



## Legislation Text

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**File #:** 18-0604, **Version:** 1

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HEARING - Community Development Services, Department of Transportation, recommending the Board conduct a Hearing to consider adoption of Resolution of Necessity **067-2018** related to the Silver Springs Parkway to Bass Lake Road (south segment) Project CIP 76108 (Project) authorizing the commencement of eminent domain proceedings to acquire Assessor Parcel Number 115-030-16, owned by: Carl E. Pohto and Laura E. Pohto, his wife as joint tenants, 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 of the Board is required to adopt the Resolution of Necessity. This Resolution of Necessity and the following eminent domain action is required on this parcel because the owners of record are deceased. (Est. Time: 15 Min.)

**FUNDING:** This Project is funded by Developer Advanced TIM fees, County (west slope) TIM fees, Developer Funds and Road Funds/Discretionary 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 Silver Springs Parkway to Bass Lake Road (south segment) Project (Project) is located in the community of Rescue approximately two miles north of US Highway 50 on Bass Lake Road. The proposed Project would construct a 0.25 mile divided two-lane roadway connecting the existing Silver Springs Parkway to Bass Lake Road. The Project would also realign and reconstruct Bass Lake Road approximately 800 feet south and 500 feet east of the proposed Silver Springs Parkway intersection and would include: Class II bike lanes, concrete sidewalks on both sides and a landscaped center median.

The need for a connector road between Green Valley Road and Bass Lake Road (which this Project serves to provide) was initially identified in the late 1980s and proposed in the 1990s. In 2005, the properties containing the northern portion of the (then) future roadway were purchased by Silver Springs LLC, a division of Cambay Development Group (Developer). In 2006, the Developer, in the beginning stages of developing and subdividing their property, entered into a Road Improvement Agreement with the County which conditioned them to make certain road improvements, signalization

improvements and dedications for future roadways. In 2008, the Board authorized the Department of Transportation (Transportation) to proceed with ordering title reports and appraisals for the right of way related to the Project. In 2010, the County made First Written Offers to the affected parcel owners. The acquisitions were however placed on hold shortly thereafter due to the recession and a lack of funding.

In 2013, the County and Developer entered into a new Road Improvement Agreement and Reimbursement Agreement related to the future subdivision and the Project. The northern portion of Silver Springs Parkway was constructed and completed in 2014. Since 2014, the County conducted field studies related to updating the environmental document for the current Project. These studies were completed and incorporated into the Subsequent Environmental Impact Report which was adopted by the Board on August 2, 2016 (Item 28).

Construction of the Project is anticipated to begin in the spring of 2019. The Project is included in the 2017 Capital Improvement Program as adopted by the Board of Supervisors on June 27, 2017 (Item 25).

### **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 115-030-16, as more particularly described and depicted in Exhibits "A" and "B" (Attachment C), located in El Dorado County and consisting of 7,123 square feet in fee (the "Subject Property"). As identified in a Title Insurance Litigation Guarantee, ownership of the Subject Property is vested in Carl E. Pohto and Laura E. Pohto. County Staff has determined that Carl E. Pohto and Laura E. Pohto are deceased, and has been in contact with their son, David C. Pohto.

Based on an appraisal by an independent real estate appraiser, staff has established \$8,200.00 as the amount that is believed to be just compensation for the Subject Property. An offer was sent to the address on record with the County Assessor in January 2018. This offer was received and acknowledged by David C. Pohto. Mr. Pohto and family have decided not to pursue their own independent probate in order to clear/transfer title of the Subject Parcel. Mr. Pohto, on behalf of his family, has acknowledged and supports the County's need to acquire the property through eminent domain. Mr. Pohto has requested that the County name them (himself and two siblings) as heirs in subsequent court filings with the intention of receiving the proceeds. Staff has advised them that the court will ultimately make the decision regarding their interest and right to compensation. 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**

Consistent with the requirements of the California Environmental Quality Act ("CEQA"), County staff prepared and circulated the Bass Lake Road Realignment Environmental Impact Report in 1992 (1992 EIR) which was certified by the Board in May 1992. In September 1998, the County also certified the Silver Springs Subdivision's EIR. After Agreements between the County and the Developer were renewed in 2013, the County began to work on updating the 1992 EIR. A notice of preparation of the Subsequent Environmental Impact Report (SEIR) circulated in April 2014. The draft SEIR was circulated between November 2015 (2015 SEIR) and February 2016. Notices were sent to 1,150 residents and applicable local agencies. An extended 70-day review period (at community request) took place. Twelve comment letters and emails were submitted in response.

Three of the comments were standard responses from agencies acknowledging requirements and/or facilities. The nine public comments/concerns were related to noise, headlights, alignment, sight distance, and landscaping/water conservation. The County responded to all comments and found: all significant or potentially significant impacts are reduced to less than significant with mitigation and there are/were no significant and unavoidable impacts. The Final SEIR was certified on August 2, 2016, and a notice of determination was filed on August 2, 2016.

