

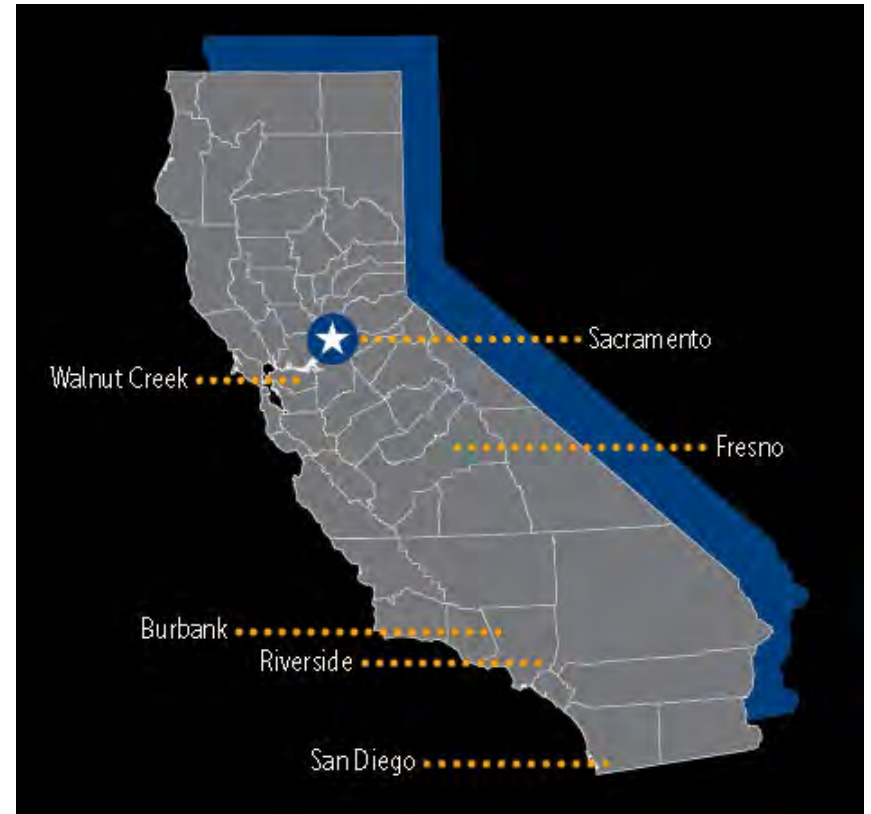


THE PRICE IS NOT RIGHT:
EXAMINING THE OFFER
PROCESS

Presented by Chip Willett

BENDER ROSENTHAL INCORPORATED

**CHIP WILLETT,
VICE PRESIDENT OF
SOUTHERN CALIFORNIA
PROJECT DELIVERY**



**Founded in 1997
130+ Employees**

SUMMARY OF THE RIGHT OF WAY PROCESS

- Right of Way Planning (30% Design)
- Right of Way Defined (60% Design)
- Rights of Entry for Testing/Surveys
- Appraisal Maps/Plats and Legals
- Appraisals
- Acquisition
- Condemnation
- Right of Way Certification

