

Handout

Agenda Item

SB86

Date April 26, 2018

April 18 2018

Sutter Club Sacramento Spring Seminar - Project Delivery and Encroachment: Clearing the Way

MCs: Sidney Bender, Dave Roth Pres. BRI.

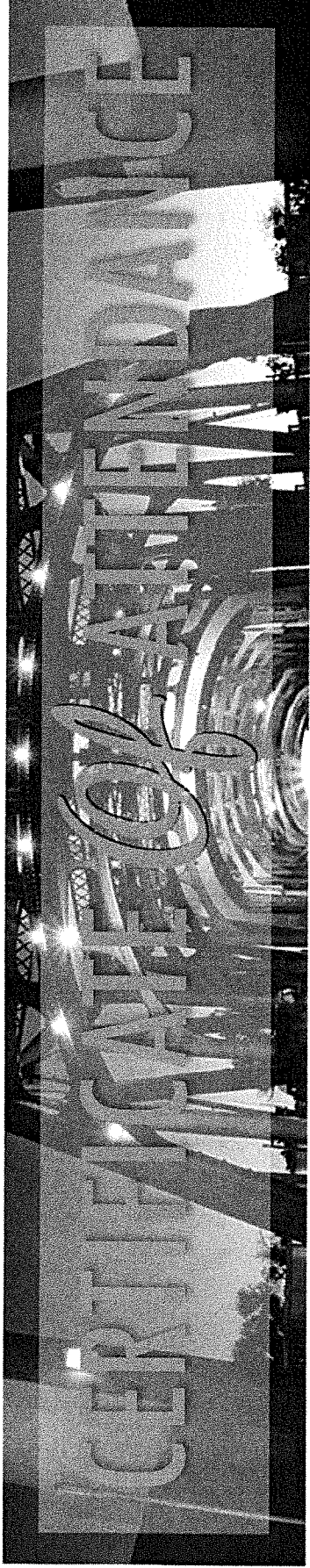
2pm: Large Scale Projects: Planning for Success. Artin Shaverdian (AS), Partner, Nossaman LLP; Steve Parent (SP), Bender Rosenthal, Inc.; Kristin Mendenhall(KM), Staff Attorney, Nossaman LLP; Edward McSpedon(EM), CEO, Engineer, Infrastructure Delivery Strategies. AS: SPMM Transit Authority's Urban Connector Project. Org. Structure, Project RE Needs, Cooperative and Interagency Agreements. Example is Transit Project. Urban rail line ext. PUC for Authorities (enacting language). 400+ parcels full and partial acquisition for 7 miles. EM: Org: Mission Critical Depts: Plg and Design, Environmental, Construction, Real Estate and relocation. SP: Reduce layers of decision making. Map, flowchart such as appraisal to property delivery to contractor. Why is it taking so long? ID strategies to shorten delivery cycle. Biggest time waster is sitting in a que. consider executives to delegate acquisition authority to r/w field staff. AS: Staffing not there in agencies to get work done in large projects. Project Mgt., Leadership: Hire experienced. RE appraisal/relocation, legal services, project mgt and risk mitigation. Help to train board of directors, their role and how they can help. Help be an advocate and get job done. Project & Real Estate Needs: ID Project Goal, Define/describe project, legal and valuation issues to consider when defining project: narrow/specific; broad/vague. Valuation issues: severance, project influence. Project description/def: legal issues: limited ability to changes, limit future use, limiting ability to offset benefits Livermore Kittyhawk and east airway severance damages. City of Livermore v. Baca 2012. Courts look into area as terms of contract. Livermore 3 contracts but court look only at first contract. Not able to include adjacent roadway improvements to be included in severance damages. When value property need to not include the project. Impt. to know where project and if there is enhanced value from nearby projects., comps. No benefits from initial or 2nd or 3rd contracts in Baca. Appraiser have to disregard properties influenced by project. Imperial County, Calexico 40k pop., Mexicali 1M pop. 3rd busiest port of entry in CA. Road Widening Project \$11M budget. Project Definition, Traffic, Value. Considered two different projects. If it was considered one then need to consider traffic from port of entry. Have to get past right to take (RTT) phase to get to valuation phase. Broad vague scope. City of Stockton v. Marina Towers LLC 2009. Pre-condemnation damages, valuation issues - project influence. Valuation issues w/broad project descriptions. Environmental documents: Project Dfn. usually first in EIR. ID project and impacts. Limit row lines sometimes at 30-40% design, define project re needs with fat pencil where possible, not a scpael. May want to purchase things early so not have to wait and can deliver to contractor when needed by need room to store the items. Make sure contractor can build what is within the EIR. Cheaper to abandon a taking that you don't need after already appraised, acquired cheaper than telling contractor don't have enough right of way and restart acquisition. Avoid small "Sliver Takes". Shearton small vegetation take. offer \$20k, hotel want \$1.5m (noise, disruption), settlement for TCE \$387,500. Claim could have been avoided altogether w/sliver take. Project: Define the Project. Do everything possible to keep real estate off of the critical path of construction. Don't miss dates or contractor will put right on you. consider early acquisitions. use real estate availability milestones for contractors with due caution. expect things to take longer than planned. empower contractor, design build to acquire project critical property. appraisal, unit value discussions in area with others in pre condemnation discussions. ie gas stations values in areas consistent. In cooperative/interagency agreements, try to get private contractors to acquire and find way to pay to work directly with you such as retired, senior people since they know how to work with agency people. Top ten takeaways in packet. 1. Obtain the best enabling legislation; 2. Early coordination, and engagement with all key stakeholders is vital. Must understand how key stakeholders define success. 3. Organize staff, empower & engage you internal right of way resources early in the project planning phase. 4. Reduce decision-making layers and streamline processes. 5. Supercharge your cross-functional, internal project team by engaging the best external advisors early: Project delivery, right of way/appraisal/acquisition/relocation, Legal. 6. Establish baseline expectations for consultants when multiple firms are involved. require consistency in appraisal methodology and right of way processes, facilitate and require cooperation across firms/taks managers, empower and delegate settlement authority to acquisition consultants. 7. Define you project so that it is not too narrow or too broad. How you define you project can have significant implications on legal and right of way issues. 8. Define you right of way needs using a fat pencil/ acquire adequate right of way to facilitate efficient construction operations. Leave yourself flexibility to take full advantage of future contractor alternative design concepts, project enhancements, or transit-oriented development opportunities. obtain input from legal and right of way regarding necessity and design optimization. 9. Establish a deliverable tracking system and dedicate resources to follow up: Reduce cue time. Clearly define roles and responsibilities. Establish and enforce required maximum task completion durations. 10. Acquire and clear the right of way before awarding major construction contracts. Only violate this rule with extreme caution using conservative availability milestones in your contracts. Keep these milestones off the contractor's critical path. Empower your contractors to acquire urgently needed parcels via private transaction pending completion fo the public acquisition process.

