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October 16, 2020

Chair Hilary Norton  
and Commissioners  
California Transportation Commission  
1120 "N" Street  
Sacramento, California 95814  
Attn.: Mr. Douglas Remidios, Staff Services Manager

**CTC MEETING TAB 63**

October 22, 2020, 9:00 am

Reference Number: 2.4a, Action Item  
(Engelhardt Trust)

RE: REPLY ON BEHALF OF TRUSTEE BEVERLY ENGELHARDT, IN THE MATTER  
OF RON C-21939 (CALTRANS-PROPOSED EMINENT DOMAIN TAKING OF  
ENGELHARDT TRUST PROPERTY, ALBION, MENDOCINO COUNTY)

Dear Madam Chair and Commissioners:

We represent Trustee Beverly Ann Engelhardt of the Franklin A. Engelhardt and Beverly Ann Engelhardt Trust (Trust).

The California Department of Transportation (Caltrans) - in association with an uncoordinated, unsettled, and inconsistent Highway 1 project in the designated, mapped, and adopted highly scenic, rural, and environmentally sensitive coastal zone at Albion, Mendocino County - proposes to take Trust real property by eminent domain, without the required unbiased analysis of relevant evidence that alone can serve as the basis for findings by the California Transportation Commission (Commission) to authorize a Caltrans takings request pursuant to Code of Civil Procedure (CCP) § 1245.230.

Our Client, for the reasons discussed below, therefore requests the Commission to reject (deny) the Caltrans-proposed Resolution of Necessity C-21939 for lack of adequate findings to adopt it, and thereby allow Caltrans to now seriously engage in the consultations (negotiations) with our Client that Caltrans professes it wishes to conduct. A valid appraisal package for Caltrans submittal to the Trust constitutes an integral component of them.

To be clear, our Client's objections to the Caltrans-proposed taking of Trust property arise from Caltrans' substantially flawed appraisal submittal and offer, in conjunction with Caltrans' repeated failure to produce the evidence and careful analysis - rather than conclusory and speculative assertions - that reflect:

- a settled and necessary public interest project, contained in a finite project description;
- project plans and a location demonstrated to be most compatible with the greatest public good and least private injury;
- where property is proposed to be taken, a demonstration that it is necessary (rather than merely convenient) for the project; and,

- if Caltrans determines to proceed with a sustainable, consistent project in this area, an offer, based on a valid appraisal that takes all mandatory considerations into account.

The record in this matter - from (a) the District's lack of property stakeholder and public participation in early project design, (b) failure to prepare a regulatory constraints analysis to inform it, (c) more than 10 kaleidoscopic and variously inaccurate and incomplete project descriptions, (d) knowing and intentional false written representation to Mendocino County in July, 2019 (application for CDP 2019-0024) that the "Department of Transportation-District 1" is the "property owner" of the parcels (including the Trust property) implicated in the project, (e) the District Condemnation Evaluation Meeting (DCEM, in two sessions), (f) the Condemnation Review Panel Meeting (CRPM), and (g) through a *subsequent* pro-forma District 1 consultative session - is clear. It plainly reveals that Caltrans (District 1) has no definition of the public interest, the greatest public good, and the least private injury other than its own convenience and preferences; considers necessity to be at its unexamined call; knowingly and intentionally creates multiple project descriptions to be able to selectively implement them, including to avoid regulatory controls; plays fast and loose with constitutionally protected private property rights and due process; and would now have the Commission be its handmaiden in an invalid and unnecessary scheme to take Trust property.

In this matter, the Commission is called upon to render an unbiased decision, on the public record, on the unsupported Caltrans request for authorization to take Trust property by eminent domain. The evidence in the record indicates that Caltrans has failed to meet its burden, both with regard to informed and consistent project planning and development pursuant to the CCP and other law, and its vastly flawed offer to the Trust. The record before the Commission therefore deprives the Commission of the legal basis for adopting Resolution of Necessity C-21939 (RON).

