectfully submits that until an offer is made giving appropriate consideration to these matters, the Commission should not consider adoption of the proposed Resolution of Necessity.

B. ADOPTION OF THE PROPOSED RESOLUTION OF NECESSITY WOULD VIOLATE CALIFORNIA CODE OF CIVIL PROCEDURE §§1245.230 AND 1263.410, AND CALIFORNIA GOVERNMENT CODE §7267.2, INsofar AS IT FAILS TO PROPERLY CONSIDER SEVERANCE DAMAGES.

In addition to the above-referenced issues with the overall validity of Caltrans' two offers/appraisals, neither appraisal properly considered the matter of severance damages. Code of Civil Procedure §1263.410 expressly requires that just compensation shall consider all damages to the remainder property, where, as here, the property to be taken is only a portion of a larger parcel ("severance damages").

As noted above, the Subject Property consists of surface parking areas owned by the Successor Agency that serve the immediately adjacent commercial/retail buildings, as well as the Westfield Shoppingtown mall. The portions of the surface parking area to be acquired by Caltrans as part of the Project represent about 25% of land area (about 128,000sf) owned by the Successor Agency in this portion of the mall (the Successor Agency also owns other parking areas within the mall).

Although the taking and construction of the Project will result in severance damages, none of Caltrans' appraisals properly considered severance damages to the property not acquired. (While Caltrans' first appraisal included compensation for "cost-to-cure" damages (\$3,458.80), this relates only to additional compensation for replacement of site improvements.)

Among other factors, the utility of the remainder parcel will be significantly diminished. The fee area to be acquired (about 24,000sf) represents about 1/3 of the surface parking area that presently serves the two adjacent retail/commercial buildings at 100 and 110 S. California Avenue (about 72,000sf). Because Caltrans is also acquiring these two buildings as part of this Project the utility of the remaining approximately 48,000sf of the surface parking area will be severely diminished. This is particularly so during construction of the Project that is scheduled to last until November 2016 – *more than 4 ½ years*. ***However, although the Successor Agency is entitled, by law, to compensation for the diminished utility of its remainder property, none of Caltrans appraisals gives it any consideration.***

In fact, Caltrans' appraisals state that, "the remaining land could serve as additional parking for the remaining retail establishments, and/or parking when there is redevelopment on the subject site." However, such use of the property is not realistic during Project construction – particularly with respect to the temporary demolition easement impeding direct access from the remaining retail buildings. Moreover, development of any portion of the remaining parking area would be precluded during Project construction, particularly with imposition of the temporary easements across portions of this land. Damages to this "remaining" land appears to be substantial such that the "remaining" land will be rendered an uneconomic remnant.

The Successor Agency respectfully submits that until an offer is made giving appropriate consideration to these matters, the Commission should not consider adoption of the proposed Resolution of Necessity.

C. THE PROJECT IS NOT PLANNED OR LOCATED IN THE MANNER MOST CONSISTENT WITH THE GREATEST PUBLIC GOOD AND LEAST PRIVATE INJURY (CAL. CODE CIV. PROC. §1245.230(C)(3).)

It has recently come to the Successor Agency's attention that Caltrans failed to properly evaluate the considerable private injury that will be caused by the Project during construction. The law clearly requires that the Project be planned or located in the manner most consistent with the greatest public good and least private injury. Here, however, the Project has not properly considered the substantial impact of the Project on public streets and the Westfield Mall.

To date, Caltrans has not properly evaluated or considered the significant traffic impacts of the Project during construction – *and has not made any efforts to minimize the considerable injuries (public and private) that will result.* During construction, Caltrans apparently intends to close Garvey Blvd. and California Avenue along the 10 Freeway adjacent to the Westfield Mall. This is a heavily traveled roadway that will be disrupted during construction eliminating a key traffic circulation route not just within the Mall, but for the public in general. Closure of this roadway during construction is not consistent with the greatest public good and least private injury – surely there is an alternative that would be less disruptive to both the public roads and the Westfield Mall.

Notwithstanding the considerable impact of this street closure, Caltrans has not submitted a traffic management plan to the City or Westfield that addresses the impacts on the public or the Westfield Mall. Accordingly, the Project has not been planned or located in the manner most compatible with the greatest public good and least private injury.

