HIGHWAY TRAFFIC NOISE LAWSUIT AGAINST THE STATE OF CALIFORNIA

A LESSON ON THE IMPORTANCE OF GOOD WRITING IN NOISE STUDY REPORTS AND ENVIRONMENTAL DOCUMENTS

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BACKGROUND

- B.S. Civil Engineering
- P.E. Civil Engineering, California
- P.E. Acoustical Engineering, Oregon
- INCE, Bd. Cert.
- >25 years of experience
- >10 years of experience working directly with Caltrans HQ noise staff.

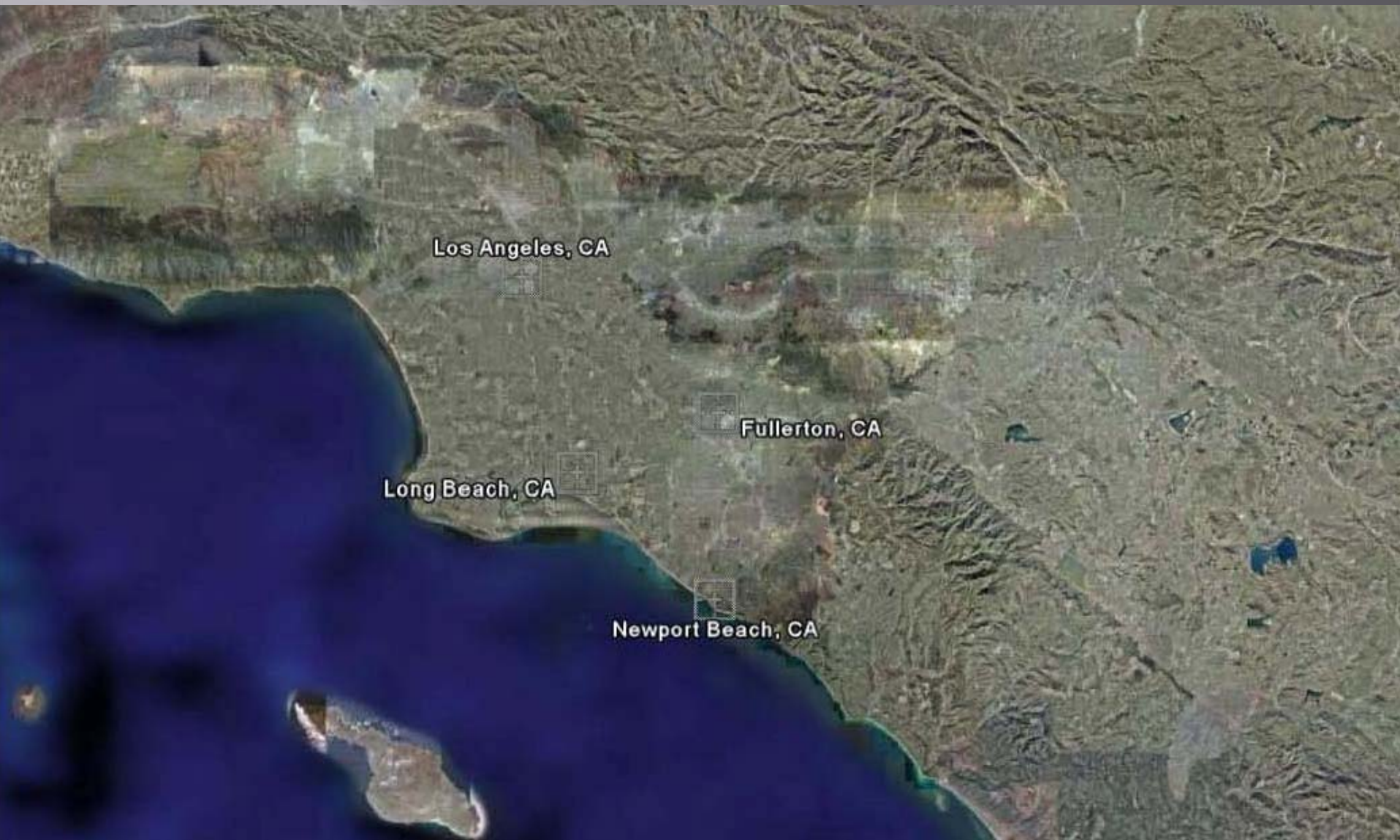
OVERVIEW

- Inverse condemnation
- Site location and conditions
- Caltrans projects in the area
- Timeline
- Plaintiff claims
- Highway traffic noise abatement and mitigation
- Trial
- Jury verdict