1. Improper Notice. The Commission itself did not provide notice of its hearing and potential action on the RON by first class mail to our Client or the Trust, as required. In a material substantive error that goes to Caltrans' repeated failure to identify a correct and consistent post mile location for the project as it relates to, and proposed takings of, Trust property, the Commission agenda at Tab 63 states an erroneous and prejudicial location ("01-Men-01-PM 41.89"), as further discussed below. To the extent that the Commission delegated the notice function to Caltrans, it failed to timely provide proper notice of the Commission hearing and possible action to our Client by not (a) enclosing the agenda of the meeting that identifies the Commission meeting item ("Tab") at which the Caltrans request to take Trust property would be heard, (b) identifying the RON by its number and title, (c) providing a summary description of the Caltrans takings request, and (d) providing a copy of the RON or the CRPM report, notwithstanding that the substantively incomplete notice states that it encloses the latter. For lack of required and timely notice, the Caltrans request for Commission adoption of the RON is not properly before the Commission for hearing and action. (Government Code § 11125.)

2. Unsettled Project Location, Scope. A settled, accurate, complete, internally consistent, and development regulatory program consistent Caltrans description of the project location and its scope in relation to the Trust property (and generally) constitutes the predicate for any Commission finding pursuant to CCP § 1245.230. However, the record before the Commission in this matter does not include such a finite project description of the project location or its scope in relation to the Trust property (and generally), and therefore denies the Commission sufficient

detail for reasonable identification of the project location and extent (including cumulative extent) of the Trust property that Caltrans proposes to or may in association with the project likely take. Specifically, the project in relation to the Trust property (and generally), is unsupported by (a) an accurate metes-and-bounds description of the Trust property, (b) an accurate metes-and-bounds description of the Trust property that Caltrans proposes to take by eminent domain, (c) an accurate and settled post mile location, (d) a finite textual description of the project components, (e) an accurate and complete Right of Way Appraisal Map, (f) an accurate and complete project site plan, and (g) accurate and complete sections (cross-sections) of the varied topography and stratigraphy of the Trust property that Caltrans proposes to take for purpose of obtaining soil and rock to implement the project, and to gift or otherwise convey to a private contractor for use outside the Caltrans-identified project area. For lack of a finite project description, the Commission cannot make the findings pursuant to CCP §§ 1245.230(c)(1), (c)(2), (c)(3), and (c)(4) that the *proposed* project is in the public interest, necessary, compatibly planned and located with the greatest public good and the least private injury, the Trust property described in the RON is necessary for the proposed project, and that an offer has been made to acquire the Trust property based on a valid appraisal.

3. No Permit to Enter. In the absence of early property stakeholder consultation, Caltrans performed purported biological and potentially other investigations on the Trust property without disclosed written Permits to Enter.

4. Invalid CEQA/NEPA Documents. Caltrans District 1 exempted the project - as described on March 14, 2019<sup>1</sup> - from CEQA environmental review (a) in reliance on 14 Cal. Code of Regs. §15301 (Class 1[d]), and (b) based on the *false* statements that the following do not apply: (1) the project impacts an environmental resource of critical concern where designated, precisely mapped, and officially adopted pursuant to law - here, the designated, mapped, and adopted highly scenic area on the Navarro Ridge slope of the Trust property; (2) there will be a significant cumulative effect by this project and successive projects of the same type in the same place, over time - here, the District 1 projects on Navarro River grade, Navarro Ridge, and Navarro Drainage; (3) there is a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances - here, through filling of wetlands and streams, destruction and disturbance of ESHA, and excavation and fill of natural landforms in highly scenic areas; and (4) that this project causes a substantial adverse change in the significance of a coastal resource - here, the Caltrans-proposed and CTC-approved programmed destruction and replacement, in the whole project, of the State and federally listed historic Albion River Bridge. The District 1 categorical exemption of the project from CEQA environmental review was invalid *ab initio*, and in the absence of a valid environmental document for the most recently produced, materially changed, project description the CTC cannot now approve RON C-21939.