3pm: Utility Coordination and Relocation. Yoli Matranga(YM), Bender Rosenthal, Inc.; Bernadette Duran-Brown(BB), Nossaman LLP. YM: At&t Joint Trench Issue work. BB: Considerations for utility relocations. How to we figure out who is paying for the relocation (everytime with utility relocation). How does the regulatory scheme impact relocations. Know rights franchise, easement, license, fee interest, encroachment permit, joint use agreement, final order of condemnation Others? What about Prescriptive Rights? SCE: most own by fee. SDG&E: most owned by easement. Easement: Legal right to use another's property for a specific limited purpose." Easement considerations (forward looking): Duration (time, or perptuity, is it assignable), restrictions on other use, future projects, relocations, purpose/use limitations, transferability. Utilities usually work with each other. Make sure have plan on Easements, can get a relocation clause for future? Overburdening An Easement (backward looking): Acquire rights with the future in mind. don't try to do more than what the document says, some language if very specific: distribution v. transmission, wood pole v. steel tower, a single line v. multiple lines, undergorund v. overhead, technological upgrades, Intent. eg leases from 1990 no one forecasting 5G and now 2x2 square to put equipt. in or antenna array therefore have to acquire again. Appurtenances is big word could be cabinets on pole, is that the intent in the easement? Franchise Agreements: most in public utility is franchise agreements. Generally, municipality is accommodating the utility. Utility pays for any relocation for City purposes (Pub. Util. Code subsection 6297). Poential issues? What if the agreement defines a project? Or a specific entity? Problem ie so ca rapid transit district is now called la county metro. Easements not apply. What is proper government use? therefore try to get municippality to pay for relocation. Good Franchise Agreement: Lays out the process clearly, addresses liability directly, self-renewing. SCE : Self renewing every 5 years. Everyone revisits and makes sure it is good. "Bad" Francise Agreement: Unclear