← OFFER PROCESS

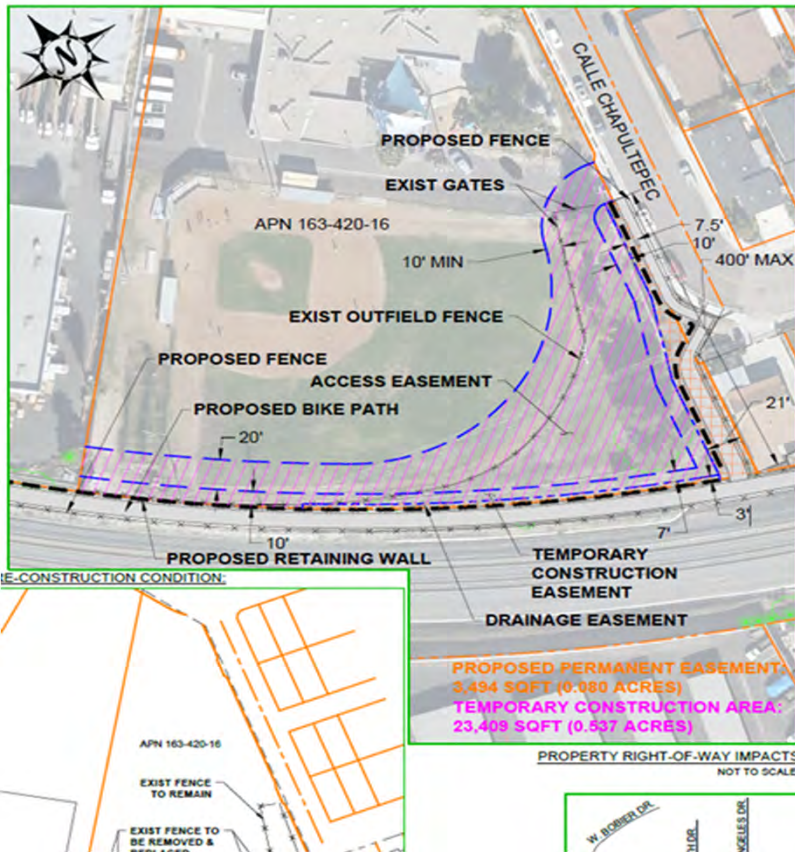


APPRAISAL TIMELINE

- Appraisals initiate when right of way design is about 60% complete
- Owner's First Contact
 - Notice of Intent to Appraise
 - Stake the Right of Way for Inspection with the owner
- Appraisal establishes the Fair Market Value and Agency establishes Just Compensation

Code of Civil Procedure §1263.320 (b) "The fair market value of the property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable"

SAMPLE PROPERTY OWNER EXHIBIT



APPRAISALS — FACT OR FICTION?

