



# County of El Dorado

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## Legislation Details (With Text)

**File #:** 12-1568      **Version:** 1

**Type:** Agenda Item      **Status:** Approved

**File created:** 12/20/2012      **In control:** Board of Supervisors

**On agenda:** 1/4/2013      **Final action:** 1/4/2013

**Title:** Department of Transportation recommending the Board conduct a Hearing to consider adoption of the Resolution of Necessity 001-2013 authorizing the commencement of eminent domain proceedings to acquire a portion of Assessor Parcel No. 122-720-09 from EDH 52, a California General Partnership needed for the construction of the proposed U.S. 50/Silva Valley Parkway Interchange - Phase 1 Project, CIP No. 71328 on State Highway Route 50, finding that:

- 1) The Public interest and necessity require the proposed Project;
- 2) The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- 3) The property sought to be acquired is necessary for the Project;
- 4) The offer required by Section 7267.2 of the Government Code has been made to the owner of record; and
- 5) Authorizing outside Counsel; Meyers, Nave, with cooperation as needed from County Counsel, to proceed with the necessary steps to acquire the required property. (4/5 Vote Required)

**FUNDING:** El Dorado Hills Traffic Impact Mitigation Fees - Silva Valley Interchange Set Aside Fund.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. A - Draft CRS 1-4-13.pdf, 2. B - Resolution of Necessity 1-4-13.pdf, 3. C - Exhibit A 1-4-13, 4. D - Revised Resolution of Necessity 1-4-13 (1).pdf, 5. E - BOS Item letter 1-2-13 (1).pdf, 6. F - SVIC Resolution of Necessity Presentation 1-4-13 r1.pdf, 7. Fully executed Resolution 001-2013.pdf

Date	Ver.	Action By	Action	Result
1/4/2013	1	Board of Supervisors	Approved	Pass

Department of Transportation recommending the Board conduct a Hearing to consider adoption of the Resolution of Necessity **001-2013** authorizing the commencement of eminent domain proceedings to acquire a portion of Assessor Parcel No. 122-720-09 from EDH 52, a California General Partnership needed for the construction of the proposed U.S. 50/Silva Valley Parkway Interchange - Phase 1 Project, CIP No. 71328 on State Highway Route 50, finding that:

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**Fiscal Impact/Change to Net County Cost**

There is no fiscal impact associated with this agenda item. There is no change to net County Cost.

## Background

The County is proposing to construct the U.S. 50/Silva Valley Parkway Interchange - Phase 1 Project (Project) on U.S. Highway 50 between the El Dorado Hills Boulevard/Latrobe Road Interchange and the Bass Lake Road Interchange near the existing Clarksville Road undercrossing (e.g. existing Silva Valley Parkway) within the County. The Project will include a six-lane overcrossing (four through lanes and two deceleration lanes to the loop on-ramps), new signalized diagonal off-ramps, diagonal on-ramps, and loop on-ramps. The mainline will be improved to include east and west auxiliary lanes between El Dorado Hills Boulevard and the new Interchange. The Project includes the following improvements:

1. A partial cloverleaf with loop on-ramps in the northeast and southwest quadrants and diagonal on-ramps and off-ramps in each direction of travel on the freeway;
2. Continuous auxiliary lanes between El Dorado Hills Boulevard and the Silva Valley Parkway Interchange connecting the on-ramps with off-ramps;
3. An auxiliary lane at the eastbound diagonal on-ramp and westbound diagonal off-ramp;
4. An overcrossing structure providing four lanes for through traffic on Silva Valley Parkway in addition to deceleration lanes for loop on-ramps and turn pockets at the intersections;
5. The existing Tong Road north of the freeway will be relocated to provide access to the parcels in the northeast quadrant and connect to Silva Valley Parkway;
6. On-ramps will accommodate future ramp metering, HOV lanes and California Highway Patrol enforcement areas; and
7. Safety lighting and signs, signalization of intersections, and Class II bicycle facilities will be constructed and connected to the existing bike path on Silva Valley Parkway.

The Project will be conducted in two phases. Phase 1 will include the majority of the Project improvements with the exception of the eastbound diagonal on-ramp and the westbound loop on-ramp. These ramps will be constructed in Phase 2, which is anticipated to begin construction after 2020. Phase 2 is expected to be operational by year 2030. The Project is necessary to accommodate planned growth as noted in the County's General Plan and to accommodate commercial and residential development of the areas surrounding the Project.

The real property proposed for acquisition consists of portions of unimproved real property identified as Assessor's Parcel Number 122-720-09, and is more particularly described and depicted in Exhibit "A", located within El Dorado County consisting of 381,990 square feet (8.77 ± acres) in fee, and 31,237 square feet (1.46 acres ±) in easement (slope and drainage) plus 31,237 square feet in fee as an uneconomic remnant (collectively referred to herein as the "Subject Property"). The Subject Property is owned by EDH 52, a California general partnership whose general partner is Angelo K. Tsakopoulos.

Several alternatives for the Project were studied in the environmental process including a No Build Alternative. It was determined that the Subject Property is best suitable and necessary for the Project, will result in a maximum benefit to the Project, at the most reasonable cost, and with the least interference as possible to private property rights, and that there is no other reasonable, permissible location configured for the Project.

