



When the Legal Issues Snowball

The importance of finding the right solution before it's too late

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Sometimes, due diligence can make or break a project. A few years ago, the State of California proposed removing a lightly-trafficked frontage road as part of a freeway-widening project in Ventura County, California. The decision to close the county road was expected to alleviate the need for a difficult acquisition of cemetery property located on the opposite side of the freeway. The project's design process included a relocation study for identifying potential displacements.

The relocation study was conducted by a right of way agent and included a property inventory, survey of occupants and a physical inspection of the areas within and near the proposed project. During the course of the study, the agent confirmed that the frontage road, though rarely used by the general public, was a primary access point for a 63-space residential mobile home park. The situation was not obvious from the aerial maps used to design the project, but closing the road would effectively eliminate the only legal access point for the mobile home park.

The agent noted that the mobile home park had an emergency fire exit and gate on the opposite side of the park. This exit led directly to an ungraded dirt path that was designated as a future street for a then-vacant property subdivided for future residential development. Known as a "paper street" on the county assessor parcel maps, the dirt path was a secondary access point from the mobile home park to the County's existing system of roads and streets. There was no indication that the

property owners had any immediate plans to develop the subdivided vacant property. Nor were there any plans by the property owner or the County to construct street improvements within the designated paper street area.

Assessing the Legalities

At this point, the freeway-widening project was relatively far along in the design and funding approval process. In order to keep the project moving forward, the right of way department asked for a legal opinion outlining the available options and obstacles if they proceeded to close the County frontage road as specified in the current design.

We presented the scenario wherein the State could close the frontage road, pay for and acquire the existing access rights from the mobile home park owner, and then concurrently acquire a separate portion of the mobile home park property to provide a new primary access point. In this situation, the State would also be required to acquire the property rights necessary for the mobile home park residents to pass onto and through the paper street on the adjacent property. Necessity is a judicial matter that is determined in a resolution of necessity and can be challenged on that basis. Mere economy to a public agency is not necessarily determinative, but necessity is to be liberally construed and the acquisition for this purpose would likely be permitted.

The Issues Compound

However, changing the mobile home park's primary access point to the paper street would require several additional improvements, such as street construction and accompanying infrastructure, including asphalt paving, signage, curbs, gutters, storm drains and connections. The State would have to pay to relocate the buildings occupied by mobile home park security and the onsite manager to a more functional location closer to the new main access point. This relocation would likely also require the acquisition of two existing mobile home units.

Also, if the State acquired the new road on behalf of the mobile home park property owners, there was an

open question concerning who would be obligated to accept responsibility for ownership, maintenance and control of the new proposed road—the State, County or the mobile home property owners? A County has no obligation to accept a proposed roadway into their street and highway systems. And a street or road does not become a public entity’s responsibility until its governing body affirmatively accepts it into their property inventory by resolution. Furthermore, the mobile home park owners would not be legally obligated to accept ownership and responsibility for the new roadway, although they would have an affirmative duty to mitigate any severance damage claims, including maintaining legal access. They could, however, seek to recover ongoing maintenance costs under a claim of severance damages to the remainder.

Alternatively, the State could seek to acquire the entire mobile home park, since the acquisition of access would leave the mobile home park effectively landlocked. In this scenario, the owner-occupants of the 63 residential units would be eligible to accept offers to sell their real property interests, as well as relocation assistance benefits for moving their personalty.

The Final Decision

After careful consideration, the State decided that these options were too complex to be worthwhile, and chose instead to acquire the necessary right of way from the cemetery on the other side. For this particular project, the exemplary right of way work and timely request for a legal opinion avoided a highly untenable situation. 🌟



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