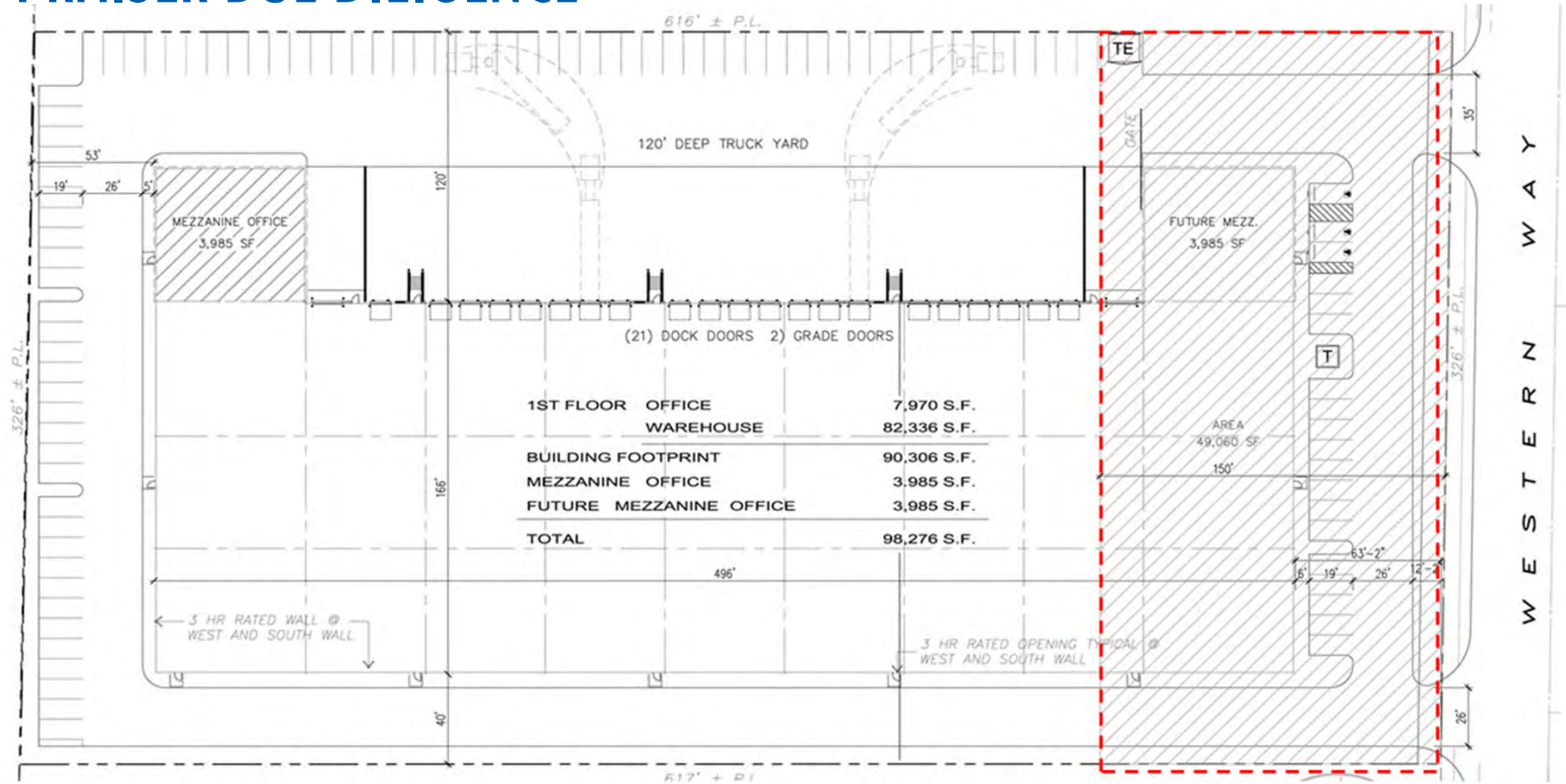


- Appraisals are opinions of value, not facts.
- There can be new comparable sales that hit the market after the date of the offer appraisal.
- There may be other considerations that are not readily apparent in the market that could affect value.
- Empathy, listen to owner's concerns....consider reasonable redesign.

APPRAISER DUE DILIGENCE



APPRAISER DUE DILIGENCE



TYPES OF OWNERS

- Individuals
- Co-Owners
 - Tenancy In Common
 - Joint Tenancy
 - Partnerships
- Limited Liability Company
- Trust
- Corporation
- Homeowners Association.....UGH!



POTENTIAL SPECIAL CONSIDERATIONS

- Property is under contract for sale: may need to deal with both buyer and seller and avoid “interference” claims.
- Release of Liens: Lenders are increasingly combative, may charge a fee, may want a portion of the just compensation....may take forever!
- Option: Optionee may have a compensable interest, depending on terms of the option agreement.
- Conservation Easements: May require special handling or preclude the proposed project.

CONSERVATION EASEMENT: IMPACTS ON VALUE

METRO DEVELOPMENT PROPERTY
(DEVELOPMENT HIGHLY LIKELY)




REMOTE PROPERTY
(DEVELOPMENT UNLIKELY IN THE FORESEEABLE FUTURE)



Identical
Easements

Same impact on
Value???

WHAT IS IN A FIRST WRITTEN OFFER (FWO) PACKAGE?

- The Offer 
- Summary Statement - of the basis of the appraisal (or appraisal, if SFR)
- Right of way map/exhibit
- Signing Instructions and Agreement for Purchase and Sale
- Escrow Instructions
- Preliminary Title Report
- Eminent Domain Brochure

HELPFUL HINTS



A first written offer (“FWO”) package should not be so large as to be intimidating. Chip suggests that it be limited to just the offer letter, summary statement and brochure, lets call this Package A. If a settlement is reached with the property owner, then provide the purchase and sale agreement, signing instructions, W-9 if applicable, and other documents for signature (Package B).



Transactional documents should be as simple as possible to understand. Property owners should not be forced to seek legal counsel after they have agreed to a settlement because of the complexity of Package B.

CONTINGENT OFFERS

- The offer may be conditioned upon the legislative body's ratification of the offer by execution of a contract of acquisition or adoption of a resolution of necessity or both
 - Code of Civil Procedure §7267
- An offer may not be contingent on funding

HOW TO PRESENT THE OFFER

- Send the offer certified mail or FedEx (FedEx provides better receipt information, and owners are more likely to receive a FedEx).
 - Better in most cases to have the offer on Agency letterhead in an Agency envelope.
- Work with title company to ensure that all owners of record as of the most recent assessed tax roll receive the offer
- Typically, with multiple owners, there is a designated point of contact
- Attempt to also present the offer in person

PREPARATION TO MEET WITH PROPERTY OWNER - AGENT'S ROLE

ADDRESS

ENSURE

EXPLAIN (TRANSLATE)