INVERSE CONDEMNATION

- Inverse condemnation:
  - a situation in which the government takes private property but fails to pay the just compensation required by the Constitution.
  - The land owner must sue the government.
  - The land owner is the plaintiff and that is why the action is called *inverse* - the order of parties is reversed.
  - As compared to *direct* condemnation where the government is the plaintiff who sues a land owner to take his property.

SITE LOCATION



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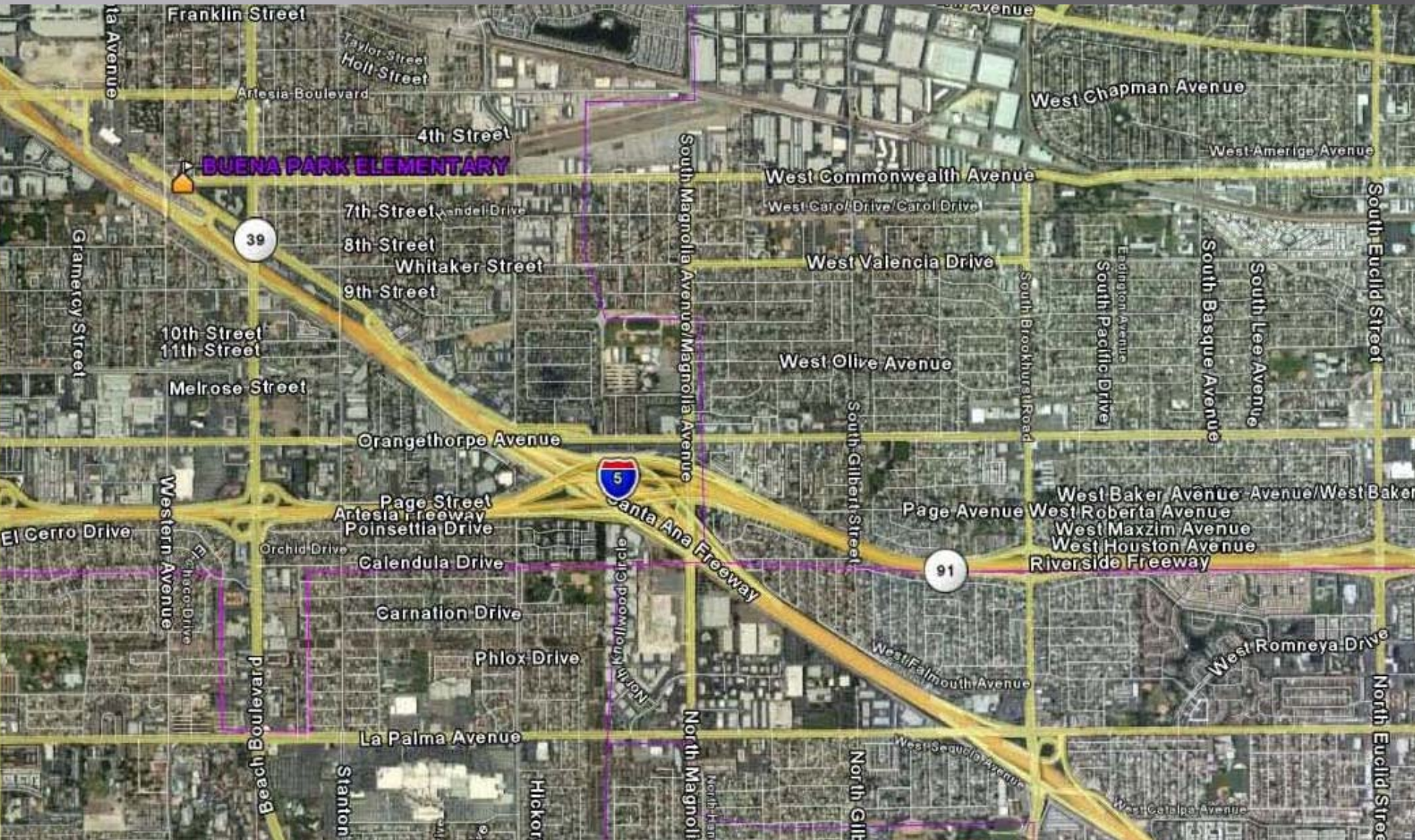

