



## Legislation Details (With Text)

**File #:** 20-1373      **Version:** 1

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

**File created:** 10/8/2020      **In control:** Board of Supervisors

**On agenda:** 11/17/2020      **Final action:** 11/17/2020

**Title:** HEARING - Department of Transportation, recommending the Board consider the following:  
 1) Conduct a Hearing to consider adoption of Resolution of Necessity 177-2020 related to the Diamond Springs Parkway Phase 1B Project, CIP 72334/36105011 (Project) authorizing the commencement of eminent domain proceedings to acquire the parcel identified as Assessor Parcel Number 327-270-003, owned by El Dorado County Industrial Development Corporation, Inc., a dissolved California corporation;  
 2) Find, pursuant to California Code of Civil Procedure Section 1245.230, that: a) The public interest and necessity require the proposed Project; b) 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) The Property described in the Resolution of Necessity is necessary for the proposed project; and d) The owner(s) of record could not be located with reasonable diligence, therefore no offer could be made pursuant to Section 7267.2 of the Government Code;  
 3) Adopt Resolution of Necessity 177-2020 (4/5 vote required); and  
 4) Authorize outside Counsel, Meyers-Nave, with cooperation as needed from County Counsel, to proceed with the necessary steps to acquire the required property.

**FUNDING:** Traffic Impact Mitigation Fees (20.4%), Master Circulation and Funding Plan (41.8%), Tribe Funds (18.6%), Road Fund (<1%), and to be determined anticipated grant funds (18.8%). (Local and State Funds)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** . . . . .

Date	Ver.	Action By	Action	Result
11/17/2020	1	Board of Supervisors	Approved	Pass

HEARING - Department of Transportation, recommending the Board consider the following:  
 1) Conduct a Hearing to consider adoption of Resolution of Necessity **177-2020** related to the Diamond Springs Parkway Phase 1B Project, CIP 72334/36105011 (Project) authorizing the commencement of eminent domain proceedings to acquire the parcel identified as Assessor Parcel Number 327-270-003, owned by El Dorado County Industrial Development Corporation, Inc., a dissolved California corporation;  
 2) Find, pursuant to California Code of Civil Procedure Section 1245.230, that: a) The public interest and necessity require the proposed Project; b) 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) The Property described in the Resolution of Necessity is necessary for the proposed project; and d) The owner(s) of record could not be located with reasonable diligence, therefore no offer could be made pursuant to Section 7267.2 of the Government Code;  
 3) Adopt Resolution of Necessity **177-2020** (4/5 vote required); and  
 4) Authorize outside Counsel, Meyers-Nave, with cooperation as needed from County Counsel, to proceed with the necessary steps to acquire the required property.

**FUNDING:** Traffic Impact Mitigation Fees (20.4%), Master Circulation and Funding Plan (41.8%), Tribe Funds (18.6%), Road Fund (<1%), and to be determined anticipated grant funds (18.8%).  
(Local and State Funds)

### **DISCUSSION/BACKGROUND**

The Board of Supervisors (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.

The two-phase Diamond Springs Parkway Project (Project) will provide improved traffic circulation and safety through and around the historic town of Diamond Springs.

Phase 1B will construct a 4-lane minor arterial from a new Missouri Flat Road intersection south of Golden Center Drive to a new intersection at State Route 49 (SR-49) south of Bradley Drive. Phase 1B connects to the SR-49 prior improvements constructed in Phase 1A to create a continuous 4-lane roadway corridor with multimodal features from the intersection at Fowler Lane/SR-49 all the way to U.S. Highway 50. The parkway includes new traffic signals at the intersections of Missouri Flat Road, Throwita Way and SR-49. Multimodal transportation features include Class II bike lanes, sidewalk, and transit bus turnouts on both sides of the parkway. Construction of Phase 1B is anticipated to begin in 2022.

### **The Subject Property**

The real property proposed for acquisition consists of the fee interest in the unimproved real property, Assessor's Parcel Number 327-270-003 as described and depicted in Exhibits "A" and "B" of the Resolution of Necessity, located in El Dorado County and consisting of 33,106 square feet (the "Subject Property"). As identified in a Preliminary Title Report (see Attachment C), ownership of the Subject Property is vested in El Dorado County Industrial Development Corporation, Inc., a dissolved California corporation. Due to the nature and creation of the Subject Property, Placer Title Company was not able to supply the County with a Litigation Guarantee.

Based on an appraisal by an independent real estate appraiser, staff has established \$1,000 as the amount that is believed to be just compensation for the Subject Property. This nominal amount is a minimum assigned to parcels whose value is less than \$1,000. The majority of the Subject Property is encumbered by Depot Road and therefore holds no market value as either an open market sale or as assemblage to an adjoining parcel. The County sent a First Written Offer to the owners of record at the address shown on the County Assessor's Tax Roll; however, the offer was returned as "Undeliverable, unable to forward."

Research has determined that the Subject Property is a portion of the larger parcel which was never properly deeded after its division/sale in the 1960's and 1970's. The corporation was dissolved in 1978 and the County has not been able to locate any of the previous officers of the corporation. In order to proceed with the Project, the County must move forward with an eminent domain action to acquire clear title to the Subject Property.

### **Environmental Review**

The Project is subject to the California Environmental Quality Act (CEQA) and the review and consideration by the Board of the information within the Environmental Impact Report dated May 10,

2011. The Project has been found in compliance with the CEQA requirements and was certified by the Board on May 24, 2011 (Item 39). A Supplemental Environmental Impact Report was approved on May 3, 2016 (Item 23).