on liability or renewal language. Utility may want renewal language where the municipality may not. Other considerations? Current trend: local municipality asking utility for more than their fare share. eg on trenching, repave whole half of street or block rather than 10x10 pacht and curb and gutter for street. When is it too onerous. eg There is situation limit how often get in bec. we repave every 5 years. 5 year window used to be pretty standard. All relocations and installations need to be done at that time. Utilities always needs to get back inot the streets. TELCO. Franchise Agreement with State is called 7901 to get into the street. BB: Safety features test and integrity and seen agencies add into franchise agreements. Franchise Rights: Does Ownership of Utility Matter? Investor Owned Utility: Common Law Rule, Utility relocates at own expense. v. Pubic Utility: Common law rule not apply. Prior in time, prior in right. Utility must relocate at its own expense when necessary to relocate at its own expense. eg existing water easement, 10 years later telco came in, 50 years later come in and who pays. Deal with water district and power company. utility in their last pays. Franchise Protectable property interest. So ca gas co v. city of la 1958. franchise rights constitutes a contract secured by constitution. Who pays: 1. review the documents, Easements, franchise agreements, joint use agreement, deed documents, reservatin of rights, What to look for; condemnation clause, relocation clause, eceptions to gran or other conveyance of property. Utility now say 1x relocation, and more municipality, others have to pay for it. Look for exceptions at bottom of document. Seen a lot of joint use agreements now. Lets try not to disturb these impt. facilities. favorite question: how can we avoid doing this? Franchise Law, statutory rights, common law rights, other obligations: who pays. rail corridors complicating relocations; utilities get into rail corridors: permits, easements, others. fight of relocaiton costs, limited case law. LA Metro BLine: Pasadena Metro Blue Line Construction Authority v. Pacific Bell Telephone Company. 2006. Authority had rights prior, said it would pay to relocate, then seek reimb. Court disagreed that those aren't your obligations, do have to pay utility relocations like on other segments. Deal with a lot of regional transportation agencies with predecessor agencies and how does new agency deal with. eg at grade crossings.reactivating line out of service for 30 years. transit agency make them move. ? utility in Rails to Trails area, under Patent, is it enfoceable? Who owns this property and what can do with it. unclear. Navigating the regulatory world when dealing with relocation: Utility own by fee, easement; how much is relocaiton expected to cost (ie large with freeway relocations), are outages planned for the relocation, will regulatory approval be necessary. how long does the utility's internal aprval process take? External process: Does CPUC have to be involved in the relocation (acq. above \$5M : need CPUC letter approval). CPUC Advice Letter CPUC 851. What is "grant out"? Grant out part of property. Internal: utilities policies, relocation rules, review of offer packages, types of approval needed, design elements that can cause delay. Are there situations where condemnation could be preferable? Friendly condemnation could short cut acquisition with utility by several months. Undergrouding Districts: Del Mar, Chino Hills eg. transmission exempt? Chino Hills wanted hillside views, request underground. TARIFS: Rule 20- PG&E Aerial to underground conversion; Rule 32 - AT&T Aerial to underground conversion. Bring all in, all have own rules. Telco impt. that both have tariffs, eg telco on one side and need to be underground both sides and connections to customers. Relocation of poles to steel (need product orders) could take up to 18 months. Storm Drain, fire hydrants in area need to be relocated.