QUESTION

ANSWER

SOLVE

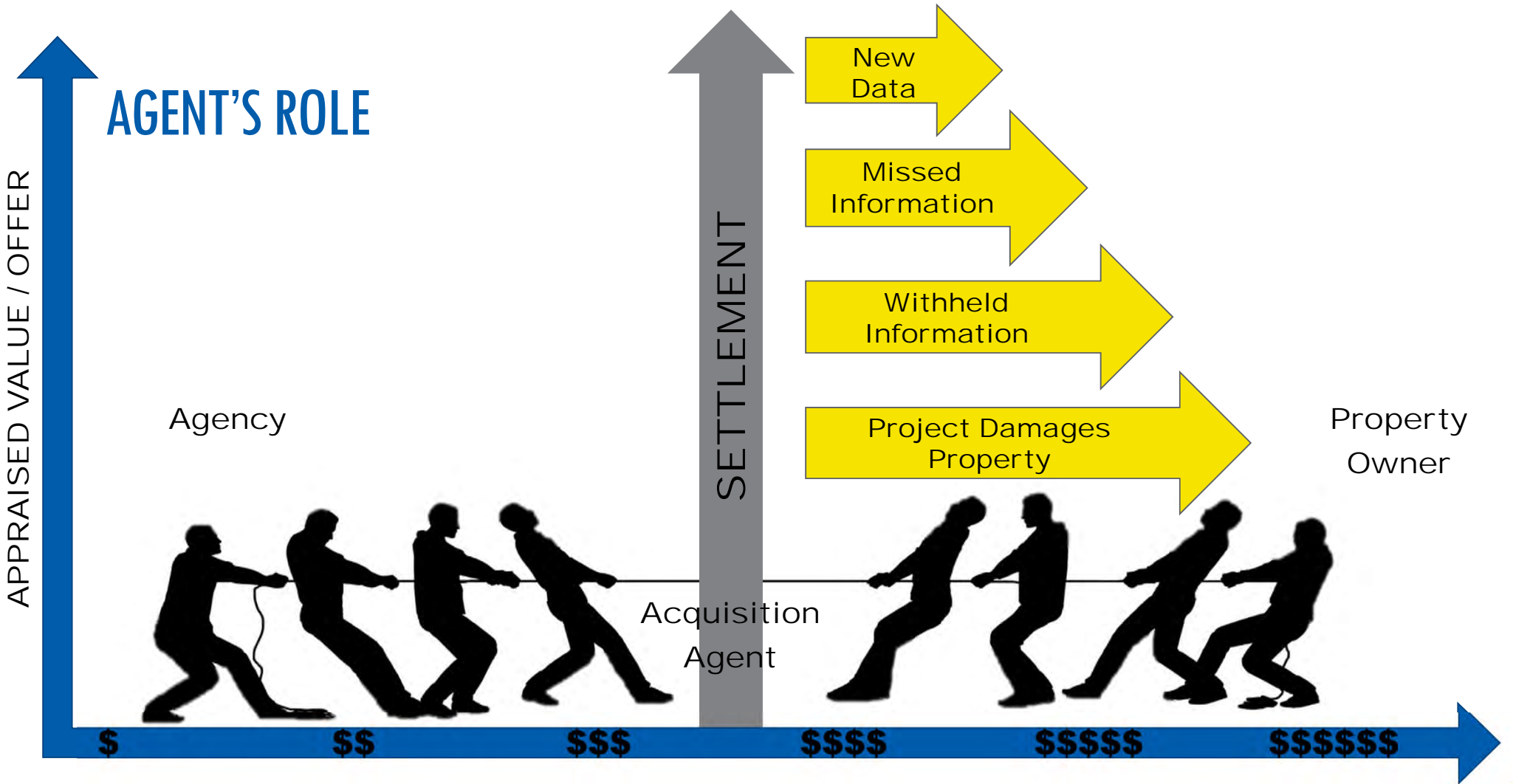
AGENCY

Protect Public Funds /
Tax Payer

OWNER

Maximum Justifiable
Benefit





THE USUAL SUSPECTS: POTENTIAL PROPERTY OWNER PROFILES



The Non-Responsive



The Absent



The Emotional



The Withholding



The Know It All



The Unrealistic



The Unicorn *



The Owner Occupied



The Angry



The Negotiator

* The 1% that is thrilled to see you!

