



**Appraisal
Institute®**

*Professionals Providing
Real Estate Solutions*

PROJECT CONSTRUCTION CHANGES

David W. Skinner, Eminent Domain Attorney
Meyers Nave

November 9, 2017

**A real estate appraiser has just arrived at court
to testify in an eminent domain trial.**

**While waiting outside, the appraiser received
an email from the attorney.**

**The appraiser is told that the project (or
certain construction details about the project)
have changed.**

What is the appraiser's reaction?



WHY THE ANXIETY ABOUT POTENTIAL CHANGES TO THE PROJECT?

When talking about “changes,” we need to distinguish between:

- **Changes to “the project;” and**
- **Changes to “the take area.”**

Rules for Changes to the Take Area

In order for a public entity to “add to” the property taken, it generally must adopt a new resolution of necessity.

(Code of Civil Procedure Section 1250.340(b).)

In order for a public entity to “decrease” the property sought to be taken, it generally must:

- 1. File a motion to amend the complaint in eminent domain (Code of Civil Procedure Section 1250.340(c)); and**
- 2. Comply with the requirements for a “partial abandonment” (Code of Civil Procedure Section 1268.510)**

**But, changes to the project are a
different story ...**

Appraisers' top concerns when there are changes to the project.

- And, whether they are “fact” or “fiction”?



- 1. For purposes of a “full take,” I am generally required to disregard the influence of “the project.”**
 - Therefore, I need to get the project right.**

- **Fact or fiction?**

2. Fair market value must be determined as of a specific “date of valuation.”

Therefore:

- I am limited to what a seller and buyer would reasonably believe the project is as of that date; and**
- I cannot consider post-date of valuation information about “the project.”**

- **Fact or fiction?**

- 3. For purposes of determining “severance damages” and “benefits” to the “remainder” parcel in the “after condition,” I must consider “the construction and use of the project ... in the manner proposed by the plaintiff.”**

- **Fact or fiction?**

4. In considering “the construction and use of the project ... in the manner proposed by the plaintiff,” the following principles apply:

- a. A real estate appraiser cannot engage in undue “speculation.”**

- **Fact or fiction?**

- b. A description of “the construction and use of the project .. in the manner proposed by the plaintiff” is limited to, and cannot contradict, the resolution of necessity (“RON”) and/or complaint in eminent domain.**

- **Fact or fiction?**

- c. An eminent domain trial is a landowner's "last chance" to obtain compensation for the taking of his/her property.**

- **Fact or fiction?**

d. Therefore, in considering the potential impact of the construction and use of the project in the manner proposed by the plaintiff on the remainder parcel, I must assume the “most injurious use.”

- **Fact or fiction?**

HOW TO REDUCE ANXIETY ABOUT PROJECT CHANGES



**FIRST: We need to acknowledge
that many public projects are
getting larger and more complex.**

Examples: Article from the June 9, 2017 “Business Insider,” entitled “19 giant infrastructure projects that could reshape the world”



Completed in 2011, China's Jiaozhou Bay Bridge is the world's longest cross-sea bridge, stretching nearly 26 miles — almost the length of a marathon. It cut travel time in half for people going between east China and the island of Huangdao.



The Hong Kong-Zhuhai-Macau Bridge project will link three cities in China's Pearl River Delta — creating one mega-city of 42 million people — when it's completed in 2017.