Although Angelo K. Tsakopoulos is also associated with West Valley, LLC, the entity responsible for advance funding any shortfall between the Project cost and the Silva Valley Parkway Interchange Set-Aside Account, EDH 52 and West Valley, LLC are separate legal entities, and communications regarding this proposed acquisition have been directed to EDH 52. Communications with representatives of EDH 52 began in March, 2012 and have continued with EDH 52 and their counsel, Robert Holderness through the present.

The County's appraisal consultant Seevers, Jordan & Ziegenmeyer has appraised the proposed fee, easement, and uneconomic remnant acquisition at a cumulative total of \$468,600. This appraised value was approved by the Board and the County made an offer in the full amount of the approved appraisal on May 15, 2012. After several months of discussions and communications, a settlement was not reached and the County must now move forward with the proposed Resolution of Necessity in order to commence eminent domain proceedings. A copy of the offer package to the record owner (s) is incorporated herein by reference and is available for review by the Board.

On December 17, 2012 Department of Transportation (Department) staff, Caltrans representatives, and outside Counsel met with EDH 52 representatives including their legal counsel to discuss any concerns they may have regarding the Project design related to their property. Ownership representatives expressed significant concern regarding impact to their property. The Department does not agree with the ownership's assessment of the Project impacts to the property; however, the Department will consider their requests in the final Project design and respond on a point by point basis. In the meeting, Ownership representatives confirmed they support the Project but want any potential damages to their property minimized. As damages are a compensation issue, which is to be addressed outside of the consideration of this Resolution of Necessity item, the Department believes these concerns can be addressed at a later date should the Board concur.

### CEQA COMPLIANCE

The requirements of the California Environmental Quality Act have been met. In 1989, a Draft Environmental Impact Report (EIR) was prepared. In 1990, a Final EIR was completed. In 1991 the Board certified an EIR for the Project. Subsequent to that action, on June 14, 2011, the Board certified the Supplemental EIR for the Project, consisting of the Draft Supplemental EIR dated January 2011, Revised Draft Supplemental EIR dated May 9, 2011, and the Final Supplemental EIR dated June 2011; found the information in the Supplemental EIR adequate to approve the Project and reflective of the independent judgment and analysis of the Board; adopted the Findings of Fact and Statements of Overriding Consideration Related to the Certification of the Supplemental EIR for the Project June 2011; and adopted the Mitigation Monitoring and Reporting Plan. All the aforementioned environmental documents are incorporated herein by reference and are on file at the Board Clerk's office for this agenda item. The preliminary Engineering drawings and preliminary construction documents for the Project are also available to the Board for its review.

### STAUTORY AUTHORIZATION FOR EXERCISE OF EMINENT DOMAIN

Streets and Highways Code Section 116 authorizes Caltrans to delegate to a county any part of the powers and jurisdiction vested by law in the Department inclusive of the power of eminent domain with respect to any portion of the State Highway System within that county, and Caltrans has delegated to the County of El Dorado Caltrans' power and authority to hear all Resolutions of Necessity to condemn rights-of-way should negotiations for the real property acquisitions necessary for the Project prove unsuccessful. In addition, the County is vested with the power of eminent domain by virtue of Article 1, Section 19 of the Constitution of the State of California, Government Code Section 25350.5 which authorizes the Board to exercise the powers of eminent domain necessary to carry out any of the powers and functions of the County, and by virtue of California Code of Civil Procedure Sections 1240.050, 1240.110, 1240.120, 1240.125, 1240.150, 1240.410, and 1240.610 and Streets and Highways Code section 943 which authorize the Board to acquire any property necessary for the use and purposes of county highways. Code of Civil Procedure Section 1240.410 authorizes the County to acquire the portion of the subject Property described as an uneconomic remnant by eminent domain in accordance with that article.

The subject Property is being acquired for a compatible use under Code of Civil Procedure Section 1240.510 in that the County and the State respective Department of Transportations' use of the Subject Property for a highway interchange, road, and related slope and drainage purposes will not interfere with or impair the continued public use as it now exists or may reasonably be expected to exist in the future, and alternatively for a more necessary public use under Code of Civil Procedure Section 1240.610 in that the County and the State respective Department of Transportations' use of the subject Property is a more necessary public use than the use to which the property is appropriated.

Written Notice of this proceeding was given to EDH 52 in accordance with Code of Civil Procedure Section 1245.235, and in accordance with Caltrans policies and procedures. EDH 52 is listed as the property owner on the County's title report, and is listed as the property owner on the County's last equalized roll. Copies of the notice are on file with the Board Clerk's office for this agenda item. EDH 52 was advised of their right to speak at this Hearing on the following matters:

- a. Whether the public interest and necessity require the Project;
- b. Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c. Whether the subject Property is necessary for the Project; and
- d. Whether the offer required by Government Code Section 7267.2 has been made to all owners of record.

### **Reason for Recommendation**

The Board should open the Hearing and take testimony on the aforementioned matters in consideration of adoption of the attached Resolution of Necessity. It should consider all testimony, information, and discussion, exercise its discretion and independent judgment, and if appropriate, make the above findings, and adopt the attached Resolution of Necessity.

### **Action(s) to be taken following Board approval**

1. The Clerk of the Board will obtain the Chair's signature on the Resolution.
2. The Clerk of the Board will forward a copy of the Resolution to the Department for further processing.

**Contact**

Kim Kerr, Interim Director  
Department of Transportation

**Concurrences**