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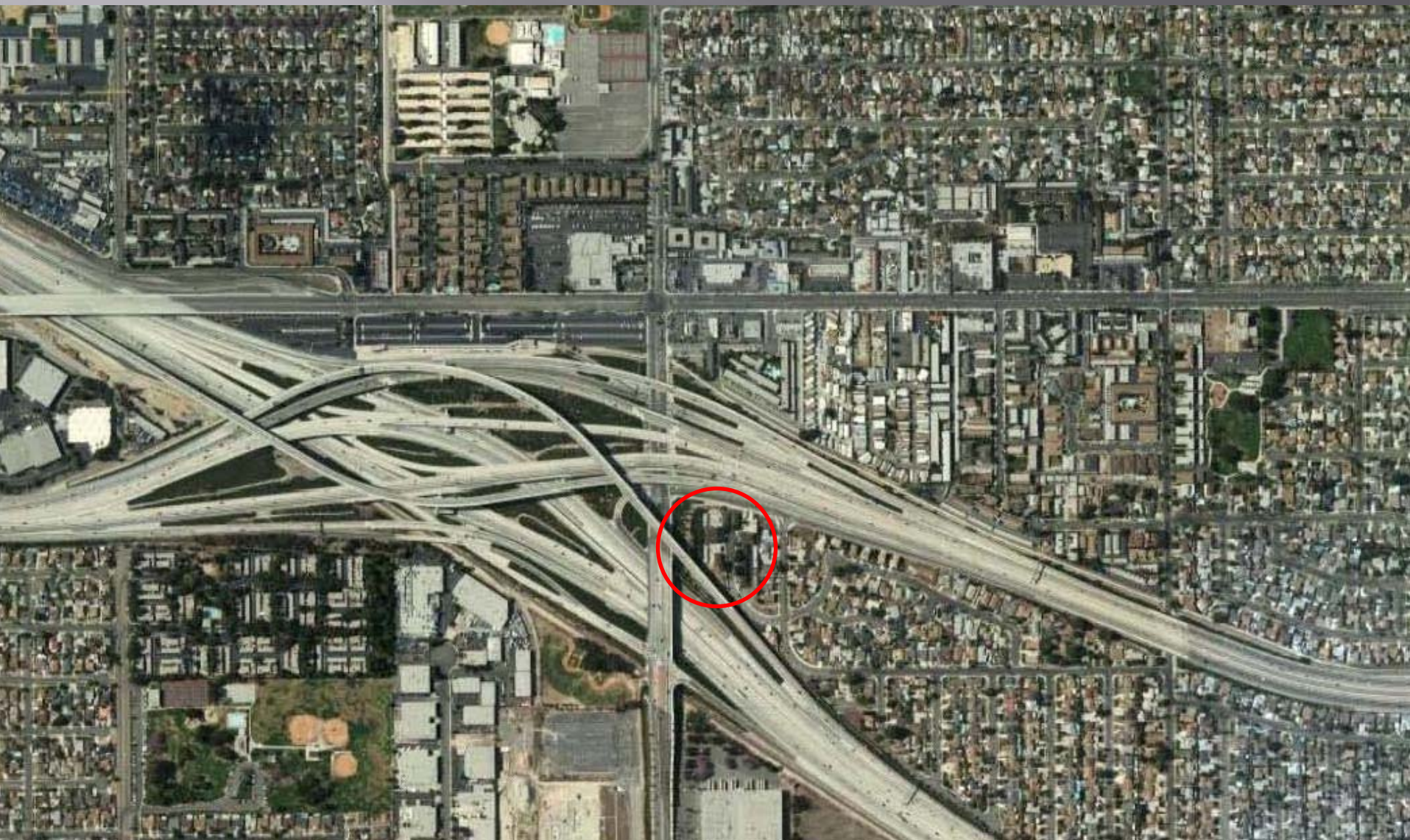

