



Legislation Text

File #: 15-0851, **Version:** 1

HEARING - Community Development Agency, Transportation Division, recommending the Board adopt and authorize the Chair to sign Resolution of Necessity **136-2015** related to the Sly Park Road at Clear Creek Bridge Replacement Project CIP No. 77115 authorizing the commencement of eminent domain proceedings to acquire Assessor Parcel Number 079-030-13, owned by: James Henry Eva and Crocker First National Bank of San Francisco, as trustees in trust, as set forth in the Estate of Samuel J. Eva, Deceased, by Decree recorded in Book 349 at Page 97, as to an undivided 1/3 interest; Susan A. Stanford, as to an undivided 1/6 interest; Art Friesen, as trustee of the trust created under the will of Sylvia Irene Schwartz, deceased, by an Order under Case No. PP93-3082, as to an undivided 1/6 interest; Evalyn M. Chamberlain, Dorothy E. Morey, and Dorothy Burnett, as to an undivided 1/3 interest; and 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(s) of record, unless the owner(s) could not be located with reasonable diligence; 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.

Note: A 4/5 vote is required for a Resolution of Necessity. This Resolution of Necessity and the following eminent domain action is required on this parcel because the owners of record are not able to be located (see below). (Est. Time: 15 Min.)

FUNDING: Federal Highway Administration Highway Bridge Program (83%), Traffic Impact Mitigation Fee (15%), and Regional Surface Transportation Program funds (2%). (Federal Funds)

DEPARTMENT 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.

DISCUSSION/BACKGROUND

The Sly Park Road at Clear Creek Crossing Bridge Rehabilitation Project (Project) involves the replacement of Bridge No. 25C-0047 (Clear Creek Bridge) at the intersection of Sly Park Road and Clear Creek, 1.1 miles east of Pleasant Valley Road and six miles north of El Dorado in unincorporated El Dorado County.

The existing Clear Creek Bridge was built in 1936. It is a two-lane, single span structure, approximately 20 feet long and 20 feet wide, with cast-in-place concrete bridge abutment structures. Based on a bridge inspection, the California Department of Transportation (Caltrans) assessed the Clear Creek Bridge with a Sufficiency Rating (SR) score of 49.6 on a scale of 0 to 100, and rated the bridge as functionally obsolete. The SR score is the overall measure of the bridge condition and

sufficiency to remain in service, and is used to determine eligibility for federal funds and prioritization. Bridges with an SR score that is less than 50 are eligible for replacement. A bridge is deemed functionally obsolete if it was built to standards that are not used today, such as inadequate lane widths, shoulder widths, or vertical clearances to serve current traffic demand. In addition, recent inspections indicate scour problems with the bridge footings and abutments. Based on the combination of the substandard physical design, poor bridge condition and scour problems, rehabilitation of the existing bridge is infeasible, and replacement of the bridge is the most cost-effective approach for correcting the functionally obsolete status of the bridge.

The new bridge will be approximately 45 feet long and 52 feet wide and will have three 12-foot lanes and two 8-foot shoulders with guard rails. Approximately 965 feet of Sly Park Road would be reconstructed to improve the approaches and widen the roadway to conform with the new bridge. The new roadway will be higher than the existing roadway to match the new elevation of the bridge. Approximately 80 feet of Clear Creek Road from the intersection with Sly Park Road will receive a new pavement overlay, and the grade will be adjusted to conform to the new Sly Park Road grade. Driveway entrances in the Project area will be reconstructed to match the new grade. The Project will also provide improved drainage facilities on Sly Park Road.

The Project will improve traffic safety conditions on Sly Park Road and Clear Creek Road by: (1) replacing the functionally obsolete and substandard bridge with a new structure that meets current standards, (2) correcting the road geometry approaching the bridge from both the eastbound and westbound directions, and (3) providing a turn lane and turning access at Clear Creek Road and local driveways.

Construction of the Project is expected to start in 2017 and will require two construction seasons, each lasting approximately 9 months (March through November).

THE SUBJECT PROPERTY

The real property proposed for acquisition consists of the fee interest in the unimproved real property identified as Assessor's Parcel Number 079-030-13, as more particularly described and depicted in Exhibits "A" and "B", located in El Dorado County (the "Subject Property"). As identified in a Title Insurance Litigation Guarantee, ownership of the Subject Property is vested as follows:

James Henry Eva and Crocker First National Bank of San Francisco, as Trustees in Trust, as Set Forth in the Estate of Samuel J. Eva, Deceased, by decree recorded in Book 349 at Page 97, as to an undivided 1/3 interest; Susan A. Stanford, as to an undivided 1/6 interest; Art Friesen, Trustee of the Trust created under the Will of Sylvia Irene Schwartz, deceased, by an Order under Case No. PP93-3082, as to an undivided 1/6 interest; Evalyn M. Chamberlain, Dorothy E. Morey, and Dorothy Burnett, as to an undivided 1/3 interest