In tandem, Caltrans District 1 exempted the project - as described - from NEPA environmental review in reliance on 23 Code of Fed. Regs § 771.117, based on (a) the *false* determination that the project does not individually or cumulatively have a significant impact on the environment as defined by NEPA, and (b) that the the project has considered unusual

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<sup>1</sup> Caltrans described the project on the CEQA Categorical Exemption Form on that day to “include” “widening both lanes between PM 41.8 and 42.3 to 12 feet, widening both road shoulders to 4 feet, improving the road surface super-elevation, excavation of materials from the east side of the road, placement of new structural section, and drainage rehabilitation.

circumstances pursuant to 23 Code of Fed. Regs. § 771.117(b). Lest there is any confusion, “unusual circumstances” here include significant environmental impacts; substantial controversy on environmental grounds; significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; and inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action. Here, the project has significant environmental impacts as discussed *infra*, substantial public controversy on environmental grounds exists about the project, the whole project is inconsistent with the historical protection requirements of federal law, and the project is prima facie inconsistent with the LCP and CCMP. The District 1 categorical exclusion of the project from NEPA environmental review was invalid *ab initio*, and in the absence of a valid environmental document for the project the CTC cannot now approve RON C-21939.

5. No Federal Consistency Determination. The in-part federally funded project is located in the coastal zone, where the U.S. Department of Commerce has approved the California Coastal Management Program (CCMP), including its incorporated Mendocino County local coastal program (LCP) pursuant to the U.S. Coastal Zone Management Act (CZMA, 16 U.S.C. § 1451 et seq.). The CZMA requires that each federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. Implementation of that CZMA requirement occurs through a federal consistency determination by the federal agency, with review and decision by the California Coastal Commission as the designated State coastal management agency. Here, the Federal Highway Administration (FHWA) is that federal agency. Caltrans has suggested, but not produced evidence, that the FHWA has delegated its

CZMA functions to Caltrans. In any event, neither the FHWA nor Caltrans (if its designee) has performed the required federal consistency determination of the federal funding of the project, and the California Coastal Commission has not rendered its respective decision. In the absence of the required federal consistency determination, Caltrans cannot request the Commission to authorize the RON and the commitment of federal transportation funds it entails, and the Commission is precluded from approving the RON.

6. Inconsistent with State Coastal Program. Project consistency with adopted development regulatory standards constitutes a further predicate to any Commission action on the RON. The location of the project in the California coastal zone requires rigorous project consistency with the California Coastal Act and its delegated implementation through the certified Mendocino County LCP. (Public Resource Code [PRC] §§ 30512, 30513, 30519, 30600.). All California public agencies shall comply with the provisions of the Coastal Act (PRC § 30003); the Coastal Act authorizes no regulatory indulgences of Caltrans development projects as a function of Caltrans financial largesse in co-funding the State coastal program. The project components constitute regulatory development (PRC § 30006) subject to the coastal development permit (CDP) regulatory requirements of the Coastal Act and LCP. The project is located in a certified LCP-designated and mapped highly scenic area, where the proposed excavation grading, and removal, disturbance, and alteration of environmentally sensitive habitat from, the Navarro Ridge natural landform on the Trust property is prohibited. (LCP Policy 3.5-1.) As our Client identified to the record of the DCEM and CRPM, the project also entails numerous other LCP inconsistencies; together, the inconsistencies sum to an impermissible project. Caltrans District 1 attempted to process a woefully incomplete and inaccurate CDP application for the project at the County in 2019; the County appropriately determined the application to be inadequate and

incomplete for filing and processing. In the absence of a demonstrated coastal development regulatory program-consistent project, the Commission is precluded from adopting the RON.

7. No Evidence, Analysis, or Finding that the Public Interest Requires the Proposed Project.

The record before the Commission is clear that Caltrans - by its speculations, conclusory statements, and plain revelation that no runoff road collisions have occurred along the highway where it is located on, or west of, the Trust property - has not met its burden in this matter to (a) define what constitutes the public interest in relation to the proposed project as it relates to the Caltrans proposed taking of Trust property, and (b) demonstrate, on the basis of relevant factual evidence and requisite analysis, that the public interest require the proposed project. Caltrans has not - and cannot - point to any highway safety problem on or west of the Trust property. Tellingly, the project plans omit any proposal to install the primary functional components of this "safety project" (guard rails, travel lane edge line rumble strips, and even an 8-inch asphalt-concrete berm) from the project segment on or west of the Trust property. While Caltrans claims some unexplicated interrelationship between that highway segment and areas upcoast or downcoast where road runoff collisions have occurred, Caltrans altogether has failed to adduce any evidence or analysis of the claimed nexus - because none exists. Instead, Caltrans has repeatedly, knowingly, and intentionally fudged the location of the Trust property to falsely bring it within the ambit of those extrinsic road runoff collisions. Perhaps not unremarkably, while posturing that its proposed taking of Trust property is in the public interest, Caltrans' own project plans indicate that it would located an open four-foot wide and variously deep drainage ditch adjacent to the NB travel lane shoulder that by its very location creates a new substantial safety hazard. Caltrans has presented the Commission with no evidence or analysis that the public interest requires the proposed project segment in relation to the Trust property, and therefore has denied the Commission the ability to adopt the finding, determination, and declaration hereon required by CCP § 1245.230(c)(1).