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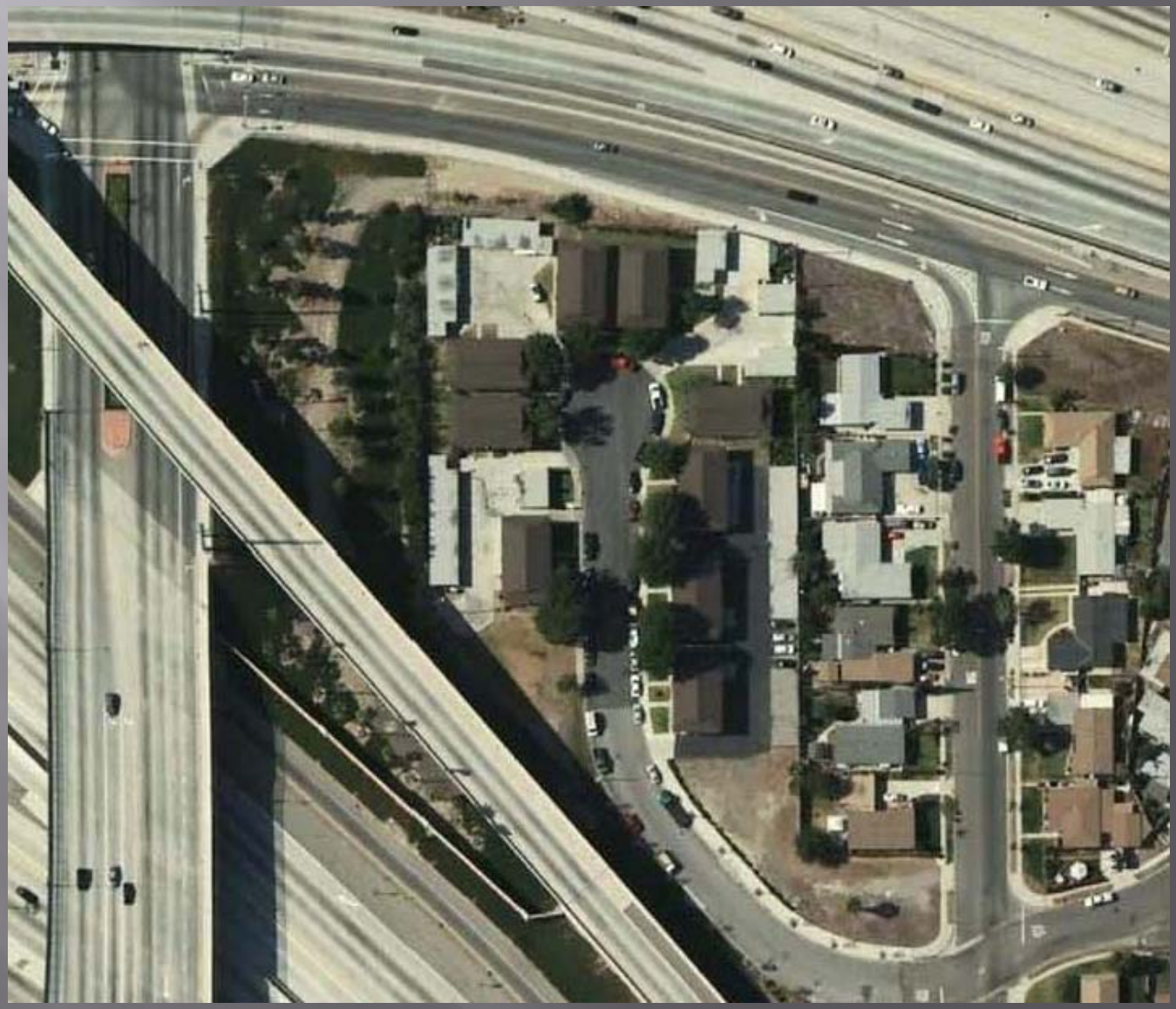