### **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. This notice was received and acknowledged by David Pohto.

### **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 the evidence presented at the hearing:

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

The Project is necessary to complete a connector road between Bass Lake Road and Green Valley Road improving traffic circulation consistent with the Circulation Element of the County General Plan. The Project will improve traffic circulation within Western El Dorado County by providing for improved and additional connectivity between Green Valley Road to the north and Bass Lake Road (which connects to U.S. Highway 50) to the south. The Project will improve vehicle and pedestrian safety and provide bike lanes and sidewalks along a north-south connection between the existing Bass Lake Road and Green Valley Road to interconnect community areas and to connect the existing Pleasant Grove Middle School and the future El Dorado Union High School with existing and

developing residential communities.

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

The proposed alignment of the Project and its impacts was studied extensively in the 1986 Bass Lake Road Realignment Study (1986 Study), 1992 EIR and 2001 Addendum, and 2015 SEIR.

The 1986 Study considered several corridor/routing options for a new connection between Bass Lake Road and Green Valley Road. In evaluating different alignments for Bass Lake Road in 1986, the County considered placing the road through the parcels of land in the Green Springs Subdivision basically following the alignment of Deer Valley Road. That alignment was the longest of any segments considered and would have been the most costly to construct. That alignment would also have had serious environmental implications and five houses were located within the setback for the right-of-way. In general, the location of that alignment was found to have the potential to result in greater land use compatibility impacts than the selected alignment because it would cross an existing rural subdivision whose residents value the rural character of the area. Additionally, according to the study, the alignment would not meet design criteria due to steep grades. The alignment would have resulted in elimination of oak trees, fragmentation and disturbance of wildlife habitat, and effects on wetlands including drainage swales and an intermittent creek. As a result of the 1986 study, an alignment was selected that is similar to the current alignment within the Project segment (south portion) of the Silver Springs Parkway alignment. The 1986 alignment varied from the current Silver Springs Parkway alignment in the northern portion, and was located farther to the east than the recently constructed northern segment.

The 1992 EIR documented the County's decision to select an alternative to the alignment that had been previously selected by the County in the 1986 Study. The 1992 EIR considered the "no-project alternative" as the County proceeding with development of the previously adopted alignment for the Bass Lake Road realignment, as opposed to not constructing the realignment. The 1992 alignment was identified as having similar environmental effects as the 1986 alignment. However, the 1992 alignment was identified as having a reduced impact on oak tree loss (removal of approximately 391 oak trees as a result of constructing the 1992 alignment compared to removal of approximately 574 oak trees as a result of constructing the 1986 alignment) and an increase in the amount of wetlands fill (fill of approximately 2.09 acres of wetlands as a result of constructing the 1992 alignment compared to fill of approximately 1.68 acres of wetlands as a result of constructing the 1986 alignment). The 1992 alignment was also determined to be superior to the adopted alignment, since it would allow a better roadway profile grade, less grading would be required which would reduce scarring of the topography, and better sight distance at the intersection of Green Valley Road.

As part of the 2015 SEIR (Appendix G), the Project was found to be consistent with the goals, objectives and policies of the 2004 El Dorado County General Plan. The County found that alternative alignments deviating substantially from the previously approved alignment do not represent feasible alternatives to the Project. In addition, the 2015 SEIR concluded that acquisition of the necessary rights-of-way for the Project is not anticipated to preclude the existing or reasonably anticipated future uses of the remaining portions of any affected properties. No permanent buildings or other structures are located in the acquisition portions of the properties that would be removed, and the acquisitions would not reduce the parcels to sizes less than that permitted by current zoning. The residential properties from which right-of-way would be acquired for the Project would remain

available for the same uses that presently exist and no substantial change in, or conflict with, the ability to utilize these properties would be expected. The Project will not displace or require the relocation of any private property owners. 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 interests are located along the Silver Springs Parkway alignment and are required for the construction, operation and maintenance of the Project; and associated improvements.

### **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 owners' address on record with the County Assessor. This offer was received and acknowledged on behalf of the deceased owners by their son, David C. Pohto.

All the environmental documents, reports and studies referenced in this report are incorporated herein by reference and made a part of the administrative record of this proceeding 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.

## **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.

## **OTHER DEPARTMENT/AGENCY INVOLVEMENT**

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

## **CAO RECOMMENDATION**

It is recommended that the Board approve this item. The administrative recommendation for approval is due to the Silver Springs Parkway to Bass Lake Road (south segment) Project being identified in the past as a priority to finish and the Transportation Department meeting the necessary findings.

## **FINANCIAL IMPACT**

This Project is funded by Developer Advanced TIM fees, County (west slope) TIM fees, Developer Funds and Road Funds/Discretionary Funds. The just compensation established for the acquisition is based upon an independent appraisal report and totals \$8,200.

## **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 Julie Millard, for further processing.

## **STRATEGIC PLAN COMPONENT**

Infrastructure

**CONTACT**

Rafael Martinez, Director

Community Development Services, Department of Transportation