8. No Evidence, Analysis, or Finding that Necessity Requires the Proposed Project. The record before the Commission is clear that Caltrans - by its speculations, conclusory statements, and plain revelation that no runoff road collisions have occurred along the highway where it is located on, or west of, the Trust property - has not met its burden in this matter to (a) define what constitutes the "necessity" in relation to the proposed project as it relates to the Caltrans proposed taking of Trust property, and (b) demonstrate, on the basis of relevant factual evidence and requisite analysis, that any necessity (i.e., any imperative, compulsion, requirement, precondition, obligation, demand, exigency) requires the proposed project. Our Client reincorporates her additional objections stated in part 7, above, herein. Caltrans therefore has denied the Commission the ability to adopt the finding, determination, and declaration hereon required by CCP § 1245.230(c)(1).

9. No Evidence, Analysis, or Finding that the Proposed Project is Planned in the Manner that will be most Compatible with the Greatest Public Good. The record before the Commission is clear that Caltrans - by its actions, errors, and omissions - has made an absolute planning mess of the proposed project, in its various kaleidoscopic iterations. First, Caltrans failed to coordinate the project design/planning with the property stakeholders and the public, including in, but not limited to, Albion. Second, Caltrans failed to perform (or in the alternative failed to disclose in response to our PRAR) the development regulatory consistency analysis of the project that any prudent developer in the coastal zone does at the outset. Third, Caltrans failed to prepare a settled project description. Fourth, Caltrans invalidly piecemealed the project from the whole project, and exempted one of its (incomplete, inaccurate) project descriptions (March, 2019) from CEQA/NEPA environmental review, while failing to conduct supplemental

environment review of the subsequently materially revised project descriptions. Fifth, Caltrans failed to define the “greatest public good”, or analyze any of the proposed project descriptions (or our Client’s recommended alternative that is both environmentally preferred for its LCP consistency and avoids the proposed taking of Trust property) in light of that definition. Sixth, Caltrans failed to define or analyze the compatibility of any of those project descriptions with the controlling LCP standards of review. In sum, Caltrans failed to plan the project - including in relation to project development on the Trust property - in the manner most compatible with the greatest public good, and therefore has denied the Commission the ability to adopt the finding, determination, and declaration hereon required by CCP § 1245.230(c)(2).

10. No Evidence, Analysis, or Finding that the Proposed Project is located in the Manner that will be most Compatible with the Greatest Public Good. The record before the Commission is clear that Caltrans - by its actions, errors, and omissions - has failed to locate the project in a manner that comports with the greatest public good. First, Caltrans failed to coordinate the project design/planning with the property stakeholders and the public. Second, Caltrans failed to perform (or in the alternative failed to disclose in response to our PRAR) the development regulatory consistency analysis of the project that any prudent developer in the coastal zone does at the outset. Third, Caltrans failed to prepare a settled project description. Fourth, Caltrans invalidly piecemealed the project from the whole project, and exempted one of its (incomplete, inaccurate) project descriptions (March, 2019) from CEQA/NEPA environmental review, while failing to conduct supplemental environment review of the subsequently materially revised project descriptions. Fifth, Caltrans failed to define the “greatest public good”, or analyze any of the proposed project descriptions (or our Client’s recommended alternative that is both environmentally preferred for its LCP consistency and avoids the proposed taking of Trust property) in light of that definition. Sixth, Caltrans failed to define or analyze the compatibility of any of those project descriptions with the controlling LCP standards of review. Caltrans has therefore failed to plan the project location - including in relation to project development on the Trust property - in the manner most compatible with the greatest public good, and therefore has denied the Commission the ability to adopt the finding, determination, and declaration hereon required by CCP § 1245.230(c)(2).

