County of El Dorado

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Legislation Details (With Text)

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File created:	10/28/2020	**In control:**	Board of Supervisors
On agenda:	2/9/2021	**Final action:**	2/9/2021

Title: HEARING - Department of Transportation recommending the Board consider the following:
1) Reconvene the Public Hearing that was held on January 26, 2021 (Item 20) and make findings 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 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;
2) Adopt Resolution of Necessity 189-2020 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 051-250-011, owned by Martin Murillo and Diane S. Murillo, Trustees of the MDM Trust under Declaration of Trust Dated December 18, 2007 (4/5 vote required); and
3) Authorize outside Counsel, Meyers-Nave, with cooperation as needed from County Counsel, to proceed with the necessary steps to acquire the required property. (Reconvene from 1/26/2021, Item 20)

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: 1. 3A - Resolution Presentation for 02-09-21, 2. 3B - Notice of Intent Letter for 02-09-21, 3. 2A - Revised Resolution Presentation BOS Rcvd 1-21-21, 4. A - Counsel Approval, 5. B - RON + Plats and Legals, 6. C - First Written Offer, 7. D - Notice of Intent Letter, 8. E - Resolution Presentation, 9. E - Revised Resolution Presentation BOS Rcvd 12-7-2020, 10. F - Vicinity Map, 11. Public Comment BOS Rcvd 2-9-2021, 12. Executed Resolution 189-2020

Date	Ver.	Action By	Action	Result
2/9/2021	3	Board of Supervisors	Approved	Pass
1/26/2021	2	Board of Supervisors	Failed	Pass
1/26/2021	2	Board of Supervisors	Continued	Pass
12/8/2020	1	Board of Supervisors	Continued	Pass

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DISCUSSION/BACKGROUND

On January 26, 2021 (Item 20), the Board of Supervisors (Board) held a Public Hearing to take testimony on the aforementioned matters in consideration of adoption of the attached Resolution of Necessity. The Board continued the hearing until February 9, 2021, and directed staff to prepare an additional item on that date addressing the financing of the subject project. The Board should reopen the hearing to take testimony on the aforementioned matters in consideration of adoption of the attached Resolution of Necessity, including any additional testimony and information presented on February 9, 2021. It should consider all testimony, information, and discussion presented at both the January 26, 2021, hearing and today, 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.

Diamond Springs Parkway, previously known as the Missouri Flat/Pleasant Valley Connector, was included as a new road in the 2004 General Plan. Previously in 1997, Transportation presented six conceptual alignments for the Project to the Board for consideration. The Board selected Alternative #3 as the preferred alternative under the condition that it would meet California Department of Transportation (Caltrans) approval. Alternative #3 was a sweeping alignment bisecting several properties that would consequently segment State Route 49 (SR-49). Once formal coordination with the state began, Caltrans requested a modified alignment that did not segment SR-49 in an effort to avoid the process for a new Route Adoption and streamline state approval of the final project. As a result, Transportation proposed the current Alternative #4, which retains the existing SR-49 alignment, following property lines and resulting in less fragmentation of parcels. Caltrans indicated preference for this alignment and the Board approved amending the preferred alignment from Alternative #3 to Alternative #4 in April 2008.

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 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 proposed acquisitions from the improved 1.74 acre real property, identified as Assessor's Parcel Number 051-250-011 (the "Subject Property") and as more particularly described and depicted in the Exhibits to the Resolution as noted, consist of: 26,579 square feet (SF) of Fee Title (Exhibits "1" and "2"); 6,099 SF of Slope and Drainage and Public Utility Easements (Exhibits "3" and "4"); 4,918 SF of Temporary Construction Easement (Exhibit "5"); and monies for site improvements and damages as described in the First Written Offer (Attachment C). As identified in a Title Insurance Litigation Guarantee, ownership of the Subject Property is vested in Martin Murillo and Diane S. Murillo, Trustees of the MDM Trust under Declaration of Trust Dated December 18, 2007.

Based on an appraisal by an independent real estate appraiser, staff has established $118,000 as the amount that is believed to be just compensation for the Subject Property. The County sent a First Written Offer on August 19, 2020 to owners of record at address shown on the County Assessor's Tax Roll. On October 2, 2020, the owner sent in a written counter-offer in the amount of $245,000. The County and the owner have been unable to reach an agreement and negotiations are at an impasse.

On November 5, 2020, in coordination with County Counsel and outside Counsel, Myers-Nave, and as required by law, staff sent Mr. and Mrs. Murillo a Notice of Intent to Adopt [the] Resolution of Necessity. This letter provides notice to property owners of their right to object and appear before the Board.

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 of Supervisors 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 of Supervisors 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 as aforementioned. 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 proposed 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 interests described in the Resolution of Necessity are 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.

ALTERNATIVES
If eminent domain proceedings do not commence to acquire the necessary right of way for the proposed 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 (Item 14) - Project adopted as part of the 2008 CIP, under the current CIP Project name
April 29, 2008 (Item 58) - Board approved “T” alignment (Alternative #4) as the preferred alignment alternative per California Environmental Quality Act
May 24, 2011 (Item 39) - Certified Final Environmental Impact Report adopted for the Project
December 18, 2012 (Item 57) - Board approved to support economic development and create a special revenue fund and direct Transportation to immediately proceed with completion of design and right of way.
June 10, 2014 (Item 23) - Board approved commencement of acquisition process for the Project
May 3, 2016 (Item 23) - Certified Supplement to the 2011 Environmental Impact Report adopted for the Project
July 23, 2019 (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 (Item 28) - Board approved continued work on the Project
August 4, 2020 (Item 48) - Transportation authorized to begin right of way negotiations with Seller
October 20, 2020 (Item 33) - Board reviewed owner’s counter-offer and decided to move forward with eminent domain proceedings

OTHER DEPARTMENT/AGENCY INVOLVEMENT

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

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 to Transportation, attention Lindsay Tallman, for further processing.

STRATEGIC PLAN COMPONENT

Infrastructure

CONTACT

Rafael Martinez, Director
Department of Transportation