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VIA EMAIL ONLY
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Nevada County Board of Supervisors
950 Maidu Avenue
Nevada City, CA 95959-8617

Re: September 13, 2022, Nevada County BOS Meeting - Agenda Item No. 35 - SR 22-0948 - Resolution Approving the Notice of Intent to Consider Adopting a Resolution of Necessity re Hirschdale Road Bridge Project

Dear Honorable Members of the Board:

This correspondence is submitted on behalf of Ron and Virginia Legg, owners of real property designated as Nevada County APNs 048-100-12 & 048-120-43, located adjacent to the Truckee River and the Hirschdale Road bridge.

While the Leggs remain committed to working with the County to negotiate temporary construction easements for the Hirschdale Road Bridge Project (the “Project”), the Leggs object to the commencement of formal condemnation proceedings to take their property. The County has not yet confirmed whether the Project will involve impairment of the Leggs’ abutter’s rights, and therefore, it is premature to condemn the property without a full understanding of what the actual “take” will be. Moreover, absent a determination of whether the Project will “take” the Leggs’ abutter’s right, the County cannot comply with the statutory and other legal pre-requisites for adoption of a Resolution of Necessity and commencement of a condemnation action.

Accordingly, the Leggs respectfully request that the Board defer taking action to commence formal condemnation proceedings until such time as the County has completed the following:

- Determine whether a take of the Leggs’ abutter’s rights is necessary, and if so, that the Project has been designed so as to cause “the least private injury” to the Leggs. (Code of Civil Procedure § 1240.030(b).)
- If the County determines that a take of the Leggs’ abutters rights is necessary, make an appropriate pre-condemnation offer under Government Code § 7267.2, which offer must include compensation for the impairment of access and associated severance damages.
- Prepare a feasibility report and hold a public hearing on the feasibility of providing public access vis-à-vis the proposed stairway on the south side of the Hirschdale Road Bridge, as required by Streets and Highways Code § 991.
- Conduct an appropriate environmental analysis under CEQA to assess and mitigate all potentially significant impacts of the proposed stairway, which impacts were not



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assessed under the prior mitigated negative declaration prepared for the bridge replacement project. (See 14 Cal. Code Regs. §§ 15162 & 15164 (an addendum to the prior adopted mitigated negative declaration is not authorized based on the substantial changes to the Project and the circumstances under which the Project is undertaken, and new information relating to the Project).)

As referenced in prior correspondence regarding this matter, the Leggs have been in negotiations with the engineering firm retained by the County for reconstruction of the Hirschdale Bridge for several years. The Leggs believed that a consensus had been reached on all issues related to the temporary construction access easements but were recently informed that the bridge construction and associated stairway may permanently and completely block vehicular access to the southern portion of the Legg property (APN 048-120-043).

Owners of property abutting a public right-of-way, such as Hirschdale Road, have a special easement for access to their property, referred to as abutter's rights. (*Rose v. State* (1942) 19 Cal.2d 713, 727.) This right "cannot be destroyed or substantially impaired for the benefit of the public without adequate compensation." (*People ex rel Dep't of Pub. Works v. Silveira* (1965) 236 Cal.App.2d 604, 611.) When abutter's rights are taken, the property owner is also entitled to severance damages, i.e., the diminution in value of the remaining property that formerly had the easement of access. (*People ex rel Dep't of Pub. Works v. Logan* (1961) 198 Cal.App.2d 581, 586.)

Until the County has determined whether the Project will result in a direct or indirect take of the Legg's abutter's rights, the fair market value of those rights (including severance damages) if they will be taken, and made an appropriate pre-condemnation offer under Government Code § 7267.2 to compensate the Leggs for the take of such rights, it cannot proceed with the formal condemnation process.

Thank you for your consideration of our comments.

Respectfully,

Greg Gatto

Cc: Patrick Perkins, PE - Principal Civil Engineer - Nevada County Department of Public Works