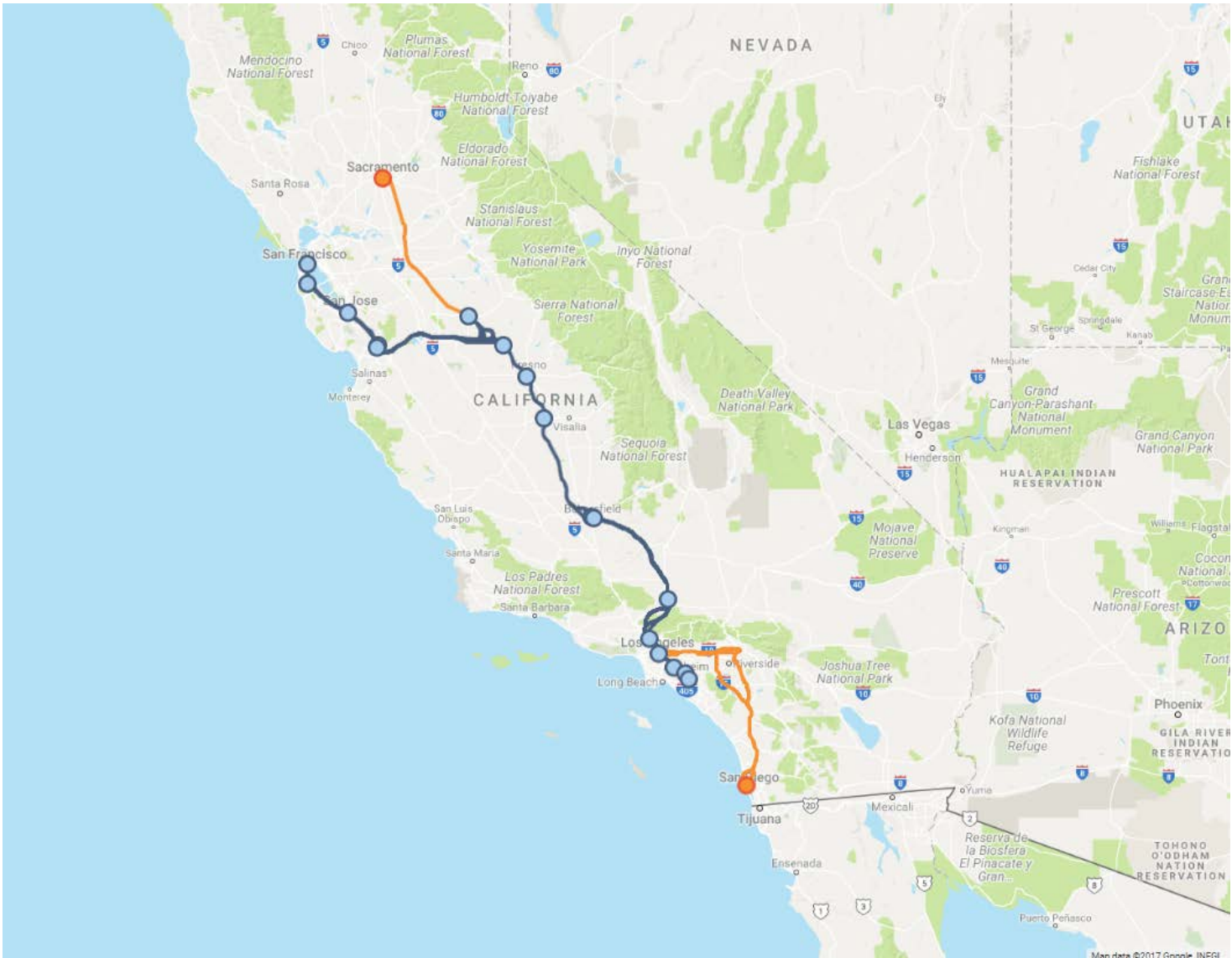
The Riyadh Metro, Saudi Arabia's new \$23.5 billion rail line will boast a station designed by Zaha Hadid. Its 109 miles of railway will revolutionize how residents of Riyadh get around. It's set to begin operation by 2019.



In July of 2016, Norway announced plans to spend a reported \$25 billion on a fully submerged, floating tunnel beneath the Sognefjord, a body of water more than 4,000 feet deep and 3,000 feet wide. It would be the first of its kind in the world.



What about California High Speed Rail?





SECOND: We need to anticipate potential modifications to construction details on large infrastructure projects.

For purposes of eminent domain in California, the appraiser's question should not be not be: "Please, there won't be any construction changes, right?"

Rather, the question should be: “If construction changes are a possibility, what is *the plan* to address them?”



THIRD: If there is a change in the project (or in construction details), understand where you are in the appraisal process.

- **There is an initial appraisal for purposes of the public entity's Government Code Section 7267.2 offer, and for purposes of making a deposit of probable just compensation (to obtain an order for prejudgment possession) has already been completed.**

- **Then, if the case does not settle, there is an exchange of lists of expert witnesses and statements of valuation data which occurs (if no agreement or court order on a different date) 90 days before trial.**

- **Then, the expert depositions are set.**

- **But, with design-build contracts, certain specific and technical details of a Project's design and construction may not be known until after the exchange or even after the depositions.**

- **So, if the attorney tells you some construction details have changed just before you walk into court to testify, what do you do?**

- **Punch the attorney?**
- **Self-medicate?**

FOURTH: Remember what you have relied upon for your project description.

- 1. Review the project description in the environmental review document.**

- 2. In addition to the RON, review the staff report supporting the RON, and any presentation about the project at the hearing on the RON.**

3. Information of construction timing and impacts:

- a. Construction contract**
- b. Construction plans and specifications**
- c. Details from project manager/engineer**
- d. Deposition of “person most qualified” or “person most knowledgeable”**

FIFTH: Keep in mind: By operation of law, the project description cannot significantly change from that described in the environmental review document.

- **So, any changes in the “construction and use” of the project *should* be relatively minor.**

SIXTH: If you do not feel comfortable with the new information on changes in the construction plans, or if you need more time to consider them, ask the attorney for additional time to amend your statement of valuation under Code of Civil Procedure Section 1258.270.



**The only way to make sense out
of change is to plunge into it,
move with it, and join the dance.**

Alan Watts