### **Statutory Authorization For Exercise Of Eminent Domain**

The acquisition of private property for a public right of way has long been regarded as a "public use" for which the use of eminent domain is justified. 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 County Board to exercise the powers of eminent domain necessary to carry out any of the powers and functions of the County, Streets and Highways Code Section 943 which authorizes the County Board to acquire any property necessary for the use and purposes of county highways, and by virtue of California Code of Civil Procedure Sections 1240.050, 1240.110, 1240.120, 1240.150, 1240.410, 1240.510 and 1240.610.

The acquisition by eminent domain of any portion of the Subject Property constituting an uneconomic remnant is authorized under Code of Civil Procedure Section 1240.410.

The Subject Property is being acquired for a compatible public use under Code of Civil Procedure Sections 1240.510, in that the County's use of the Subject Property 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's 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 has been sent to the owner's address as listed on the Assessor's Tax Roll pursuant to Code of Civil Procedure Section 1245.235.

### **Adoption of the Resolution of Necessity and Findings:**

By adopting the proposed Resolution of Necessity, the Board will authorize the filing of an eminent domain action to acquire the Subject Property. Before adopting the Resolution of Necessity, the Board must make the following findings based on the evidence presented at the hearing:

#### **1. The public interest and necessity require the proposed Project.**

The Project was approved as part of the Master Circulation and Financing Plan in December of 1998 and has been included in the General Plan Transportation and Circulation Element since 2004. Phase 1A, currently under construction, was the first of two phases necessary to complete the entire Project. Phase 1B will include: constructing a new connector road from Missouri Flat Road to SR 49, signalization of three new intersections, necessary changes to turn lane capacity, sidewalk improvements for pedestrian mobility, and construction of a new parking lot adjacent to the El Dorado Trail. These improvements will relieve traffic congestion and provide an acceptable level of service through the Diamond Springs Historic District along with bicycle and pedestrian route connectivity from downtown Diamond Springs to Missouri Flat Road.

#### **2. The proposed project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.**

This Project will not displace or require the relocation of any private property owners on the Subject Property to be acquired in this proceeding. The location of 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.

**3. The property described in the Resolution of Necessity is necessary for the Project.**

The Subject Property is located along the Diamond Springs Parkway alignment and is required for the construction, maintenance and design of the Project.

**4. The Offer required by Section 7267.2 of the Government Code has been made to the owner (s) of record, unless the owner(s) could not be located with reasonable diligence.**

The offer was sent to the owner's address on record with the County Assessor. The offer was returned to sender as "Undeliverable, unable to forward". The Notice of Intent was additionally posted at the Subject Property as well as published via Press Release and noticed in the Mountain Democrat newspaper, as included in Attachment E. However, the owner of the property could not be located.

**ALTERNATIVES**

If eminent domain proceedings do not commence to acquire the necessary right of way for the Project, the Project will not proceed as planned.

**PRIOR BOARD ACTION**

September 14, 2004 (Item 81) - Project adopted as part of the Fiscal Year 2003/04 Interim CIP as project 72334, under former CIP Project name "Missouri Flat Road / Pleasant Valley Road Connector"

February 11, 2008, 08-0038, (Item 14) - Project adopted as part of the 2008 CIP, under the current CIP Project name

May 24, 2011, 11-0448, (Item 39) - Certified Final Environmental Impact Report adopted for the Project

December 18, 2012, 12-1540, (Item 57) - Board approved to support economic development and create special revenue fund and direct Transportation to immediately proceed with completion of design and right of way.

June 10, 2014, 14-0725, (Item 23) - Board approved commencement of acquisition process for the Project

May 3, 2016, 16-0370, (Item 23) - Certified Supplement to the 2011 Environmental Impact Report adopted for the Project

July 23, 2019, 19-1009, (Item 22) - Task Order 461-S1711-01 with Bender Rosenthal, Inc. approved to complete right of way services, including valuations/appraisals, acquisitions, and relocation services for the Project

July 14, 2020, 20-0828, (Item 28) - Board approved continued work on the Project

August 4, 2020, 20-1018, (Item 48) - Transportation authorized to begin right of way negotiations with Seller

**OTHER DEPARTMENT/AGENCY INVOLVEMENT**

Transportation has worked closely with both County Counsel and outside Counsel (Meyers-Nave) on this Resolution of Necessity.

## **CAO RECOMMENDATION**

Approve as recommended.

## **FINANCIAL IMPACT**

There is no change to Net County Cost associated with this item. Funding for the Project is included in Transportation's 2020 CIP, which was approved by the Board on June 9, 2020 (Item 54), and is funded by a combination of Traffic Impact Mitigation Fees (20.4%), Master Circulation and Funding Plan (41.8%), Tribe Funds (18.6%), Road Fund (<1%), and to be determined anticipated grant funds (18.8%). The Project is included in the Fiscal Year 2020-21 Budget.

## **CLERK OF THE BOARD FOLLOW UP ACTIONS**

1. The Clerk of the Board will obtain the Chair's signature on the Resolution of Necessity.
2. The Clerk of the Board will forward a copy of the Resolution of Necessity to Transportation, attention Lindsay Tallman, for further processing.

## **STRATEGIC PLAN COMPONENT**

Infrastructure

## **CONTACT**

Rafael Martinez, Director  
Department of Transportation