PROJECTS

- Widening of I-5 from SR22 to SR91
- SR91 retrofit sound wall project
- I-5/SR91 Interchange Improvement Project
- SR-91 HOV Project

TIMELINE

- I-5 Widening Project:
  - November 1988: Noise Study Report
  - May 1991: Final EIR/EIS
- SR-91 Soundwall Retrofit Project
  - June 1991: Noise Study Report and Project Report
- I-5/SR-91 Interchange Improvement Project
  - February 1993: Noise Study Report
  - March 1993: ND/FONSI
  - February 1996: NEPA Environmental re-evaluation
- SR-91 HOV Project
  - December 1991: Noise Study Report
  - April 1992: ND/FONSI

TIMELINE

- SR-91 Soundwall Retrofit Project and SR-91 HOV Project constructed in late 1990's

- Property was acquired from the owner of the apartment complex for the I-5 projects in 1997.

- I-5/SR-91 Interchange Improvement Project and I-5 Widening Project opened in December 2001

TIMELINE

- Inverse condemnation lawsuit filed by apartment complex owner in October 2005

- Site specific noise study conducted to measure current noise levels and determine if any additional noise abatement is reasonable and feasible, September 2006.

- Retained as expert witness in January 2007

- Jury trial and verdict in April 2007

PLAINTIFF CLAIMS

- As part of the acquisition agreement the State documented the physical conditions that would exist after construction of the project.

- The property owner used this information to evaluate the adequacy of the acquisition agreement and payment.

PLAINTIFF CLAIMS

- The plaintiff claimed that the noise conditions on the project site after construction of the interchange improvements were not what they expected based on information provided by the State.

- The plaintiff claimed that noise should have been reduced to less than 67 dBA

- Plaintiff was seeking 1.7 million dollars in additional payment plus interest and attorneys fees.

HIGHWAY TRAFFIC NOISE ABATEMENT AND CEQA MITIGATION

- Noise barriers are triggered in two ways in California:
  - 23CFR772
  - California Environmental Quality Act (CEQA)

HIGHWAY TRAFFIC NOISE ABATEMENT AND CEQA MITIGATION

- 23CFR772
  - Federal $ = 23CFR772
  - Traffic noise impacts occur if:
    - predicted noise level in the design year approaches or exceeds noise abatement criteria (NAC)
    - Predicted design year noise level substantially exceed existing noise levels.
  - If a traffic noise impact is predicted noise abatement must be "considered"
  - Noise abatement that is reasonable and feasible and is *likely* to be incorporated into the project must be identified before adoption of the final EIS or FONSI

HIGHWAY TRAFFIC NOISE ABATEMENT AND CEQA MITIGATION

- Key points regarding 23CFR772:
  - NAC are NOT design goals or post project performance standards
  - There is no requirement to reduce noise below the NAC
  - "When noise abatement measures are being considered, every reasonable effort shall be made to obtain substantial noise reductions"
  - In California the goal is to reduce noise by 5 dB. (This not a post-project performance standard but rather is a design goal)

HIGHWAY TRAFFIC NOISE ABATEMENT AND CEQA MITIGATION

- CEQA
  - "Significant " noise impacts must be identified
  - "Significant" means a substantial adverse change in physical conditions within the area affected by the project
  - If mitigation is "feasible" it must be identified in the environmental document and implemented.

