



Metro


Metropolitan Transportation Authority

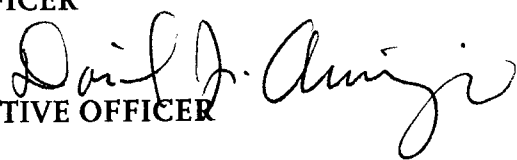
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JANUARY 10, 2006

TO: BOARD OF DIRECTORS

THROUGH: ROGER SNOBLE
CHIEF EXECUTIVE OFFICER 

FROM: JOHN B. CATOE, JR. 
for DEPUTY CHIEF EXECUTIVE OFFICER

SUBJECT: DIVISION 1 CONDEMNATION STATUS

ISSUE

On March 25, 2004, the Board authorized the Adoption of a Resolution of Necessity (the "Resolution") to Condemn Real Property (the "Subject Property") located adjacent to Division 1 at Sixth and Alameda in the City of Los Angeles, California. The Subject Property is necessary for the construction and expansion of the existing Division 1 Bus Division, and to allow for an increase in the current bus capacity and associated employee parking related to the Consent Decree. Construction of improvements required to expand Division 1 were completed in June 2005, and the facility is now operating at an increased capacity of approximately 90 bus parking spaces.

In adopting the Resolution, the Board directed staff to work with the owner towards negotiating a mutually acceptable joint parking development concept, simultaneously with the condemnation process. The condemnation complaint was filed on April 1, 2004 and the amount offered as the amount of probable compensation was deposited into court as required under California law. The defendants in the condemnation action are: Alameda Produce Market, Inc. (fee owner)(APMI), American Apparel, Inc. (claimed tenant), VCC Alameda LLC (former fee owner of the property), and Namco Capital Group (note holder).

After the complaint was filed, defendants APMI and American Apparel challenged Metro's right to take the property on the ground that the resolution of necessity was conditional, and therefore not effective, as a result of an amendment to the resolution adopted by the Board that instructed staff to negotiate with the appropriate owner or owners toward a mutually agreeable joint parking development concept. A trial on the "right to take challenge" began on December 12, 2005. The Court indicated, in off-record remarks, that it was troubled by the amendment to the resolution of necessity. While not ruling on the issue, the Court indicated that it viewed the amendment as more than a direction to staff, because it changed

the resolution and became a part of it. The Court felt that Metro staff should report back to the Board on the progress made, if any, towards negotiating an agreement as described in the amendment. The Court deferred further proceedings until January 12, 2005, at which time the Court wants a status report relative to joint parking.

The purpose of this report is to update the Board on the current status of the condemnation case and efforts to negotiate an agreement for use of the Subject Property for joint parking. Staff is also requesting further direction and clarification from the Board regarding MTA's parking development proposal described below, as well as the general intent of the Board's direction to Staff at the March 2004 Board meeting. A project timeline, documenting progress of the project from April 2000 to the present, is included as Attachment A.

DISCUSSION

Metro staff has sought since April 2004 to negotiate a mutually agreeable joint development to accommodate APMI parking needs that would address the mutual parking needs of both Metro and APMI. Metro management and legal counsel hosted a meeting with APMI's principals in April 2004, at which time Metro indicated that its preference would be to provide for mutually agreeable parking through a request for proposal process when Metro's long-term facility requirements and APMI's parking requirements were better known and developed. Metro staff invited APMI to participate in that process. It became apparent; however, that APMI did not favor a request for proposal process.

The trial to determine Metro's right to take the Subject Property was originally scheduled to begin in May 2005. At that time, it was agreed to continue the trial until December 12, 2005 to attempt to reach a mutually acceptable agreement. APMI agreed that they would initiate the process by submitting a proposal to Metro. In June 2005 APMI submitted a letter to Metro with several questions regarding the site and Metro's plans for the Subject Property, all of which were answered by Metro. Four months later, on October 3, 2005, APMI submitted what it termed a "proposal" to Metro. However, the "proposal" contemplated a 14-story residential development that would dominate the use of the Subject Property, leaving a very small and inadequate space for Metro's bus and employee parking uses, and prohibiting future increased Metro usage of the facility for transit purposes. Further, the "proposal" contained no financial proposal, deal points, or terms. Staff rejected the proposal, because it did not meet Metro's operating requirements for parking of buses and employees, and the major residential component was not compatible with an operating bus facility and was completely inconsistent with the direction to staff from the March 2004 Board meeting.