D. ADDITIONAL OBJECTIONS TO THE PROPOSED RESOLUTION OF NECESSITY TO BE CONSIDERED BY THE CTC.

1. Department of Finance Determination that Property is Not a Governmental Use.

Title to this property was held by the Community Development Commission of the City of West Covina (a redevelopment agency). This property, as well as the Lakes property, provides public parking facilities associated with the adjacent commercial developments (the Westfield Mall and the Lakes Office complex). These properties, and the adjacent commercial developments, were developed as part of redevelopment projects undertaken by the Community Development Commission in conjunction with private developers.

However, upon the abolition of redevelopment agencies in the State of California, title is now nominally held by the Successor Agency to the CDC. This presents logistical issues as the Successor Agency is not able to enter into agreements or other arrangements without the approval of the City Council, the Oversight Board, and the State of California Department of Finance.

Several months ago, the Successor Agency obtained the approval of the City Council and Oversight Board for these properties to be transferred from the Successor Agency to the City's Parking Authority as these properties are public parking facilities – additionally, that portions of the properties are sought by Caltrans for widening of the freeway.

The matter was then submitted to the California Department of Finance for approval. Recently, the Department of Finance advised the Successor Agency that the transfer is being denied because it is not a "governmental use." Thus, although Caltrans seeks to acquire portions

of these properties for widening of the freeway, the California Department of Finance apparently has determined that this is not a “governmental use.”

2. Interests of Third Parties Have Not Been Considered and Addressed by Caltrans.

The Westfield Mall, of which this property is a part, is encumbered by various agreements amongst and between the various property owners. There are also land use restrictions imposed by the City of West Covina. To date, Caltrans has failed to evaluate and consider these matters. Among other matters, there are rights and obligations of the various owners with respect to potential condemnation activities. These include, without limitation, obligations to restore areas taken and/or damaged by virtue of condemnation actions and public projects.

Moreover, the Successor Agency has raised concerns about the impact of the proposed takings and Project with respect to the Community Facilities District (Mello-Roos) affecting the Westfield Mall properties. To date, Caltrans has not provided the Successor Agency with its analysis or evaluation of compensation to be paid based on these impacts.

Caltrans has failed to properly evaluate and consider the implications of its Project on these various agreements and obligations, and take these matters into account in the determination of just compensation.

Contrary to Caltrans’ assertion in its March 15, 2013 letter, all of this information is publicly available as all agreements are a matter of public record. Moreover, although the Successor Agency has no obligation to provide this information to Caltrans, all of the requested information was previously provided.

3. Caltrans Never Provided Information It Agreed To Provide.

In June, 2012, at Caltrans’ initial Design Review Meeting with the Successor Agency, the Successor Agency raised concerns and issues regarding private utility facilities located in and adjacent to the proposed take areas. These private utility facilities include, without limitation, parking lot lighting, electrical utilities and landscape irrigation facilities. Because these facilities would be affected by the Project, during construction, Caltrans agreed to meet with the City of West Covina on site to identify all such utilities and, for all utilities identified, Caltrans agreed to provide a plan for properly securing these facilities during construction, ensuring that replacement facilities are provided by Caltrans during construction, and that restoration/reconfiguration of the facilities is accomplished after completion of construction.

To date, Caltrans has not met with the City of West Covina, nor has Caltrans provided the information it agreed to provide. Contrary to Caltrans' assertion in Mr. Nierenberg's March 15, 2013 letter, these requests were made subsequent to February 2013, Caltrans agreed to meet with the Successor Agency/City, and Caltrans failed to do so. The Successor Agency/City has provided all requested information. Moreover, these matters are not addressed in any of Caltrans' offer appraisals.

4. Uncertainty regarding the timing of the Temporary Construction Easements and Temporary Demolition Easement.

Although Caltrans seeks to acquire Temporary Construction Easements and a Temporary Demolition Easement for periods of 56 months (*4 ½ years*), this time-frame appears to be excessive and not required for the Project. Caltrans is required to only acquire property (or property interests) that are required for the Project. Unless Caltrans can establish that it needs these temporary easements for actual construction activities associated with the Project for the full *4 ½ years*, this is excessive and not necessary for the Project.

E. CONCLUSION.

For the reasons set forth hereinabove, the CTC cannot make the requisite finding that an offer in compliance with Government Code §7267.2 has been made by Caltrans. The Successor Agency respectfully contends that the CTC cannot consider adoption of the proposed Resolution of Necessity, or must deny approval thereof, unless and until a proper offer is made and Caltrans has addressed all of the matters set forth above.