County staff obtained and has approved an appraisal of the Subject Project by an independent real estate appraiser in the amount of \$7,000.00. On January 15, 2015, a written offer to purchase the property for the full amount of the approved appraisal was made to Dorothy Burnett and Art Friesen. The offer was received by Dan Chamberlain whom is related to Evalyn Chamberlain & Dorothy Morey (two names that appear on title). Mr. Chamberlain appeared to be an heir; however his title interest has not been legally established. On May 18, 2015 offers were made to Susan A. Stanford and Dorothy Burnett after they had been located. However, Staff has determined that James Henry

Eva, Art Friesen, Evalyn M. Chamberlain and Dorothy E. Morey are deceased, and after conducting a reasonable and diligent inquiry and search of public records, have been unable to locate their heirs and devisees. Therefore, offers to purchase the property were not made as to the deceased owners. Given the inability to identify and locate all current owners, the County has not been able to purchase the Subject Property. 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.

County staff have recently determined that the legal description of the Subject Property that was originally attached to the written offers contained a surveying error. A corrected legal description is attached to the proposed Resolution of Necessity. The land area of the property that is proposed for acquisition is unchanged.

ENVIRONMENTAL REVIEW

Consistent with the requirements of the California Environmental Quality Act ("CEQA"), Staff prepared and circulated an Initial Study and Proposed Mitigated Negative Declaration on the Sly Park Road at Clear Creek Crossing Bridge Rehabilitation Project for a 30 day public review period from June 9, 2010 to July 9, 2010. No comments were received from the public. On September 14, 2010, the Board of Supervisors determined that there is no substantial evidence that the Project, as mitigated, will have a significant effect on the environment and adopted the Initial Study/Mitigated Negative Declaration for the Project, and approved the Project as described in the CEQA document (Item No. 18). A Notice of Determination was filed with the County Recorder/Clerk on September 14, 2010.

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 Engineering drawings and construction documents for the Project are also available to the Board for its review.

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.

As required by the Code of Civil Procedure Section 1245.235, written notice of this proceeding was given to each person whose name and address appears on the last equalized County assessment roll, who could, in the exercise of reasonable diligence, be located.

ADOPTION OF THE RESOLUTION OF NECESSITY AND FINDINGS

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

1. The public interest and necessity require the Project.

The Project will improve traffic safety conditions on Sly Park Road and Clear Creek Road by: (1) replacing the functionally obsolete and substandard bridge with a new structure that meets current standards, (2) correcting the road geometry approaching the bridge from both the eastbound and westbound directions, and (3) providing a turn lane and turning access at Clear Creek Road and local driveways.

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 proposed Project will not displace any homes or people. Access to local residences will be improved through improved driveways. Furthermore, as previously determined by the Board, and as established in the Initial Study/Mitigated Negative Declaration for the Project, there is no substantial evidence that the Project, as mitigated, will have a significant effect on the environment. 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 property interests being acquired for the Project will be used for the construction of the new bridge, roadway improvements, shoulders, and drainage. There is no other reasonable, permissible location suitable for replacement of the existing Clear Creek Bridge.

4. The offer required by Section 7267.2 of the Government Code has been made to the owners, who could be located, but not to the owners who cannot be located with reasonable diligence.

As identified in a Title Insurance Litigation Guarantee, ownership of the Subject Property is vested in several owners, most of whom are deceased. Written offers to purchase the property were made to Dorothy Burnett, Art Freisen and Susan A. Stanford. However, James Henry Eva, Art Friesen, Evalyn M. Chamberlain and Dorothy E. Morey are deceased. After conducting a reasonable and diligent inquiry and search of public records, staff has been unable to fully locate heirs and devisees. Therefore, although the Subject Property was appraised by an independent real estate appraiser, the offer required by Section 7267.2 of the Government Code has not been made.

ALTERNATIVES

N/A

OTHER DEPARTMENT/AGENCY INVOLVEMENT

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

CAO RECOMMENDATION

CAO recommending the Board move staff's recommendations by making the recommended findings and in doing so moving forward with eminent domain proceedings to complete the referenced project that is found to be in the public's best interest.

FINANCIAL IMPACT

Funding for the Project is budgeted in the adopted 2015 Capital Improvement Program and is provided by the Federal Highway Administration Highway Bridge Program, Traffic Impact Mitigation Fee, and Regional Surface Transportation Program funds. There is no Net County Cost for this Project.

CLERK OF THE BOARD FOLLOW UP ACTIONS

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 Transportation for further processing.

STRATEGIC PLAN COMPONENT

Infrastructure

CONTACT

Andrew S. Gaber, Deputy Director
Development/Right of Way/Environmental
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