The parties proceeded to trial on the right to take challenge on December 12, 2005. Evidence was offered and the matter was extensively briefed and argued. On December 14, 2005, the Court suspended further proceedings and indicated to the parties some concern. Principal concerns of the Court were that there had not been a formal report to the Board relative to the status of the project, and that the negotiations for a mutually agreeable parking arrangement had not been effective.

Based upon the direction to staff at the March 2004 Board meeting, staff had envisioned reporting back to the Board when and if it had an acceptable agreement that could be considered by the Board for approval. However, notwithstanding that negotiations, to the

extent they have occurred, have not resulted in an agreement, this report is submitted with the intent to address the concern the Court raised and to address the status of negotiations.

APMI has had greater than one-year to offer a joint parking development proposal. However, as indicated above, no acceptable or feasible proposal with financial terms has ever been received by Metro. In the interest of addressing the Court's concerns, and to attempt to move the negotiations forward, staff formulated a proactive parking development proposal, which was sent to APMI on January 5, 2006. An agreement based upon this proposal would be contingent upon Metro Board approval. A copy of the proposal is attached as Attachment B. As of the date of this writing, Metro staff has not received a response to this proposal from APMI.

With respect to claimed damages, APMI claims that they have been damaged not only by Metro's taking of the Subject Property, but also because of severance damages to APMI's property across the street (the Old Produce Mart). APMI's claimed tenant (American Apparel) is also objecting to the taking, and is asserting that it has been damaged as a result of a loss of business goodwill (At the March 25, 2004 hearing before the Board, American Apparel claimed their future growth would be impaired without parking on the Subject property. Thereafter, more parking space was made available to American Apparel on APMI's other property. APMI and American Apparel have not yet communicated to Metro the claimed amounts of severance damages and goodwill loss, respectively. Metro disputes the existence of any severance damages or loss of business goodwill, and will contest those claims at the time of the valuation trial, if required.

All parties are due to return to court on January 12, 2006 to advise the Court of the current status of this matter. Metro's litigating counsel will request on January 12, 2006 that the re-start of the trial be moved to February 2006, after staff receives direction from the Board at our January Board meeting, and, hopefully, a response to the proposal has been received from APMI.

NEXT STEPS

At the January Board meeting, staff will brief the Board on the status of the condemnation case, and on the history of negotiations with APMI regarding joint use of the property for parking. The Court will be informed on January 12, 2006 that briefings with the Board are scheduled, and Metro's counsel will request that any further ruling by the Court be deferred until after the January Board meeting.

Staff will seek further direction and clarification from the Board regarding the March 2004 Board meeting, and the direction to staff to negotiate mutually agreeable adequate parking with APMI.

ATTACHMENTS

- A. Timeline of Division 1 Expansion Project
- B. Metro Offer to APMI

Prepared by: Timothy Lindholm, Project Manager, Facilities-Operations
Velma C. Marshall, Director of Real Estate

Timeline of Division 1 Expansion Project (as of December 2005)

