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Via Email/U.S. Mail

July 2, 2024

Candice Alvarez
City Clerk
City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530

Email: calvarez@lake-elsinore.org

Re: Lake Elsinore City Council Meeting on July 9, 2024

NP Lake Elsinore Commerce, LLC (APN 370-120-001): Request to be heard at the City of Lake Elsinore's July 9, 2024, hearing on its proposed resolution of necessity.

Dear Ms. Alvarez:

This firm represents NP Lake Elsinore Commerce, LLC, the owner of property that is the subject of the City's July 9, 2024, hearing regarding the City's intent to adopt a resolution of necessity authorizing condemnation for a portion of the property located at 32400 Stoneman Street, Lake Elsinore and designated as Assessor's Parcel Number 370-120-001, for the City's Murrieta Creek Multi-Use Trail project.

This letter constitutes NP Lake Elsinore Commerce, LLC's request to appear and be heard on the intended resolution of necessity. This letter also provides notice that NP Lake Elsinore Commerce, LLC intends to, and hereby does, object to the City's adoption of the proposed resolution of necessity.

Allen Matkins Leck Gamble Mallory & Natsis LLP
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NP Lake Elsinore Commerce, LLC reserves the right to submit additional comments and objections in advance of and at the July 9, 2024, hearing.

Very truly yours,

A handwritten signature in blue ink, appearing to read "K. Erik Friess", with a stylized flourish at the end.

K. Erik Friess

cc: Brian R. English, Esq.

Allen Matkins

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VIA ELECTRONIC MAIL

July 9, 2024

Candice Alvarez
City Clerk
City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530

Email: calvarez@lake-elsinore.org

**Re: Objections to the City of Lake Elsinore's July 9, 2024, hearing on a proposed resolution of necessity for partial condemnation of NP Lake Elsinore Commerce, LLP's property located at 32400 Stoneman Street, Lake Elsinore (APN 370-120-001) in connection with the City's Murietta Creek Multi-Use Trail Project
Agenda Item No. 18**

Dear Ms. Alvarez:

This firm represents NP Lake Elsinore Commerce, LLC, the owner of property that is the subject of the City of Lake Elsinore's July 9, 2024, hearing regarding the City's intent to adopt a resolution of necessity authorizing condemnation for a portion of NP Lake Elsinore Commerce's property located at 32400 Stoneman Street, Lake Elsinore and designated as Assessor's Parcel Number 370-120-001, for the City's Murrieta Creek Multi-Use Trail project.

We submit this letter in lieu of appearing and objecting at the hearing to detail and preserve NP Lake Elsinore Commerce's objections to the City's proposed resolution of necessity. We request that this objection letter appear in the record for Agenda Item Number No. 18 regarding the resolution of necessity.

We also request that copies of this objection letter be distributed to all the City decision-makers prior to their considering the resolution of necessity.

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OBJECTIONS

1. The City has not satisfied State-mandated prerequisites for adopting a resolution of necessity. More specifically, the City failed to make an offer of just compensation based on an adequate appraisal of the property. Thus, the City cannot adopt a resolution of necessity.

Under California's Eminent Domain Law, a condemning agency must comply with several procedural prerequisites before adopting a resolution of necessity and instituting a condemnation action. Among other requirements, the condemning agency: (1) must appraise the fair market value of the property to be condemned; (2) must make an offer of just compensation reflective of that value; (3) must provide a written statement explaining the basis of the agency's determination of fair market value; and (4) must engage in good faith negotiations before initiating a condemnation offer. (Gov. Code, §§ 7267.1, 7267.2; Code Civ. Proc., § 1245.230.)

The City has not completed the above-listed prerequisites for adopting a resolution of necessity to condemn NP Lake Elsinore Commerce's property. Specifically, the City is required to pay NP Lake Elsinore Commerce the fair market value of the property the City intends to take. (Cal. Const., art. I, § 19; Code Civ. Proc., § 1263.310.) Accordingly, the City's appraisal must accurately reflect the fair market value of NP Lake Elsinore Commerce's property and account for all relevant considerations.

But the City's appraisal is seriously defective, as detailed below. Because of these significant defects in the appraisal, the City has not properly made an offer under Government Code section 7267.2 and cannot make a finding that it has. Thus, the City cannot properly adopt a resolution of necessity.

The City's appraisal misses the proper value of the property by failing to evaluate whether the property's highest-and-best uses will still be feasible in light of the City's acquisition.