DID ALL OF THE OWNERS RECEIVE THE OFFER?

- Out of country or corporate owners
 - Obtain corporate documentation to find out who can sign
 - Mail to out of country owners
 - Condemn if they cannot be located
 - Notice requirements are more stringent
- Property is part of a Trust
 - Find out who the trustors are and complete a trust certification
- What if the owner can't be found?
 - Mail it to where they get their taxes
 - Search records for the owners
 - Use People Finders, Nexis Lexis, etc.
 - Issue a public notice (put it in the local paper)
 - Condemn if they can not be located and serve by publication

PROPERTY OWNER'S RESPONSE TO THE OFFER

- Sign the offer as presented
- Hire an independent appraiser
- Make a counter-offer
- Ask for redesign
- Do nothing
- Threaten agent
- Hire Rick Friess



If you find the offer acceptable, **please sign and return** the following documents:

- 1) Agreement for Purchase and Sale of Real Property, 2 originals
- 2) Grant Deed – 2 originals
- 3) Escrow Instructions – 2 originals
- 4) Lender Authorization

Pages that require signatures are marked with “Sign Here” tags.

Please note that signatures on the Grant Deed must be acknowledged by a Notary Public.

Bender Rosenthal will provide a Notary at your request who will meet with you at your convenience.

CALIFORNIA CODE OF CIVIL PROCEDURE § 1263.025 (APPRAISAL REIMBURSEMENT)

- (a) A public entity shall offer to pay the reasonable costs, not to exceed five thousand dollars (\$5,000), of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, at the time the public entity makes the offer to purchase the property. The independent appraisal shall be conducted by an appraiser licensed by the Office of Real Estate Appraisers.
- (b) For purposes of this section, an offer to purchase a property “under a threat of eminent domain” is an offer to purchase a property pursuant to any of the following:
 - (1) Eminent domain.
 - (2) Following adoption of a resolution of necessity for the property pursuant to [Section 1240.040](#) .
 - (3) Following a statement that the public entity may take the property by eminent domain.
- **NOTE: No requirement to provide a copy of the appraisal.**

IS THE SETTLEMENT JUSTIFIABLE?

- Full Acquisition
 - Difference of opinions in value
- Partial Acquisition
 - Difference of opinions in value
 - Difference of opinions of the potential impacts
 - Damages to the remainder
 - Cost of curative work