- April 2000 – Metro receives funding, contacts broker, and is informed property is in escrow with another buyer.
- June 2000 – Metro advises seller via letter that Metro would like to acquire the property should the current escrow not close.
- July 2000 – Metro orders appraisal and starts CEQA environmental clearance.
- Feb. 2001 – Metro Board approves the project and CEQA documents. Director Legaspi moves to explore joint development opportunities with the potential buyer (still in escrow).
- Feb. 2001 – Metro makes formal offer on property at appraised value of \$2.86 million
- Feb. 2001 – Joint Development Discussions begin with VCC Alameda as directed by Board, although the property remains in escrow.
- Mar. 2001 – After 1.5 years in escrow, and immediately after Metro's offer, seller closes with VCC Alameda for \$4.2 million
- May 2001 – After 4 months of negotiations, VCC Alameda submits joint development offer requiring Metro commitment of \$11 million. This offer was deemed unacceptable by Legal, Real Estate, and Estimating.
- July 2001 – Joint Development negotiations formally called off via letter to VCC Alameda. Board informed that negotiations were called off and other concepts for expansion in the area would be studied
- Aug. 2002 – Meeting with Richard Meruelo of VCC Alameda, who indicates continued resistance to selling and a desire to continue joint development negotiations. Also indicates that he will send a proposal to Metro for a sale of the site to Metro while Meruelo retains air rights for future development. No proposal was ever received.
- July 2003 – Metro meets with CRA and Central City East association to discuss project. CRA community plan calls for continued industrial usage of the area. No resistance from CRA or CCEA.
- Aug. 2003 – Metro meets with Jim Bickhart of Council District 14. Explained project background and need. Mr. Bickhart indicated he would discuss with Councilman Villaraigosa and respond to Metro.
- Oct. 2003 – Real Estate receiving almost daily calls from Mr. Meruelo, asking when he can expect an offer from Metro on the property
- Oct. 2003 – Metro receives FTA/NEPA clearance to proceed with acquisition.
- Nov. 2003 – Metro makes offer on property for appraised value of \$6.3 million.
- Dec. 2003 – Meeting with Mr. Meruelo, who indicates that Metro's offer is declined and presents other alternative concepts for Metro expansion.
- Dec. 2003 – Metro responds formally to December meeting alternatives. Upon analysis, none of the alternative scenarios were deemed feasible.

- Jan. 2004 – Metro holds status meeting with representatives of Directors Proo, Hahn, and Villaraigosa. Informed staff that impasse letter was sent to owner, and formal notice of February 2004 eminent domain hearing.
- Jan. 2004 – Letter of Impasse and Notice of Public Hearing sent to VCC Alameda.
- Feb. 2004 – “Resolution of Necessity” for eminent domain of required property moved to March agenda for Board consideration.
- Mar. 2004 - Held numerous briefings with Board staff to keep all involved parties up to date on project. Prepared renderings of potential Metro joint development ideas for presentation to Council District 14.
- Mar. 2004 - “Resolution of Necessity” for eminent domain is approved by the Board. Board offers amendment that requires staff to negotiate “mutually agreeable adequate parking” concurrent with the eminent domain process.
- May 2004 - Meeting between John Catoe, Denise Longley, Jeff Lyon, and Richard Meruelo (property owner) to discuss joint development possibilities. Metro indicates that it is preferred to use public RFP process when Metro’s requirements are known and certain (i.e. after ownership).
- Nov. 2004 - Metro “order of possession” is effective allowing us to take possession of the site for construction. Defendant renews annual oral lease of site to a Christmas tree lot, who takes possession of the site on the day prior to effective date of the “order of possession”. (The Christmas tree lot was not informed by APMI of the pending “order of possession”).
- Dec. 2004 - Metro commences construction of project.
- May 2005 - Initial trial date for challenge of the “right to take” by defendants. At APMI’s request, parties stipulate to continue trial to pursue exclusive negotiations. Trial date reset to December 2005. Agreement was that defendant (Meruelo) would start the process by issuing a proposal to Metro.
- June 2005 - Metro received letter from Defendant requesting information to specific questions prior to formulation of a proposal. Metro responded to the letter by providing answers and direction to each individual question.
- June 2005 - Metro completes construction of the project. The facility is opened on June 26, 2005.
- Sept. 2005 - Status conference with the Court. Metro informs court that to date we have not received a proposal from the Defendant, and would like to proceed with trial. Court mandates that Defendant provide proposal no later than October 4, 2005.
- Oct. 2005 - Defendant submits a “proposal” on October 13, 2005. The “proposal” consists of renderings of a proposed 14-story residential tower and parking. Metro’s portion of the development is inadequate, and no financials are submitted. Metro responds to “proposal” on October 18, 2005 indicating that neither the concept, nor the “proposal” were acceptable to Metro.
- Nov. 2005 - Defendant responds to Metro letter, and requests a continuance of the trial to conduct further negotiations for joint development. Metro responds on November 16, 2005, agreeing to conduct further exclusive negotiations, but only if Defendant drops the “right to take” challenge.
- Dec. 2005 - Metro never receives a response to settlement proposal. Trial starts Dec. 12, 2005.