2. LAND ADJACENT TO 1000 – 1050 LAKES DRIVE, WEST COVINA – CALTRANS PARCELS 79820-1, 2 (LAKES OFFICE COMPLEX)

A. CALTRANS HAS NOT MADE A PROPER OFFER AS REQUIRED BY GOVERNMENT CODE §7267.2 PROPERLY TAKING INTO ACCOUNT SEVERANCE DAMAGES; ADOPTION OF THE PROPOSED RESOLUTION OF NECESSITY WOULD VIOLATE CODE OF CIVIL PROCEDURE §§1245.230 AND 1263.410.

Here, although Caltrans is required to evaluate and analyze potential severance damages where only a portion of property is being acquired, Caltrans failed to include compensation for the considerable severance damages (during construction and permanently) that will result from the Project. This Project includes the taking of a portion of the parking area that will result in the loss of more than 80 parking spaces during construction, and about 40 parking spaces permanently. Caltrans' offer completely ignores these damages (although Caltrans does

recognize the impact because it retained the services of a parking engineer to evaluate potential reconfiguration scenarios).

Neither Caltrans, nor its appraiser, ever consulted with anyone at the City of West Covina (not the Successor Agency, the Public Works Department or the Planning Department) to evaluate and analyze the actual loss of parking based on various City requirements.

California Code of Civil Procedure §1245.230 provides that before a public agency may adopt a Resolution of Necessity, it must find, among other things, that an offer consistent with California Government Code §7267.2 has been made. California Government Code §7267.2 requires that the government must obtain an appraisal of the property to be condemned in order to determine just compensation, and make an offer of just compensation to the owner in the amount so determined.

While Caltrans obtained an appraisal, and made an offer, ***neither the appraisal nor the State's determination of just compensation is consistent with the law.*** Code of Civil Procedure §1263.410 expressly requires that just compensation shall consider all damages to the remainder property, where, as here, the property to be taken is only a portion of a larger parcel ("severance damages"). Caltrans' appraisal fails to properly take such severance damages into account. ***Specifically, without limitation, Caltrans' appraisal (1) fails by a large margin to correctly account for the parking spaces being lost, and (2) fails to consider the cost of replacing such parking.***

The Subject Property consists of two multi-level parking structures and adjacent surface parking areas held by the Successor Agency that serve the two privately owned adjacent office buildings as well as adjacent retail/movie theater space. The office complex, known as "The Lakes office complex," consists of two buildings of approximately 90,000 square feet each, for a total of about 180,000 square feet of office space. The Lakes office complex is adjacent to multi-tenant retail commercial buildings, also privately owned, including a movie-theatre. There are various agreements binding the various owners with respect to parking, cross easements and operations.

The State seeks to acquire two adjacent parcels from the Successor Agency's parking areas serving The Lakes' office complex and adjacent retail (Caltrans Parcel Numbers 79820-1 and 79820-2). The first parcel is an approximately 7,718 square foot permanent fee acquisition. The second parcel is an approximately 8,297 square foot temporary construction easement (expiring November 15, 2016) immediately adjacent to the permanent fee acquisition. Together, these parcels encompass the entire row of surface parking spaces and related improvements – consisting of 85 parking spaces – along the freeway frontage. The permanent fee taking encompasses varying widths of this row of parking spaces, with the temporary construction

easement encompassing the remaining width of the parking spaces and encroaching into portions the drive-aisle.

Notwithstanding that the take area encompasses 85 parking spaces which will be permanently lost, Caltrans' appraisal incorrectly assumes a loss of only 41 parking spaces. Moreover, even with respect to the 41 spaces that Caltrans' appraisal admits will be lost, the appraisal fails to attribute any damage to the loss of those spaces and fails to consider the cost of replacing those lost spaces.

The discrepancy between the 85 spaces actually lost and the 41 spaces Caltrans' appraisal assumes will be lost appears to be based on the erroneous assumption that 44 additional parking spaces can somehow be squeezed into what's left of the parking lot by (1) reducing or eliminating "landscape medians" adjacent to the impacted parking areas; and (2) narrowing the drive-aisle adjacent to the impacted parking area.

However, *there is no valid legal basis* for assuming that landscape medians can be eliminated or drive aisles narrowed. To the contrary, the proper assumption would be that the Subject Property was constructed in compliance with all applicable laws (including providing sufficient parking as well as the required landscape areas and drive aisles), and that the landscape medians and drive aisles cannot simply be eliminated or reduced and replaced with parking. In short, there simply is no basis for assuming that 44 parking spaces can be restored within the remaining surface parking area.

