County of El Dorado

330 Fair Lane, Building A
Placerville, California
530 621-5390
FAX 622-3645
www.edcgov.us/bos/

Legislation Details (With Text)

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Title: HEARING - Department of Transportation recommending the Board consider the following:
1) Conduct a Hearing to consider adoption of Resolution of Necessity 048-2022 related to the Diamond Springs Parkway Phase 1B Project, CIP 72334/36105011 (Project) authorizing the commencement of eminent domain proceedings to acquire certain property interests from the parcels identified as Assessor Parcel Numbers 327-270-043, -046, and -050, owned by James E. Teter and Elizabeth Ann Teter, Trustees under The Teter 1991 Revocable Living Trust dated July 22, 1991;
2) 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;
3) Adopt the Resolution of Necessity (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: Master Circulation and Funding Plan (MC&FP) (41%), Traffic Impact Mitigation Fees - Zone 1-7 (25%), Traffic Impact Fees Zone B (3%), State-Local Partnership Program Funds (16%), SHOPP Funds (3%), Tribe Funds (historical) (<1%), Road Fund (<1%), and to be determined anticipated MC&FP funds (12%).

Sponsors:

Indexes:

Code sections:

Attachments: 1. A - Approved Resolution Route Sheet, 2. B - Resolution of Necessity, 3. B - Revised - Resolution of Necessity BOS Rcvd 4-1-2022, 4. C - Grant Deeds, Slope & Drainage, Utility Easements, 5. C - Revised - Grant Deeds, Slope & Drainage, Utility Easements, 6. D - NOI Letter & Postponement NOI Letter, 7. E - Presentation, 8. E - Revised - Presentation BOS Rcvd 4-1-22, 9. F - Vicinity Map, 10. G - BOS meeting response letter from Teter, 11. H - Draft Staff Report Final BOS Rcvd 4-1-22, 12. Public Comment BOS Rcvd. 4-4-2022, 13. Teter Trust Agreement, 14. Executed Resolution 048-2022

Date	Ver.	Action By	Action	Result
4/5/2022	1	Board of Supervisors	Approved	Pass

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1) Conduct a Hearing to consider adoption of Resolution of Necessity **048-2022** related to the Diamond Springs Parkway Phase 1B Project, CIP 72334/36105011 (Project) authorizing the commencement of eminent domain proceedings to acquire certain property interests from the parcels identified as Assessor Parcel Numbers 327-270-043, -046, and -050, owned by James E. Teter and Elizabeth Ann Teter, Trustees under The Teter 1991 Revocable Living Trust dated July 22, 1991;
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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;
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DISCUSSION / BACKGROUND

The two-phase Diamond Springs Parkway Project (Project) was approved as part of the Master Circulation and Financing Plan in December of 1998. It will provide improved traffic circulation and safety through and around the historic town of Diamond Springs. Construction of Phase 1A began in June 2019, was the first of two phases necessary to complete the entire project, and has recently completed construction.

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 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 the spring of 2023. The right of way phase for Phase 1B of the Project will affect 25 parcels held by 13 property owners.

It is recommended that the Board of Supervisors (Board) open the hearing and take testimony, information, and discussion in consideration of adoption of the attached Resolution of Necessity, and, if appropriate, make the above findings, and adopt the attached Resolution of Necessity.

The Subject Properties

The proposed acquisitions from the unimproved 8.81 acre real property, identified as Assessor's Parcel Numbers 327-270-043, -046 and -050 (Subject Properties) and as more particularly described and depicted in the Exhibits to the Resolution as noted, 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 Properties is vested in James E. Teter and Elizabeth Ann Teter, Trustees under the Teter 1991 Revocable Living Trust dated July 22, 1991.
The Subject Properties consist of:

APN 327-270-043:

- ~~15,556~~ 25,209 Square Feet (SF) of Fee Title;
- ~~20,550~~ 10,877 SF of Uneconomic Remnant Fee Title;
- 4,264 SF of Slope and Drainage Easement;
- 4,264 SF of Public Utility Easement.

APN 327-270-046:

- ~~32,321~~ 35,365 SF of Fee Title;
- ~~3,044 SF of Uneconomic Remnant Fee Title~~;
- 20,671 SF of Slope and Drainage Easement;
- 20,671 SF of Public Utility Easement.

APN 327-270-050:

- ~~5,455~~ 8,174 SF of Fee Title;
- ~~8,535~~ 5,816 SF of Uneconomic Remnant Fee Title;
- 1,915 SF of Slope and Drainage Easement;
- 1,915 SF of Public Utility Easement.

An uneconomic remnant is a property remaining after a partial taking, if the property remaining is of such size, shape, or condition as to be of little value or if substantially impaired economic viability

On October 16, 2018, Item 28, Legistar 18-1606, the Board authorized Department of Transportation (Transportation) staff to engage in negotiations with the property owners in closed session. Following this approval, an initial First Written Offer was sent to the owners of record at the address shown on the County Assessor's Tax Roll, but negotiations failed in this first attempt. Based on an appraisal by an independent real estate appraiser, Transportation staff has established $213,600 as the amount believed to be just compensation for the Subject Properties. The County sent another First Written Offer, based on an updated appraisal on August 19, 2020, to the owners of record at the address shown on the County Assessor's Tax Roll. The owner sent in a written counter-offer on March 5, 2021, in the amount of $224,000, but revised it down to $200,000 to account for the elimination of the temporary construction easements requested by the owner.