PROPERTY AS SEEN BY THE OWNER



OWNER'S OPINION OF AGENCY'S OFFER



PROPERTY AS SEEN BY THE OWNER'S ATTORNEY

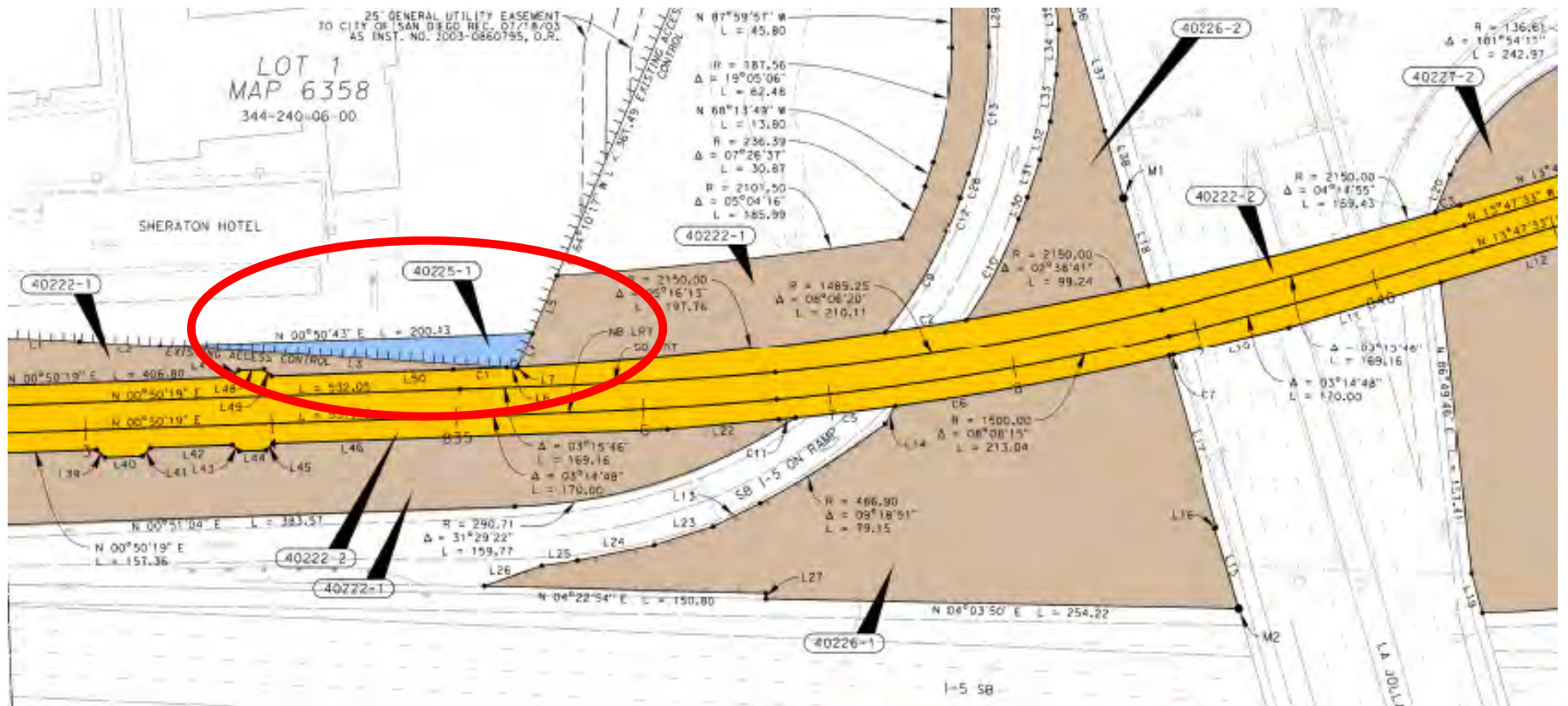


POTENTIAL IMPACTS - SHERATON HOTEL - LA JOLLA

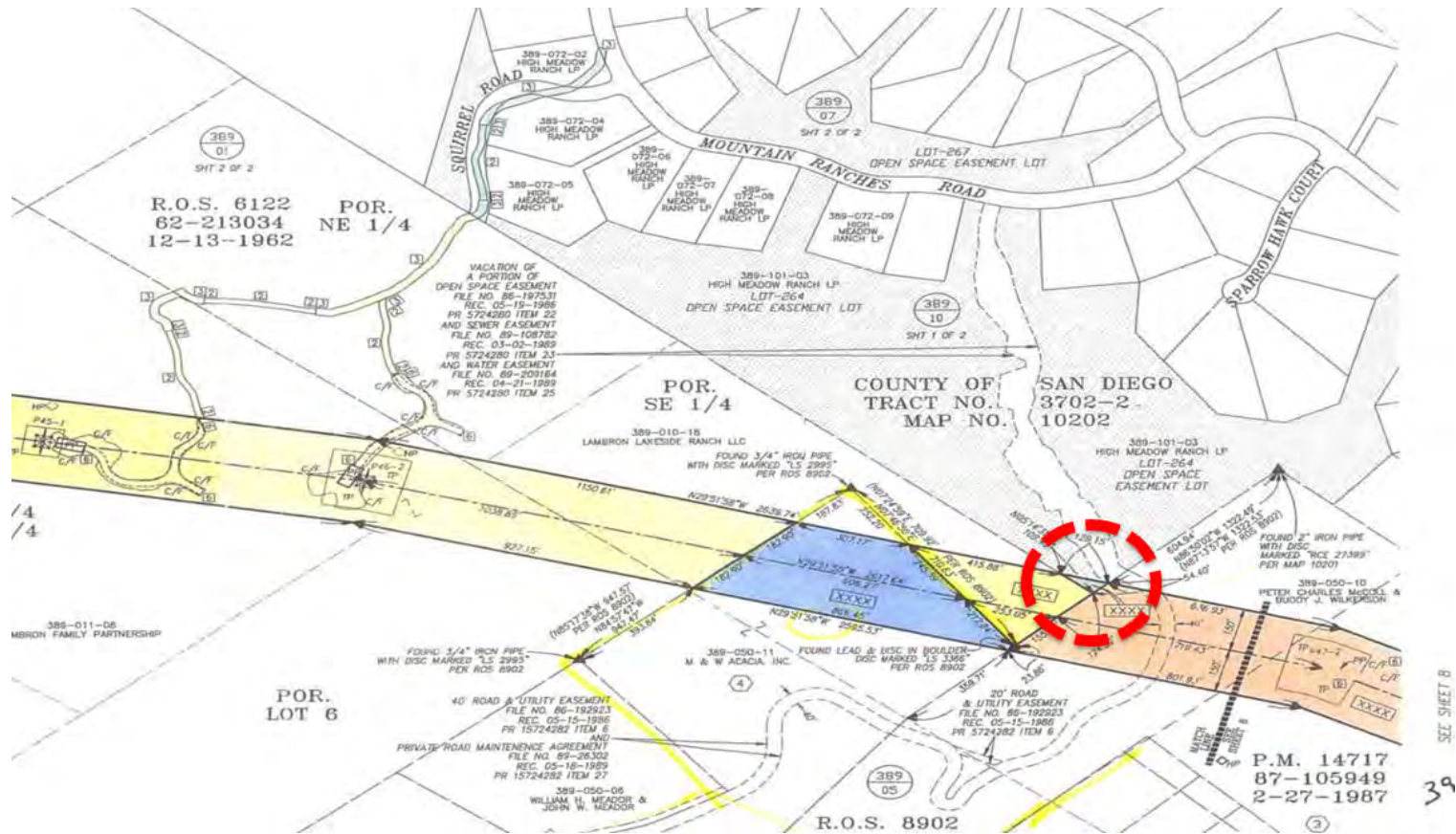


AFFECTED ROOMS

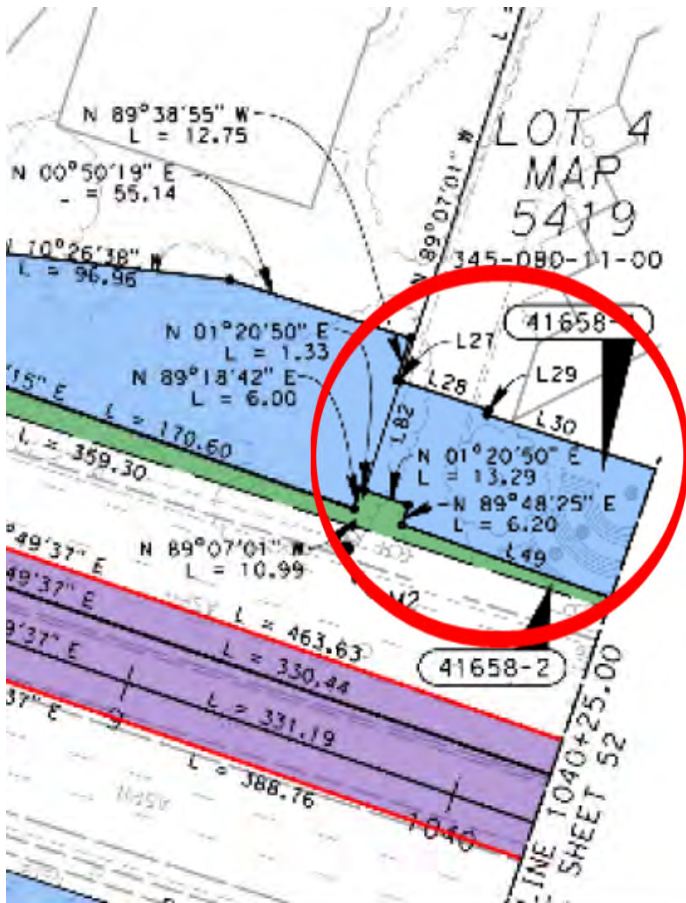
TEMPORARY CONSTRUCTION EASEMENT



POTENTIAL IMPACTS

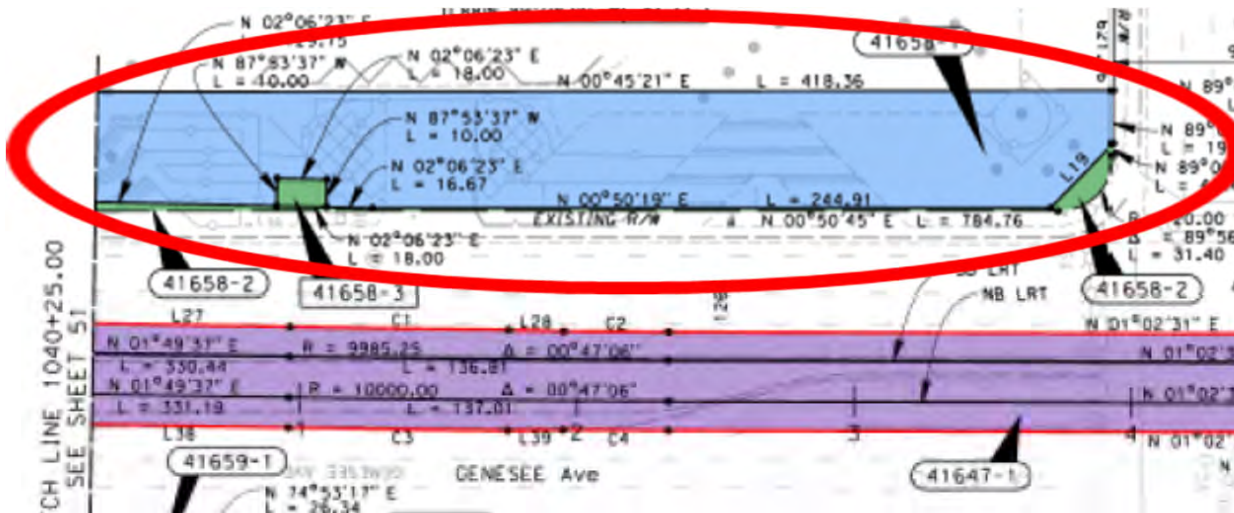


DAMAGES TO THE REMAINDER - GENESEE PLAZA - SAN DIEGO



**PUBLIC STREET EASEMENT ACQUISITION -
1,087 SF. 0.67% OF TOTAL**

DAMAGES TO THE REMAINDER - GENESEE PLAZA - SAN DIEGO



Damages: noise, views, exposure, construction impacts, and station proximity.

Item	Total
Larger Parcel	3.73± acres (162,488± SF)
Permanent Easement	0.02± Acres (1,087± SF)