Moreover, even with respect to the 41 parking spaces Caltrans' appraisal admits are permanently lost, Caltrans' appraisal appears to be based on the erroneous assumption that even if parking spaces are permanently lost as a result of the taking, the loss of these parking spaces would not impact the property in any event. In other words, Caltrans' appraiser suggests that although Caltrans is actually acquiring land from the Successor Agency – and is actually permanently removing a substantial number of parking spaces as a result – the land is somehow not really needed because less parking should suffice, and the Successor Agency is therefore not actually suffering any loss.

This assumption, too, is unwarranted. The number of parking spaces constructed were constructed for a reason. The loss of those parking spaces is indeed a loss. Caltrans' appraiser's suggestion that there is no loss because the City of West Covina could simply "grant and typically 'grandfather-in' conditions causing nonconformity and/or make accommodations due to public acquisitions," is irrelevant and inconsistent with the law. Caltrans has a responsibility under the law to compensate a property owner for the property that is being taken and *all* damages caused by the taking. Simply because the condemnee here happens to be a public agency that in theory might be able to wield its political clout to obtain an exemption from the

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City's parking requirements does not excuse Caltrans from paying for the damages its taking will cause.

Finally, Caltrans' appraisal utterly ignores the potential cost to the Successor Agency to restore the lost parking spaces. As noted, 85 parking spaces will be permanently lost as a result of Caltrans' proposed taking. Even Caltrans' own appraisal admits that there is insufficient room on the remaining property to restore all of those spaces as surface spaces. Thus, Caltrans' appraisal contemplates construction of a parking structure (which may or may not even be feasible) as the only possible means of restoring these spaces. *Yet, Caltrans' appraisal includes no analysis whatsoever of whether this is even possible or feasible, much less consider the substantial costs such construction would almost certainly entail.*

The Successor Agency respectfully submits that until an offer is made giving appropriate consideration to these matters, the Commission should not consider adoption of the proposed Resolution of Necessity.

B. CALTRANS HAS NOT FORMALLY SUBMITTED ANY PARKING RECONFIGURATION PLANS.

In response to comments more than a year ago from the Successor Agency similar to the comments described above, Caltrans indicated that it would retain a parking engineer to evaluate parking impacts resulting from the taking and Project, and to propose potential alternatives to mitigate parking impacts. It is our understanding that Caltrans retained a parking engineer, LVR International ("LVR"), in furtherance of negotiations for acquisition of the required portions of the Subject Property. Presumably, Caltrans did this in an effort to comply with California Government Code §7267.1(a)'s mandate that public agencies "shall make every reasonable effort to acquire expeditiously real property by negotiation."

Negotiations between the State and the Successor Agency were delayed while the State obtained a parking analysis from LVR. However, contrary to the mandate of California Government Code §7267.1 and prior to engaging in further discussions in light of LVR's parking analysis, Caltrans went ahead and scheduled the Commission's consideration of the proposed Resolution of Necessity for December 14-15, 2011. In fact, although the Successor Agency met with the engineer in August, the State did not even provide Successor Agency with LVR's parking analysis until October 26 – *after* Caltrans sent its Notice of Intent to Adopt a Resolution of Necessity.

Preliminarily, the Successor Agency raised a number of questions regarding the assumptions and basis for the alternative parking plans provided by LVR. Subsequently, Caltrans provided modified parking reconfiguration plans that were reviewed by the Successor Agency. However, unless and until formal plans are submitted to the City of West Covina,

together with an appropriate application, the City is unable to analyze and evaluate the plans for consistency with all applicable requirements. Moreover, the City is precluded from evaluating or assessing development plans without a full plans and an application.

Moreover, Caltrans agreed to provide the Successor Agency with an estimate of the costs associated with accomplishing the parking lot reconfiguration, including costs of temporary reconfiguration during construction (to address the 85 parking spaces lost during construction). To date, none of this information has been provided to the Successor Agency (or City). Unless and until this information is provided, Caltrans has not made a proper offer of compensation as required by Cal. Government Code §7267.2.

The Successor Agency respectfully submits that until an offer is made giving appropriate consideration to these matters, the Commission should not consider adoption of the proposed Resolution of Necessity.

