



# FOR BETTER OR FOR WORSE

A definite difference of opinion

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Public works projects invariably promote the benefits of impacting a few for the general good—in eminent domain cases, the few being private property owners who have property that is required to achieve a greater identified purpose (such as a roadway, utilities, flight path or park). Balancing the rights of private property owners against a demonstrated public purpose is never easy. The planning process cannot avoid all adverse impacts to private property owners. Projected and actual impacts are measured against the need for a safe design and cost efficient construction.

Occasionally, public projects create benefits for adjacent properties. A new off-ramp is placed through a formerly vacant parcel creating an opportunity for commercial development on the remainder parcel. Condemnation for a light rail project provides new foot traffic and visibility for storefronts in the vicinity of station stops. Often, public agencies see the better, while property owners see the worse. The State of California Interstate 5 (I-5) widening project through the heart of Orange County created intended and unintended impacts along the proposed right of way

corridor. One such acquisition involved an acquisition of a small permanent easement and a nine-month temporary construction easement from a hotel property adjacent to the existing freeway and project. The hotel was a two story residence-style building with 50+ rooms. The rooms were designed for longer stay occupancies and were equipped with functional kitchens and separate living rooms. The hotel was located in close proximity to nearby offices and business parks, retail shopping and a major theme park.

### STATE: It's Not So Bad

The floating duration of the temporary construction easement was implemented to accommodate the contractor. The more rigid the design requirements and window for access under the temporary construction easement, the higher the project bids. The contractor is thereafter not free to utilize the most efficient use of their resources in the sequence that minimizes time spent and costs incurred. The State believed that while there were some anticipated impacts, those impacts to the business were short-term and temporary. Once the project was completed, the off-ramp would be an attractive feature for hotel guests by providing convenient access to and from the freeway and surrounding streets. Prior to the project, the freeway and city streets through this area were highly congested. The construction project included effective mitigation measures minimizing project generated noise, dust and vibrations.

The State appraiser claimed no permanent loss of business goodwill because the project would create more demand for the rooms in the after condition. The ease of movement in and around the local area made this residential hotel one of the most desirable and sought-after citywide. At the time, this was one of only a handful of long-term residential hotels. The impacts to room occupancy from the construction project were decidedly temporary and should be reflected by a temporary reduction in room rates.

### HOTEL: Couldn't Get Any Worse

The project proposed to construct the freeway below grade in the area. Below grade freeway lanes allowed the approved design to include elevated high-occupancy vehicle lanes while minimizing the overall profile and height of the freeway. Construction standards deemed freeway soundwalls necessary for only half the length of the property because of the nearby revamped off-ramp configuration. The abbreviated soundwall would leave one-third of the hotel rooms "exposed" to the freeway in the after condition.

The hotel owners alleged that their property would be temporarily and permanently adversely impacted by the combination of the closer freeway lanes, the lowered

freeway grade and an incomplete sound wall. Initial complaints focused around vibrations generated by the construction project installing piles and footings only a few hundred feet away. The hotel would be uninhabitable for nine months when subjected to the sounds of pile driving, as well as the dust and fumes from construction equipment. They claimed that a large portion of their business came from repeat customers. They had an obligation to inform guests at booking of the anticipated conditions created by the public project. Further, the temporary construction easement was not for a defined period of time, so the hotel operator could not know what to tell inquiring guests when asked about when the construction project would start or finish.

The hotel owner's consultants opined that the guest rooms that were not "protected" by the soundwall now required new triple paned soundproof windows to make them comparable to the before condition sound level inside the rooms.

### Richer or Poorer

The aforementioned disagreement over the anticipated project impacts required both parties to retain consultants for noise, dust and vibration monitoring, in addition to the real property and loss of goodwill appraisers. While there was some logic to the construction impact allegations, the construction project would not start until after the trial and therefore neither vibration, dust nor sound consultant could state with any certainty the actual impacts of the project on the interior room sound levels. They could only make best effort attempts to predict construction project impacts.

In the end, the uncertainty of a potential jury evaluating the competing expert opinions coupled with the expected expenses preparing for trial were reasons enough for both parties to agree to a compromise and settlement. The trial would have started before the beginning of actual construction. The expert opinions were at best, good professional guesses. The parties were made equally uncomfortable, which is the sign of a good settlement. ✪



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