11. No Evidence, Analysis, or Finding that the Proposed Project is Planned in the Manner that will be most Compatible with the Least Private Injury. The record before the Commission is clear that Caltrans - by its actions, errors, and omissions - has failed to plan the proposed project to comport with the least private injury. First, without evidence or analysis of any road runoff collision or other significant safety hazard on the highway on or west of the Trust property, or of any nexus between that highway segment and other parts of the highway upcoast or downcoast where such collision(s) occurred or hazard(s) may exist, Caltrans planned the project, for its convenience, to inflict not least, but substantial unnecessary, injury on the private Trust property and our Client. That injury includes potential destabilization of the Navarro Ridge slope below her residence and essential appurtenances, with associated adverse effects on health, safety, and welfare; direct and cumulative project dust, emissions, light/glare, and noise impacts on the downwind Trust property from the project; destruction of the highly scenic Navarro Ridge slope and its vegetation in and potentially adjacent to the project area, with associated loss of attractive visual quality for our Client, other property owners, and the public; destruction of protected ESHA in and potentially adjacent to the project area, with associated loss of habitat for listed and significant sensitive species, and concentration of wildlife into a substantially constrained wildlife migration corridor, with foreseeable increases of vehicle-wildlife collisions; and reduction in economic value of the Trust property from the proposed takings, in combination with direct and cumulative project construction and operations. Second, Caltrans

failed to conduct the required early cooperative planning with property stakeholders and the public, which - as exemplified by our Client's objections - would have likely resulted in design and planning of the project that is compatible with the least private injury, in a faster time frame, and consistent with the controlling LCP standards that centrally provide for the avoidance of such private (as well as) public injuries from the project. Caltrans has therefore failed to plan the project - including in relation to project development on the Trust property - in the manner most compatible with the least private injury, and thereby has denied the Commission the ability to adopt the finding, determination, and declaration hereon required by CCP § 1245.230(c)(2).

12. No Evidence, Analysis, or Finding that the Proposed Project is Located in the Manner that will be most Compatible with the Least Private Injury. The record before the Commission is clear that Caltrans - by its actions, errors, and omissions - has failed to locate the proposed project to comport with the least private injury. First, without evidence or analysis of any road runoff collision or other significant safety hazard on the highway on or west of the Trust property, or of any nexus between that highway segment and other parts of the highway upcoast or downcoast where such collision(s) occurred or hazard(s) may exist, Caltrans located the project, for its convenience, to inflict not least, but substantial unnecessary, injury on the private Trust property and our Client. That injury includes potential destabilization of the Navarro Ridge slope below her residence and essential appurtenances, with associated adverse effects on health, safety, and welfare; direct and cumulative project dust, emissions, light/glare, and noise impacts on the downwind Trust property from the project; destruction of the highly scenic Navarro Ridge slope and its vegetation in and potentially adjacent to the project area, with associated loss of attractive visual quality for our Client, other property owners, and the public; destruction of protected ESHA in and potentially adjacent to the project area, with associated loss of habitat for listed and significant sensitive species, and concentration of wildlife into a substantially constrained wildlife migration corridor, with foreseeable increases of vehicle-wildlife collisions; and reduction in economic value of the Trust property from the proposed takings, in combination with direct and cumulative project construction and operations. Second, Caltrans failed to locate the project - in relation to the Trust property - in a manner, as recommended by our Client and demonstrated as feasible by District 1 in other similar locations, that would substantially avoid those private injuries and constitute the environmentally preferred/regulatory program consistent alternative. Instead, Caltrans limited its project location to some proposed project (in whichever iteration), while arrogantly and inappropriately avoiding the feasible project alternative that is compatible with the least private injury. Caltrans has therefore failed to plan the project location - including in relation to project development on the Trust property - in the manner most compatible with the least private injury, and thereby has denied the Commission the ability to adopt the finding, determination, and declaration hereon required by CCP § 1245.230(c)(2).