The Board met in closed session on April 20, 2021. No action was reported. A revised agreement was sent to the Owners on April 21, 2021. Owners expressed concerns related to drainage and compensation. The Owners sent a revised counter-offer on July 1, 2021, for $224,000. The Board met in closed session on July 20, 2021. No action was reported. The Owners signed a revised Agreement on July 22, 2021, and that Agreement was signed by the Board on August 31, 2021. However, that Agreement had an escrow closing date of September 1, 2021, and the owner was asked to sign an extension of escrow on December 8, 2021. The owner declined to sign the extension of escrow. The County and the owner have been unable to reach an agreement, and negotiations are at an impasse.

On February 4, 2022, in coordination with County Counsel and outside Counsel, Meyers-Nave, and as required by law, staff sent the owners, Mr. and Mrs. Teter, 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.

On February 18, 2022, the Owners informed the County that they intend to object to this Resolution on the basis that the project is not located in a manner that will be most compatible with the greatest public good and least private injury. On February 22, 2022, the Owners submitted a revised counter-offer requesting a valuation of the property at $8.20 per square foot and other concessions. On March 15, 2022, the Board met in closed session to consider the counter-offer. No action was reported.

In order to proceed with the Project, the County must move forward with an eminent domain action to acquire clear title to the Subject Properties.

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, Legistar 11-0448). A Supplemental Environmental Impact Report was approved on May 3, 2016 (Item 23, Legistar 16-0370).

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 Properties constituting an uneconomic remnant is authorized under Code of Civil Procedure section 1240.410.

The Subject Properties are 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 Properties are 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, recently constructed, 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.

The Owners have objected to this Resolution on the basis that the project is not located in a manner that will be most compatible with the greatest public good and least private injury.

The realignment and design of the Project was set after considerable analysis, numerous meetings and public input. In 1997, Transportation analyzed and presented six conceptual alignments for the Project to the Board for consideration. The Board initially selected Alternative #3, a sweeping alignment bisecting several properties and segmenting State Route 49 (SR-49) as the alternative that maximized the greatest public good. California Department of Transportation (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. On April 29, 2008, Item 58, Legistar 08-0628, the Board held a hearing to consider the issues and approved amending the preferred alignment from Alternative #3 to Alternative #4. In that process, the Board considered, and rejected, alignment alternatives that would not have resulted in an impact on the Subject Properties, but would have caused more private injury and would not have resulted in the greatest public good. The preferred alignment results in the greatest public good with the least private injury.

In addition, this Project will not displace or require the relocation of any private property owners on the Subject Properties to be acquired in this proceeding. The property owner has, after the original offer was sent out, moved tenants onto his property. Any impact that the Project will have on those tenants will be addressed through the existing process for relocation benefits.

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. The County negotiated in good faith with the Owners from October 16, 2018, until December of 2021. The Owners had previously signed an Agreement with the County, but the escrow period expired, and the Owners declined to extend the escrow.

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, Legistar 08-0038) - Project adopted as part of the 2008 CIP, under the current CIP Project name
April 29, 2008 (Item 58, Legistar 08-0628) - Board approved “T” alignment (Alternative #4) as the preferred alignment alternative per California Environmental Quality Act
May 24, 2011 (Item 39, Legistar 11-0448) - Certified Final Environmental Impact Report adopted for the Project
December 18, 2012 (Item 57, Legistar 12-1540) - 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 (Item 23, Legistar 14-0725) - Board approved commencement of acquisition process for the Project
May 3, 2016 (Item 23, Legistar 16-0370) - Certified Supplement to the 2011 Environmental Impact Report adopted for the Project
October 16, 2018 (Item 28, Legistar 18-1606) - Board authorized staff to engage in negotiations with property owners in closed session
July 23, 2019 (Item 22, Legistar 19-1009) - 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, Legistar 20-0828) - Board approved continued work on the Project
August 4, 2020 (Item 48, Legistar 20-1018) - Transportation authorized to begin right of way negotiations with all remaining property owners
April 20, 2021 (Item 27, Legistar 21-0658) and July 20, 2021 (Item 19, Legistar 21-1157) - Conferences with Real Property Negotiator in closed sessions
August 31, 2021 (Item 22, Legistar 21-0883) - Board signs revised First Written Offer

OTHER DEPARTMENT / AGENCY INVOLVEMENT

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

CAO RECOMMENDATION / COMMENTS

Approve as recommended.

FINANCIAL IMPACT

Funding for the Project is included in Transportation’s 2021 CIP, which was approved by the Board on June 8, 2021 (Item 54, Legistar 21-0624). There have been significant changes to the funding section of this project, which are reflected in the Funding section of this item. The changes will be incorporated into Transportation's 2022 CIP, which is set to go to the Board on June 14, 2022.

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, Fairlane Engineering, attention Shanann Findley, for further processing.

STRATEGIC PLAN COMPONENT
Infrastructure

CONTACT
Rafael Martinez, Director
Department of Transportation