HIGHWAY TRAFFIC NOISE ABATEMENT AND CEQA MITIGATION

- CEQA
  - If mitigation is not “feasible” the lead agency must adopt of “statement of the overriding considerations” stating why the benefits of the project outweigh the “significant and unavoidable” impact.
  - CEQA requires that implementation of mitigation be monitored but it does not require post project performance verification.

HIGHWAY TRAFFIC NOISE ABATEMENT AND CEQA MITIGATION

23CFR772 → noise barrier = abatement

CEQA → noise barrier = mitigation

PLAINTIFF EVIDENCE

- Statements in the noise study report and environmental documentation:

  "All sensitive receptors adjacent to the freeway will exceed the federal noise abatement criterion. With implementation of the recommended noise barriers, all future noise levels will be within the FHWA noise abatement criterion at sensitive receptors"

  "All sensitive receptors will exceed federal noise abatement criteria. However, with mitigation all levels will be within the federal criteria"

PLAINTIFF EVIDENCE

- Statements in the environmental documentation:

"To satisfy noise abatement criteria in the area where the noise level will exceed the acceptable Federal noise criteria of 67 dBA, primary 8 to 14 foot soundwalls will be constructed along the right-of-way"

"Caltrans has committed to constructing noise barriers to mitigate the future noise levels for noise sensitive land uses to below the federal noise abatement criteria"

NOISE BARRIERS CONSTRUCTED

NOISE LEVELS IN 2006

- Noise levels in 2006 were in the range of 66 to 73 dBA-Leq (h) on the apartment complex site.

CALTRANS DEFENSE

- Caltrans complied with all applicable laws and regulations.

- All feasible and reasonable sound walls were constructed.

- Acknowledged that writing in the environmental documentation was less than desirable. However, less than desirable writing does not change the states obligations under Federal and State laws and regulations.

- There was no requirement for noise levels to be reduced to below 67 dBA.

TRIAL

- Both sides presented noise and real estate expert witnesses.

- Plaintiff attempted to show that rents and occupancy were lower at their complex than other comparable facilities because of noise.

- Attempted to demonstrate that the State was obligated to reduce noise to less then 67 dBA.

TRIAL

- The judge determines liability for inverse condemnation.

- The jury determines the damage amount if the judge determines liability.

TRIAL

- Trial took about 2 weeks.

- The judge found that that state was liable for inverse condemnation (i.e. that damages and a taking of property occurred as a result of noise.)

- Judge said it was a “very close call.”

- The jury deliberated for 2 days and determined that the state should pay damages in the amount of:

DAMAGE AMOUNT

$0.00

POST TRIAL JURY COMMENTS

- The jury did not find the plaintiffs real estate appraiser to be credible and did not believe the claim that rents and occupancy were lower because of noise.

PLAINTIFF EXPENSES

- The plaintiffs expended in excess of $400,000 to prosecute the case.

SUGGESTED WRITING IMPROVEMENTS

"All sensitive receptors adjacent to the freeway will exceed the federal noise abatement criterion. With implementation of the recommended noise barriers, all future noise levels will be within the FHWA noise abatement criterion at sensitive receptors"

"All sensitive receptors will exceed federal noise abatement criteria. However, with mitigation all levels will be within the federal criteria"

- Activity Category B land uses adjacent to the project site are predicted to be exposed to traffic noise levels in the design year that approach or exceed the NAC.
- Traffic noise impacts are therefore predicted to occur at these locations. In accordance with 23CFR772 noise abatement has been considered.
- Several noise barrier configurations have been identified that are predicted to reduce noise by at least 5 dB.
- Before adoption of the final environmental document noise abatement that is reasonable and feasible and likely to be incorporated into the project design will be identified.
- During the final design changes in project conditions may result in the modification or elimination of the proposed noise abatement.

QUESTIONS?