13. No Evidence, Analysis, or Finding that the Trust Property Caltrans Proposes to Take is Necessary for the Proposed Project. The record before the Commission is clear that Caltrans - by its actions, errors, and omissions - has failed to (a) define a settled proposed project, (b) inform our Client of that settled project description in conjunction with the Caltrans appraisal of Trust property under color of such project, (c) define condition(s) pursuant to which the Caltrans-proposed taking of Trust property by eminent domain is imperative, (d) perform analysis of any evidence of runoff road collision(s) or other safety hazard(s) on the highway on and west of the Trust property to inform the Caltrans proposal to take Trust property, (e) prepare an accurate and complete metes-and-bounds description of the Trust property that Caltrans proposes to take, and informed our Client and the Trust thereof, and (f) prepare an accurate and complete Right of Way Appraisal Map that accurately and fully depicts the location of the Caltrans-

proposed taking of Trust property by eminent domain, and informed our Client and the Trust thereof. Instead, Caltrans planned - under color of the "safety project" - to impermissibly excavate substantial quantities of soil and rock, without appraisal and compensation, from the Trust property and use it for impermissible project fill, overlapping/adjacent/associated project segment fill in the proposed Navarro Drainage project, and as a gift or in-lieu of payment to a project contractor, without any evidence or analysis that taking of Trust property by eminent domain is necessary other than to impermissibly obtain, use, and benefit from that valuable Trust economic and environmental asset for "free". Notably, Caltrans also did not disclose to the Commission, during the several SHOPP proceedings in relation to this mangled project, that Caltrans would rely on the unappraised and uncompensated use of private property, over the objection of our Client, to implement the project or benefit a private third party. Caltrans' corrupt scheme thus does not and cannot serve as evidence, analysis, or the basis for a Commission finding that the Trust property that Caltrans proposes to take is imperative (necessary) for the proposed project, in any of its iterations.

14. No Evidence, Analysis, or Finding that the Trust Property Described in the RON is Necessary for the Proposed Project. RON 21939 page 3 (marked as "Page 1") contains a metes-and-bounds description of a "Parcel 12967" that is inconsistently identified thereon as "Parcel 12967-1", which adoption of the RON by the Commission would authorize Caltrans to take by eminent domain. First, the RON (at 1 of 3) inaccurately locates "Parcel 12967-1" at "Highway 01-Men-01-PM 41.89". Second, no part of the Trust property is located at such post mile. Third, the Caltrans offer/appraisal package submitted to the Trust for property that Caltrans would take variously identifies it to be located at "PM 41.93" and — on all pages of the offer package 's grant deed — at PM 41.97. Fourth, between July 18 and receipt of the letter advising of this meeting in early October, all iterations of ROW/Appraisal Maps and two versions of a legal description prepared Caltrans professional engineers and the surveyor/Project Manager have uniformly referred to PM 41.88. Fifth, Caltrans produced no evidence or analysis to the record of the DCEM and CRPM that locates the Trust property, or the Trust property that Caltrans would take, at PM 41.88, PM 41.89, PM 41.93, or PM 41.97. Sixth, while Caltrans (and, therefore, your Commission) apparently does not know (or will not say) at what post mile the Trust taking is to occur, documents of record in the possession of Caltrans indicate that in 1990 Caltrans obtained an easement from the property owner to the south between PM 41.55 and PM 41.9. Based on this 1990 recorded easement, neither the PM 41.89 on the October 2020 CTC proceedings documents now before you nor the PM 41.88 that appeared on myriad maps and legal descriptions provided between July and October 2020, appears to be on the Trust property. The location of the Trust property, or the Trust property that Caltrans would take, shown on the RON,

The metes-and-bounds description on page 3 of the RON is also in error, and remarkably references the Minor Subdivision No. 97-78 Parcel Map that Caltrans in its Power Point testimony by Mike Whiteside specifically asserts to be inaccurate, inapplicable, and not used by Caltrans for project (including Trust property takings) mapping purposes, including in the RON Exhibit B. This "legal description" (except for the change from MP 41.97 to PM 41.89, and correction of a reference to a roadway easement on another parcel) is the one contained in the Caltrans offer/appraisal package that was agreed between this firm and Caltrans officials back in June 2020 to be inadequate because, among other reasons, it (a) is based on Caltrans erroneous mapping of the northern and southern Trust parcel boundary alignment to the north of their true locations in the referenced map of record by twenty feet or more, (b) fails to provide either a metes and bounds description or the dimensions of the northerly and southerly condemnation parcel boundaries that nonetheless show up on Exhibit B, and (c) misstates the