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RAYMOND G. FORTNER, JR.
 County Counsel

January 5, 2006

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THIS MATERIAL IS SUBJECT TO THE
 ATTORNEY-CLIENT AND/OR THE ATTORNEY
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Mr. Richard Meruelo
 c/o Alameda Produce Market, Inc.
 761 Terminal Street, Building 1
 Second Floor
 Los Angeles, CA 90021

Re: 1367 E. 7th Street Property,
MTA v. VCC Alameda LLC, et al.,
LA Superior Court Case No. BC-313010

Dear Mr. Meruelo:

The Los Angeles County Metropolitan Transportation Authority ("Metro") has prepared this letter to offer Alameda Produce Market, Inc. (APMI) a framework for negotiation of future development of the subject property for parking purposes. It is being offered in response to your November 3, 2005 letter, in which you assert that you could not prepare an accurate and realistic development proposal with financial terms, since Metro's requirements were not known. Metro believes that its requirements have been sufficiently communicated to you and your staff for the purpose of making a development proposal for construction of a multi-story parking structure. Nevertheless, Metro is prepared to make you this development offer consistent with Metro's uses of the subject property. However, we would like to reiterate, clarify and expand upon our prior communications in order to facilitate further discussion. If that discussion ultimately results in a proposal from you that is acceptable, we would submit it for

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approval by Metro's Board of Directors. We propose the discussion to be generally within the following framework:

- Metro will retain ownership of the subject property.
- Metro will pay \$6.3 million for ownership of the property, subject to APMI's reserved rights discussed infra.
- Subject to the parking structure development, including structural elements necessary to provide support and access to the parking structure, Metro will retain exclusive use of the surface of the subject property (inclusive of a vacated Industrial Street) for Metro bus and employee parking uses.
- Metro will establish the maximum amount of bus and employee parking the surface of the subject property is capable of supporting (including expected accretion once the vacation of Industrial Street is complete). Any parking structure development will have to maintain that capacity.
- Metro will address and control all City issues related to the vacation of Industrial Street, at its sole cost and expense.
- Metro will reserve to APMI the right to construct a multi-story parking structure over the surface of the subject property, inclusive of the vacated Industrial Street, subject to the following terms and conditions:
 1. It will be APMI's sole responsibility to pay all costs for design, planning, engineering, construction, operation, maintenance and other tasks related to the multi-story parking structure and other appurtenant taxable property or uses, including all costs, fees, property taxes, and any other expenses.
 2. After completion of the multi-story parking structure, Metro must be able to efficiently and effectively use the surface of the subject property to park and maneuver transit buses and employee vehicles on the surface of the subject property at or above the capacity described in the above

fourth bullet. If the amount of surface capacity is decreased due to access and columns or supports related to the parking structure, Metro would allow replacement of the displaced spaces within the parking structure.

3. During construction of the multi-story parking structure, Metro must continue to operate at full capacity. As such, APMI will need to provide Metro with equivalent temporary space for parking of Metro's buses and employee vehicles. If off-site temporary space is required, the space must be located no more than one-half mile from the subject property.
4. The optimum operating configuration for Division One may depend upon future events (including street vacation and the development profile) therefore, Metro will need to retain an option to participate in the development of the multi-story parking structure, for possible additional parking space or maintenance and administrative functions. If Metro exercises this option, it will pay an appropriate percentage of the various related costs for Metro's participation in the development.
5. Metro agrees to reasonably cooperate to accommodate APMI's parking structure development.

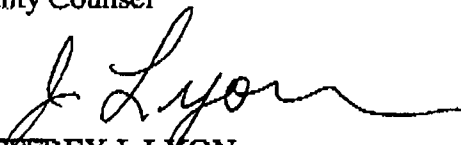
This offer is contingent upon a resolution of the eminent domain case without cost to Metro other than the compensation set out above. This letter is intended to provide a workable framework for negotiations of a settlement agreement and further discussion of possible development. While the main objective of the proposal for development is for a parking structure, Metro is willing to also discuss incorporating other uses, within an agreed time frame, which would not unreasonably impair transportation uses. If the general framework of this offer is acceptable to you, please contact Dennis Devitt at (213) 612-7811 to make arrangements to discuss the matter further with relevant

Mr. Richard Meruelo
January 5, 2006
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members of negotiating teams from Metro and APMI. As stated above, the offer would require approval by Metro's Board of Directors.

Very truly yours,

RAYMOND G. FORTNER, JR.
County Counsel

By 
JEFFREY J. LYON
Principal Deputy County Counsel
Transportation Division

JJL:pjk

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