



# County of El Dorado

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## Legislation Text

File #: 07-1174, Version: 1

Hearing to consider adoption of Resolution of Necessity **200-2007** authorizing the commencement of eminent domain proceedings to acquire property for the U.S. Highway 50/Missouri Flat Road Interchange Project 71317, Phase 1A for land rights for a portion of APN 327-130-35 from Real Estate Holdings II, LLC, A Delaware Limited Liability Company and their tenant, Jack in the Box LLC, finding that:

- (1) Public interest and necessity require the Project;
- (2) Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- (3) Property sought to be acquired is necessary for the Project; and
- (4) Offer required by Section 7267.2 of the Government Code has been made to the owner(s) of record and authorize County Counsel, together with outside counsel, Erickson, Beasley & Hewitt LLP, to proceed with the necessary steps to acquire the required property.

**FUNDING:** The Phase 1A project is funded with 2004 General Plan Traffic Impact Mitigation Fee Program (TIM) funds and sufficient funds are in the project budget for the subject acquisition.

BUDGET SUMMARY:		
Total Estimated Cost		\$0
Funding		
Budgeted	\$	
New Funding	\$	
Savings	\$	
Other	\$	
Total Funding Available	\$	
Change To Net County Cost		\$0

Fiscal Impact/Change to Net County Cost:  
There is no County Cost.

### Background:

The U.S. Highway 50/Missouri Flat Road Interchange Project #71317 ("Project") is necessary to: 1) increase the U.S. Highway 50/Missouri Flat Road interchange capacity to solve existing operational deficiencies and to accommodate traffic associated with planned growth in the County; 2) address existing safety problems associated with the interchange; and 3) meet Caltrans' planning and design requirements for those portions of the project within State right of way.

The project will involve reconstruction of the Missouri Flat Road interchange on U.S. Highway 50, realignment and reconstruction of Missouri Flat Road, seismic retrofitting and widening of the eastbound and westbound Weber Creek bridges, reconstruction of Perks Court, reconstruction of Mother Lode Drive at the intersection with Missouri Flat Road, reconstruction of the Missouri Flat Road/Plaza Drive intersection, and reconstruction of the Mother Lode Drive/Greenleaf Drive intersection.

It has been determined that CEQA provisions for the Project as developed have been adequately addressed. On August 31, 2004, the Board of Supervisors certified the Final Environmental Impact Report/Environmental Assessment ("FEIR/EA") for the Project and a Notice of Determination was filed on September 1, 2004. The FEIR/EA is on file at the Board Clerks office for this agenda item.

The property proposed for acquisition consists of portions of 3945 Missouri Flat Road, identified as Assessor's Parcel Number 327-130-35. This parcel is owned by Real Estate Holdings II, LLC ("REH") and is improved with a Jack-in-the-Box Restaurant ("JIB"). The property described and depicted in Exhibits "A-1" and "A-2" attached, measuring 0.047 acres, is proposed for acquisition in fee. This portion of the property to be acquired is situated between the restaurant drive-through area and the existing Missouri Flat Road right of way, and will be used to accomodate the widening of Missouri Flat Road. Two Temporary Construction Easements measuring 471 and 584 square feet, as more particularly described and depicted in Exhibits "B-1," "B-2," and "B-3" as "Portion 1" and "Portion 2", are proposed for acquisition.

The property is necessary for the Project, and will result in a maximum benefit to the Project, at the most reasonable cost, and with the least interference possible to private property rights. Additionally, there is no other reasonable, permissable location configured for the required Project.

Communications with the representatives of REH and their tenant, JIB regarding acquisition of the property began in May, 2005.

The County's appraisal consultant, Bender Rosenthal Inc. has appraised the partial fee and easement acquisitions of the property at \$62,900. This appraised value was approved by the Board on July 18, 2006. The County made an offer in the full amount of the approved appraisal to REH on July 18, 2006.

After several months of discussions and communications involving REH, JIB and the County, the parties entered into an Agreement for Possession and Use ("APU") on February 26, 2007. Pursuant to the APU, the County deposited into escrow the full amount of the County-approved appraisal, and REH and JIB granted the County immediate possession of the partial fee acquisition and temporary construction easement areas. The APU provided for continued negotiations towards a direct purchase of the required property, and for the commencement of eminent domain proceedings in the event a settlement is not reached within 180 days of execution. To date, a settlement has not been reached, and the County must now move forward with the proposed Resolution of Necessity ("RON") in order to commence eminent domain proceedings.

Under the APU, REH and JIB agreed to waive the following: 1) notice of the hearing and the adoption of the RON; 2) the right to object to the filing of an eminent domain action; and 3) the right to challenge the County's right to take in an eminent domain action. REH and JIB further agreed that the only issue in the eminent domain proceeding shall be the amount of just compensation for partial

fee and tempoary construction easement acquisitions.

Action to be taken following Board approval:

1. Chairman of the Board to execute Resolution of Necessity associated with the necessary land rights affecting a portion of the subject property APN 327-130-35.
2. Board to authorize County Counsel, together with outside counsel, Erickson, Beasley & Hewitt LLP, to proceed with the eminent domain process, including filing a Complaint for Condemnation in El Dorado County Superior Court..

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