dimension of the one (easterly) condemnation parcel boundary that it does purport to describe; and Exhibit B, does not conform to either the “legal description” or the map in the Caltrans offer/appraisal package to the Trust. Seventh, the recital that Caltrans taking of “Parcel 12967-1” is for “State highway purposes” is in error. Caltrans has disclosed that proposed project excavation grading, including, but not limited to, on the Trust property that Caltrans would take by eminent domain, will produce nearly 50% more earthen material (soil and rock) than the project requires, and that the excess material will be gifted or conveyed in lieu of payment to a contractor, who may use it at his discretion. Alternately, Caltrans has averred that it now proposes to use all of the excavated earthen material as part of the project, without having revised the project description and performed the requisite environmental review on it pursuant to CEQA and NEPA. In the first instance, the project for which Caltrans requests Commission authorization to take Trust property is not only “for State highway purposes” and thus not properly the subject of a Commission RON. In the second instance, Caltrans has failed to comply in this matter with CEQA and NEPA, and Caltrans’ request for the RON is also not properly before the Commission of the Trust property that Caltrans would take identifies it to be located at “PM 41.93”. Fourth, no part of the Trust property is located at such post mile. Fifth, Caltrans produced no evidence or analysis to the record of the DCEM and CRPM that locates the Trust property, or the Trust property that Caltrans would take, at either PM 41.89 or PM 41.93. The location of the Trust property, or the Trust property that Caltrans would take, shown on the RON is in error, and does not and cannot serve, as the required finding for Commission adoption of the RON.

15. Invalid Appraisal. The Caltrans offer/appraisal package to the Trust fail to meet the requisite standards set by State and Federal statutes, regulations, and procedures in myriad ways that renders it invalid, including but not limited to:

- misidentifying the condemnation parcel and related project as being at both PM 41.93 and PM 41.97, while it and the CTC now claim it is at PM 41.89, although that PM is of record as being on the property, owned by others, to the south;
- understating the use as a minor shoulder widening/guardrail project when the actual project involves excavation back some 30 – 40 feet or more on the Navarro Ridge slope on the Trust parcel;
- providing mapping and legal description that do not comport with multiple documents of record, making it impossible for even professional surveyors and appraisers to confirm the alleged area to be condemned;
- using “comparables” for undeveloped coastal zone acreage when the Trust parcel is developed with a substantial residence in a prime location;
- using one “comparable” located 15 miles away and then mapping it just south of the nearby Navarro River; and,
- failing to take damage to the remainder parcel as a result of the excavation of the lower slope of Navarro Ridge into account in its valuation.

Conclusion and Request

Caltrans has failed to meet its burden to provide the Commission with the requisite settled project description, environmental document, federal consistence determination, evidence, and analysis to support its request for taking of Trust property by eminent domain pursuant to CCP § 1245.230 and other applicable standards. Caltrans has also failed to provide proper notice of its proposed RON to our Client, the RON is inaccurate and incomplete, and unsupported by the requisite evidence and analysis in the Commission record in this matter. Caltrans' material errors and omissions preclude the Commission from acting on the RON. Commission action to adopt the RON and thereby authorize caltrans to take Trust property by eminent domain would constitute an unconstitutional taking of private property and action inconsistent with other applicable statutes.

Our Client therefore respectfully requests the Commission to either (1) take no action on the RON at its October, 2020 meeting, or (2) if Caltrans does not withdraw the request for the RON, deny it for the reasons stated above.

Our Client reserves the right to supplement this letter. We will appear at hearing, if it remains on the Commission October 22, 2020 meeting agenda.

Thank you.

Sincerely yours,

DALL & ASSOCIATES  
Consultant to Trustee Beverly A. Engelhardt,  
Franklin A. Engelhardt and Beverly Ann Engelhardt Trust

By:

**Norbert H. Dall**

**Stephanie D. Dall**

Norbert H. Dall  
Partner

Stephanie D. Dall  
Partner

c: Client  
Mr. Mitchell Weiss, Executive Director, California Transportation Commission  
Ms. Teri Anderson, Chief Engineer, California Transportation Commission  
Mr. Douglas Remedios, Staff Services Manager, California Transportation Commission

Exhibits: To be transmitted under separate cover.