NP Lake Elsinore Commerce's property consists of roughly 116 acres located in Planning Area 3 of the East Lake Specific Plan, which is zoned for "Action Sports, Tourism, Commercial and Recreation" land uses. This land use designation is the "main focal point" of the East Lake Specific Plan. This land use designation allows for a broad, versatile range of uses, including bars/cocktail lounges, hotels, municipal parking lots and parking structures, personal service establishments, restaurants, and retail stores.

Approximately 38 acres of NP Lake Elsinore Commerce's property is also zoned as an "Airport Overlay," which allows airport-related industrial uses, aviation-related residential development, and accessory buildings.

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Advantageously located adjacent to residential communities, NP Lake Elsinore Commerce's property is ripe for development. The City's appraiser recognized this by stating that the property's highest-and-best use is to "[h]old for future development when feasibility of an Action Sports, Tourism, Commercial or Recreation use for this site exists."

Yet the City's appraiser completely missed that taking 2.55 acres of the property along its main access road, Stoneman Street, for a trail easement hinders NP Lake Elsinore Commerce's ability to develop the property for its highest-and-best uses.

NP Lake Elsinore Commerce is obtaining entitlements from the City for NP Lake Elsinore Commerce's development of three industrial buildings on portions of Planning Areas 2 and 3 of the East Lake Specific Plan near the property. NP Lake Elsinore Commerce is open to negotiating to set aside as conserved land the 2.55 acres of its property that the City seeks to acquire for its trail easement. It make the most sense for these negotiations to take place in the context of NP Lake Elsinore Commerce's pending entitlement applications for its nearby industrial development project. The City's appraisal fails to mention NP Lake Elsinore Commerce's industrial development project despite it being a matter of public record.

The City's proposed taking may hinder potential negotiations between NP Lake Elsinore Commerce and the City related to NP Lake Elsinore Commerce's industrial development project. By pushing ahead with the proposed taking, the City will force NP Lake Elsinore Commerce to set aside many more acres of its property for conservation than necessary to achieve the City's project. The City's appraisal misses this and thus fails to evaluate whether the property's highest-and-best uses will still be feasible in light of the City's acquisition. The City's proposed taking significantly impedes NP Lake Elsinore Commerce's ability to develop its property for the property's highest-and-best uses when the amount of acreage subject to conservation can be negotiated between the parties.

The City's appraisal used non-reflective and outdated comparable sales.

To determine land value, the appraisal includes six "comparable" land sales. The majority of the "comparable" land sales were located in different cities from NP Lake Elsinore Commerce's property, with some properties as far as 36 miles away. Many of the "comparable" land sales were zoned for very different and less valuable land uses than NP Lake Elsinore Commerce's property. Two of the "comparable" land sales were zoned for residential use. One "comparable" land sale was zoned for agricultural use within a specific plan that allows for golf course use. Only one of the "comparable" land sales was zoned for "Action Sports, Tourism, Commercial and Recreation." (And this land sale is pending.)

In addition, half of the "comparable" land sales were distinguishable in land size to NP Lake Elsinore Commerce's 116-acre larger parcel. Two of the "comparable" land sales had less than half

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the acreage of NP Lake Elsinore Commerce's larger parcel, with one property as small as roughly 40 acres. And one of the "comparable" land sales was significantly larger in land size at 218 acres.

These "comparable" land sales used by the City's appraiser drove down the value conclusion for NP Lake Elsinore Commerce's property. Many of the "comparable" land sales are not reflective of NP Lake Elsinore Commerce's property. Not only that, but the City's appraiser also chose a price per square foot at the lower range of the "comparable" sales. At a minimum, NP Lake Elsinore Commerce's price per square foot should have been at the top of the range.

Further, the date of value of the City's appraisal is nearly a year old, rendering it stale. Additionally, nearly all of the sales dates of the six land sales were over a year before the July 2023 date of value in the City's appraisal. Four sales were as far back as 2021, which is a very different real-estate market. Such outdated "comparable" sales do not reflect fair market value in this rapidly escalating real-estate market. This should be reflected in the City's appraisal.

The City's project is not planned or located in a manner that will be most compatible with the greatest public good and the least private injury.

A public agency may not exercise the power of eminent domain for a proposed project unless it establishes that "the project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury." (Code Civ. Proc., § 1240.030, subd. (b).) The City does not satisfy this requirement. The City's staff report states that the project serves the greatest public good but includes no substantive support to demonstrate the project results in the least private injury to NP Lake Elsinore Commerce. The City's project is not planned to result in the least private injury to NP Lake Elsinore Commerce.