C. ADDITIONAL OBJECTIONS TO THE PROPOSED RESOLUTION OF NECESSITY TO BE CONSIDERED BY THE CTC.

1. Department of Finance Determination that Property is Not a Governmental Use.

Title to this property was held by the Community Development Commission of the City of West Covina (a redevelopment agency). This property, as well as the Westfield Mall property, provide public parking facilities associated with the adjacent commercial developments (the Westfield Mall and the Lakes Office complex). These properties, and the adjacent commercial developments, were developed as part of redevelopment projects undertaken by the Community Development Commission in conjunction with private developers.

However, upon the abolition of redevelopment agencies in the State of California, title is now nominally held by the Successor Agency to the CDC. This presents logistical issues as the Successor Agency is not able to enter into agreements or other arrangements without the approval of the City Council, the Oversight Board, and the State of California Department of Finance.

Several months ago, the Successor Agency obtained the approval of the City Council and Oversight Board for these properties to be transferred from the Successor Agency to the City's Parking Authority as these properties are public parking facilities – additionally, that portions of the properties are sought by Caltrans for widening of the freeway.

The matter was then submitted to the California Department of Finance for approval. Recently, the Department of Finance advised the Successor Agency that the transfer is being denied because it is not a “governmental use.” Thus, although Caltrans seeks to acquire portions

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of these properties for widening of the freeway, the California Department of Finance apparently has determined that this is not a "governmental use."

2. Interests of Third Parties That Have Not Been Considered and Addressed by Caltrans.

The Lakes Office Complex, of which this property is a part, is encumbered by various agreements amongst and between the Successor Agency, the City of West Covina and the Developer (Gateway Crescent). To date, Caltrans has failed to evaluate and consider these matters. Among other matters, there are rights and obligations of the various owners with respect to potential condemnation activities. These include, without limitation, obligations to restore areas taken and/or damaged by virtue of condemnation actions and public projects.

Caltrans has failed to properly evaluate and consider the implications of its Project on these various agreements and obligations, and take these matters into account in the determination of just compensation.

Contrary to Caltrans' assertion in its March 15, 2013 letter, all of this information is publicly available as all agreements are a matter of public record. Moreover, although the Successor Agency has no obligation to provide this information to Caltrans, all of the requested information was previously provided.

3. Caltrans Never Provided Information It Agreed To Provide.

In June, 2012, at Caltrans' initial Design Review Meeting with the Successor Agency, the Successor Agency raised concerns and issues regarding private utility facilities located in and adjacent to the proposed take areas. These private utility facilities include, without limitation, parking lot lighting, electrical utilities and landscape irrigation facilities. Because these facilities would be affected by the Project, during construction, Caltrans agreed to meet with the City of West Covina on site to identify all such utilities and, for all utilities identified, Caltrans agreed to provide a plan for properly securing these facilities during construction, ensuring that replacement facilities are provided by Caltrans during construction, and that restoration/reconfiguration of the facilities is accomplished after completion of construction.

To date, Caltrans has not met with the City of West Covina, nor has Caltrans provided the information it agreed to provide. Contrary to Caltrans' assertion in Mr. Nierenberg's March 15, 2013 letter, these requests were made subsequent to February 2013, Caltrans agreed to meet with the Successor Agency/City, and Caltrans failed to do so. The Successor Agency/City has provided all requested information.

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4. Uncertainty Regarding The Timing Of The Temporary Construction Easement.

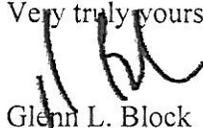
Although Caltrans initially sought to acquire a Temporary Construction Easement for a period of 56 months (*4 ½ years*), Caltrans has acknowledged that this time-frame is excessive and not actually required for the Project. Thus, Caltrans previously agreed to shorten the time to 28 months. However, it is unclear for what period Caltrans is now seeking to acquire in its Resolution of Necessity because apparently the Resolution of Necessity is based on the offer appraisal which considered compensation based on a 56 month TCE.

Caltrans is required to only acquire property (or property interests) that are required for the Project. Unless Caltrans can establish that it needs these temporary easements for actual construction activities associated with the Project, this is excessive and not necessary for the Project.

D. CONCLUSION.

For the reasons set forth hereinabove, the CTC cannot make the requisite finding that an offer in compliance with Government Code §7267.2 has been made by Caltrans. The Successor Agency respectfully contends that the CTC cannot consider adoption of the proposed Resolution of Necessity, or must deny approval thereof, unless and until a proper offer is made and Caltrans has addressed all of the matters set forth above.

Very truly yours,



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