Remainder Parcel	3.73± acres (162,488± SF)
Temporary Construction Easement	0.41± Acres (18,071± SF)

COST OF CURATIVE WORK



IMPACTS OF PROJECT DESIGN CHANGES ON OFFER / CONDEMNATION

- Careful in offering to change project design to accommodate property owners requests.
 - Could impact a “right to take” challenge
 - If changes are made and owner does not accept, revert to original offer in condemnation
 - Never put anything in writing to suggest that there may be other alternatives in design that would not require acquisition of a property

SO, WHAT'S NEXT?

- Advise the agency to accept, reject, or modify the counter-offer
 - Accept the counter-offer - Administrative Settlement
 - Reject the counter-offer - Begin Condemnation
- Agency Considerations
 - Timeline for the project
 - Funding / Budget



CONDEMNATION TIMELINE

<u>Step</u>	<u>Days</u>
Notice of Intent to Appraise	0
Appraisal & Appraisal Review (not usually required for utilities)	60
Written Offer	10 (Day 70)
Negotiations	60 (Day 130)
File Condemnation Action	10 (Day 140)
File & Serve Motion for Possession	20 (Day 160)
Hearing on Motion for Possession (Relocation?)	180 (Day 340)
Effective Date of Order of Possession	35 (Day 375 – 12+ months)

KEYS TO A SUCCESSFUL OFFER

- Constant and open communication with both the property owner and the agency
- Exercise empathy and gain trust
- Be prepared for unexpected changes
- Practice consistent messaging throughout the offer process – Neighbors talk



BRI

**BENDER
ROSENTHAL
INCORPORATED**

QUESTIONS?

BRI