As discussed earlier, the City's proposed taking may frustrate potential negotiations between NP Lake Elsinore Commerce and the City related to NP Lake Elsinore Commerce's industrial development project. This is likely to result in the City's forcing NP Lake Elsinore Commerce to conserve many more acres of its property for conservation than is necessary to achieve the City's project. This will also impact NP Lake Elsinore Commerce's ability to develop its property for "Action Sports, Tourism, Commercial and Recreation" land uses and airport-related development – depriving the public of many activities envisioned in the City's East Lake Specific Plan.

Additionally, the City's appraisal misses that the City's proposed taking may interfere with the Riverside County Multi Species Habitat Conservation Plan. The City's appraisal recognized that the MSHCP has designated portions of NP Lake Elsinore Commerce's property as conservation land. Yet the City's appraisal fails to identify how the proposed taking will impact the MSHCP's conservation efforts. More specifically, whether the City's 2.55-acre trail easement will require NP Lake Elsinore Commerce to dedicate even more of its property's acreage to the MSHCP, especially when considering that that portion of land is potentially available to the City as a conservation area

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through negotiations. At a minimum, the City needs to coordinate with the Western Riverside County Regional Conservation Authority about the areas of the property subject to the MSHCP to avoid improperly and unnecessarily multiplying the amount of NP Lake Elsinore Commerce's property that must be conserved. The City's proposed resolution of necessity is thus extremely premature.

The City's appraisal grossly underestimates NP Lake Elsinore Commerce's devastating severance damages, both for physical changes caused by the City's taking and impacts on future redevelopment.

The City's appraisal concluded that the proposed taking would result in \$0 of severance damages. But the City's appraisal offers *no support* for this conclusion. Rather, the City's appraisal claims that the City's proposed taking will not result in any change "to the utility, highest and best use, or further development of the property." There is no support provided for these claims.

For example, the City's appraisal completely ignores the severance damages that will arise from the City's proposed trail easement. In particular, the City's 2.55-acre trail easement will block the only point of access to NP Lake Elsinore Commerce's remainder property, rendering it landlocked and making development impossible. The City's appraisal recognizes that "direct access" to the property is via Stoneman Street. This is the only point of access because additional access via Como Street "is on paper only and does not physically exist." But the City's proposed trail easement, which would be ten feet wide with a four-and-a-half-foot wood-post fence installed on both sides of the trail, runs along the property's boundary adjacent to Stoneman Street. Obviously, this renders Lake Elsinore Commerce's remainder property landlocked, inaccessible, and undevelopable. Yet the City's appraiser assigned *zero* dollars of severance damages for this.

The City's appraiser also undervalues the trail easement. The trail easement prohibits any development of the easement area. Despite the extreme limitations, the City's appraiser values the trail easement as 95% of fee value. The City's trail easement area should be valued at 100% of fee value given that area will be undevelopable (just like the remainder property). Further, the City's 12-month temporary construction easement will encumber another .65 acres of the property.

The City's appraisal also fails to recognize that the property's highest-and-best uses will not be feasible as described above. Notwithstanding this, the City's appraisal ignores these significant negative impacts to opine to \$0 for severance damages. The City's appraiser is simply wrong.

Negotiations remain a possibility between NP Lake Elsinore Commerce and the City related to the entitlements for NP Lake Elsinore Commerce's industrial development project and the City's trail easement on this property. Proceeding with the proposed taking at this time is premature since the parties have yet to engage in meaningful, substantive negotiations.

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2. Conclusion.

Because the evidence presented in these objections establishes that the City's appraisal is fundamentally flawed, the City must commission a new appraisal that properly assesses NP Lake Elsinore Commerce's property, and the City must make a new offer before proceeding with a resolution of necessity. (See Cal. Code Regs., tit. 25, § 6182, subd. (i)(2).)

NP Lake Elsinore Commerce therefore respectfully requests that the City's Board *not* proceed with the premature adoption of any resolution of necessity and that the City instead begin negotiations with NP Lake Elsinore Commerce in connection with NP Lake Elsinore Commerce's industrial development project to set aside as conserved land the 2.55 acres of NP Lake Elsinore Commerce's property that the City wants to acquire for its trail easement. In the event that negotiations do not succeed, NP Lake Elsinore Commerce respectfully requests that the City obtain a new or updated appraisal that properly values the property and resultant severance damages and make a proper offer to NP Lake Elsinore Commerce to purchase the property interests.

Very truly yours,



K. Erik Friess

KEF:slp