4pm: Managing Publicly Owned Property: Best Practices for Leases, Licenses and

Encroachments. Brad Kuhn(BK), Nossaman LLP; Renee Baur(RB), Bender Rosenthal, Inc.; Partner, CA Lawyer of Year Award David Graeler(DG), Nossaman LLP; Joe Echols(JE), Pacific Gas & Electric Company. Leases, Licenses, Encroachments. Agency exposed to claims: 1.relocation, 2.loss of business goodwill,3. ff&e or even building area, 4. leasehold bonus value. Public Project, no loss of business goodwill: Ca Cartage Co. v. City of LA 2017. Kong v. City of Hawaiian Gardens RDA 2002 101 Cal.app.4th 1317. Displaced Person eligibility for benefits Consequence of a public project. crucial causal connection between the acquisition (by the public entity) and hte displacement. Tenant held over for 10 years. Most people think no relocation benefits. Court of Appeal said no you are wrong. Relocation payments must be made. Kong pre-acquisition tenant and did not have a relocation waiver. URA will not allow tenant to waive relocation as part of extending tenancy. Project Influence Rule: Value either up/down not to be considered. get tenant to agree that that provision does not apply. Rent stabilized areas may have longer lead time than URA or eminent domain law for hold overs. Unlawful detainer if not want to leave. Billboards: eg lease w/BNSF in 1960s.Can a transit agency terminate a billboard lease without paying goodwill/relocation? Does it matter if termination is for public project? Lease termination clause either party with 30 days notice.On Goodwill claim (CA Cartage) probably N/A. Relocation: Yes. Most of cases are getting negotiated out ie billboard will waive goodwill if help with relocation. Waiting for cases. Patchett v. LA Metro. Seek indemnity agreement from tenant and line that says project influence rule does not apply. Licenses: more common for utility - gardening sites, cell sites. Not a compensable right in any acquisition, personable and revocable. Be careful if license works like lease. Hubbard v. Brown 1990 Absent license language to the contrary, termination not compensable in eminent domain. URA doesn't differentiate between tenant or licensee but if a displaced person. BK worked with Cal trans in displacing cell site licenses. Bargain for Term, License holds. ie developer license park & open space under power line easement area. Utility displaced with no relocation benefits. Encroachments: Branch or two, cut off cheaper than court. Civ. Code 1007; Guerra v. Packard 1965 236 Ca app 2d 272 Adverse possession/prescriptive rights to not apply to public agency. JE: Community Pipeline Safety Initiative (CPSI). 2011 hydrotest gas pipeline. 30" pipeline. Executive know house directly over. Last 3 1/2 years JE reviewing. Amount of vegetation (trees) over pipelines. 6,750 miles of pipeline. first time in nation shot centerline every 50'. Took over one year. About 500 million worth of encroachments. DEcide to remove with company funds. typically pipes installed at least 36" depth. 12,000 land customers negotiated removal of encroachments. First worked with customers, then learned to work with communities first then individual customers. RB: Chain of title review, put in GIS system, needed parcel data with line information. Implied Right b. Expressed Rights. problems left now with last few property owners with Implied rights. Implied: Have an easement, but not to clear trees, therefore pg&e use right to maintain pipeline as basis. Trimble S6 Robotic Total Station to Survey. What tests well with community. Easements doesn't test well but safety tests well. Media Dept. brought in to work with land and all pg&e depts. Pg&E got stopped in Walnut Creek therefore started to work with community then property owners. Some customers 3 years to get to an agreement. Action Plan or Settlement Agreement (no recorded) to settle with property owners (2 page letter agreement). Now patrolling Easement areas by plane once a month and by foot once a year. Gas Dept. funded and took lead in the project.



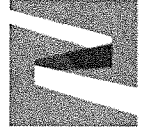
This certifies that

Craig Murray

Attended the Project Delivery & Encroachment: Clearing the Way Spring Seminar
On Wednesday, April 18, 2018 from 2:00pm to 5:30pm (3.5 hours of CEU)
In Sacramento, California

PRESENTED BY:

BRI
BENDER
ROSENTHAL
INCORPORATED



NOSSAMAN ^{LLP}

4 27 18 Defensive Driving Du All Safety du-all.com, 510-651-8289

1895 State of Ohio, Only two cars, crash on road. Defensive Driving: Save: 1. Lives; 2. Time; 3. Money. Biggest group 15-25 almost 20%; 30.3% 55 and over. 71% men 29% women crash deaths. Non speeding related deaths 70% on interstate. Nationally every 5 seconds crash occurs. CA every 2 minutes accident, every 171 minutes auto-related death. Penalties City of Berkeley for violations: many in the \$22,000. fine area. Factors that contribute: Roadway env., vehicle, 90% is operating. Seattle image 6 lanes without cars, on bikes, 3 busses and on light rail train. (small portion of one lane). More care: more accidents. Financial impact to employers: over \$60B in medical care, legal, damaged property and lost productivity. Cost to employer: \$ 16,500 accident, \$74,500 injury and \$500,000 death. 65% not wearing seat belt. Myth safer to be thrown from vehicle. Basic speed law: can be cited for 15 mph less than speed limit. Conditions: rain, snow, ice, fog. uneven roads, construction zones, curves, intersections, gravel roads, heavy traffic. Fatality Analysis Reporting System (FARS) reported 25% speeding-related large -truck accidents during adverse weather conditions. Tips: Large truck high center of gravity in Entering a Curve. Consider vehicle you are driving. Approach to enter/exit ramp. Drive slowly with a loaded trailer (weight in back, shifting make a huge difference. Weight in front of trailer OK. Weight in back of trailer - truck fish tails. Slow down in work zones. Speed increases perception-reaction distance. Be cautious of intersections. Remember the speed limit for blind intersections is 15 mph. Check left, right, left before entering intersection. Review maps and plans your route before driving. so not constantly looking at map while driving. Do not suddenly change your direction of travel. Lot of crashes having suddently missed turn or exit. Signal your intentions. You will be in safer position to communicate with the surrounding drivers. Be aware of your blind spots. Be vigilant in watching for vehicles in the NO ZONE. blind spot: 300' out, 300' back. Always drive defensively. : A way of operating your vehicle to avoid accidents due to the actions of others. Look Far Enough Ahead. Look 15 seconds in front of you (approx. 1/4 mile on interstate and 1 1/2 blocks in City). You can navigate and avoid. For safety and flow ahead. Q: Uber drivers stop immediately ahead. Avoid frustration of one car to go left on a light, avoid abrupt braking situations. Check your mirrors often. (at least every 5 to 8 seconds) and before you change, turn or merge. Liz Marks texting video on You Tube. Get enough sleep before getting behind the wheel. Body naturally drowsy: 12 to 6am, 4pm to 6pm. Allow at least 15 minutes to awake before driving. Avoid medication that may induce drowsiness. Do not fixate on Non-Driving related objects. keep your mind on driving-related. Turn off your cell phone while driving. Risk of crash: 4x higher while using a cell phone. Minimize eating and drinking while driving. Do not follow too closely. LTCCS reported 5% of turck crahses occurered when the CMV driver was following the lead vehcile too closely. Do not follow too closely. Double your following distance in Adverse Conditions. Avg. stopping distance: 199' truck, 136' vehicle. Do not drive during a medical emergency. Park with consideration of others. lane management: is it safe, legal. Keep away from cars that are on fire. Be cautious of unfamiliar roadways esp. temp. construction zones. Commercial Motor Vehicle (CMV) may be unfamiliar. Secure all cargo before hitting the road. groceries in back seat.. Safety Features: Some helpful: blind spot, lane change detector (strong vibration in some rental cars). Airbags. in 2003 at least two front. ABS in 2003. Park Assist. Electronic Stability Control (ESC) for roll over. All SUV by 2012. back up parking, voice controls. Insurance.com says can distract driver unnecessarily. Adaptive cruise control. Adaptive headlights pivots with wheel. back-up cameras. NHTSA (National Highway Transportation Safety Administration by May 2018 all passenger vehicles to have. blind-spot warning. lane departure waring. Forward collision warning. Highway Data Loss Institute only 3%. TPMS Tire Pressure Monitoring System. CarPartsKings.com TPMS is extremeley effective in preventing blowouts, ext. gas mileage. Inspection items-headlights. replace if gray out. air conditioning, eng. temp, tire pressure, tire tread quarter test : top of washington head on quarter. good tread channels water. Brake pads, oil. When Emergency Vehicle approaching from behind. If stopped stay

stopped, if moving move to right and stop. CHP: Be polite, acknowledge officer, stay calm: about half pull over receive no ticket. Backing Up: 500 deaths, 15k injuries per year. Driver distraction. Inadequate evasive action: having enough space.