



## Legislation Text

File #: 22-1256, Version: 1

**HEARING** - Department of Transportation, recommending the Board consider the following:

- 1) Conduct a Hearing to consider the adoption of Resolution of Necessity **131-2022** related to the Newtown Road Bridge at South Fork Weber Creek Replacement Project, CIP 77122/36105030, which if adopted will authorize the commencement of eminent domain proceedings to acquire certain property interests from the parcels identified as Assessor Parcel Numbers 077-431-062, owned by Wanda Nagel, Trustee of the Wanda Nagel 1991 Revocable Trust under instrument dated January 14, 1999;
- 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, with cooperation as needed from County Counsel, to proceed with the necessary steps to acquire the required property.

**FUNDING:** Highway Bridge Program (78%), Regional Surface Transportation Program Exchange (3%), Shingle Springs Band of Miwok Indians Tribe funds (Tribe) (9%), to be determined anticipated Highway Bridge program funds (9%) and to be determined anticipated local funds (1%).

### **DISCUSSION/BACKGROUND**

The Newtown Road Bridge at South Fork Weber Creek Replacement Project (Project) was adopted into the Capital Improvement Program (CIP) on May 5, 2009. This Project will replace an obsolete single-lane bridge/culvert hybrid structure with a new bridge and improve roadway geometrics through the Project site. Construction of the Project is anticipated to begin in the Spring of 2024 contingent on the funding allocation from Caltrans and the Federal Highway Administration.

### **Subject Property and Negotiation Summary**

Transportation proposes the County acquire property from the improved 4.69-acre real property identified as Assessor's Parcel Number 077-431-062 (Subject Property). As identified in a Title Insurance Litigation Guarantee, ownership of the Subject Property is vested in Wanda H. Nagel, and Trustee of the Wanda H. Nagel 1999 Revocable Trust, under instrument dated January 14, 1999.

The proposed acquisitions from the Subject Property are as follows:

- 1,114 square feet (0.03 acre) of Fee Title
- 2,031 square feet (0.05 acre) of Slope and Drainage Easement
- 8,321 square feet (0.19 acre) of Temporary Construction Easement

On August 4, 2020 (Legistar 20-1016, Item 46), the Board authorized the Department of

Transportation (Transportation) staff to engage in negotiations with the property owners in closed session.

After Transportation obtained an appraisal of the value of the proposed acquisition, the first written offer of \$3,100.00 was mailed to the property owner on September 21, 2020. Transportation called the property owner and left voicemails on October 5, 2020, October 23, 2020, October 26, 2020, and October 30, 2020. Transportation mailed the property owner a letter requesting a response to the County's first written offer on October 30, 2020. The property owner emailed Transportation on November 18, 2020, and mentioned that her attorneys were reviewing the offer for her.

Transportation emailed the property owner on November 20, 2020, and January 12, 2021, asking for an update on the status of the review of the County's offer. Transportation mailed the property owner a second request for a response letter on February 1, 2021. On June 23, 2021, the County received an objection letter from the property owner's attorney. The primary objection to the County's first written offer was that the first written offer was based on an appraisal that did not address the value of the trees that were identified for removal.

Transportation obtained a revised appraisal that included the trees identified for removal. A revised first written offer was sent to the property owner on January 24, 2022. County Counsel also provided a courtesy copy of the updated appraisal and the revised first offer to the property owner's attorney (Eminent Domain Law Group) on January 28, 2022, and offered to open a dialogue regarding the proposed acquisition. County Counsel again reached out to the property owner's attorney on February 18, 2022, and requested that they respond to the County's revised offer by March 4, 2022. County Counsel left a voicemail for the property owner's attorney on March 3, 2022. The property owner's attorney responded that their office would be in touch the following week. The property owner's attorney called County Counsel on March 7, 2022, and requested an additional 45-60 days to visit the site and obtain their own appraisal of the proposed acquisition from the subject property prior to responding to the County's revised offer. On April 4, 2022, the property owner's attorney requested a copy of the title report, and County Counsel sent the title report on April 21, 2022. On May 10, 2022, County Counsel notified the property owner's attorney regarding the lapse of the 60-day period they requested and stated the County remained willing to negotiate the matter. On May 23, 2022, County Counsel sent a follow-up email to the property owner's attorney and asked for a response no later than May 27, 2022. On May 25, 2022, County Counsel left a voicemail for the property owner's attorney and followed up with an email referring to the May 27, 2022 deadline. The property owner's attorney responded that they received the voicemail and email and would respond by May 27, 2022. County Counsel staff received no subsequent communication from the property owner's attorney. Thus, County Counsel and Transportation concluded that negotiations were at an impasse. In addition, Transportation believed it necessary, based on the information described below, that this Project move forward, as this Project is necessary to address public safety concerns with the existing bridge.

## **Environmental Review**

The Project is subject to the California Environmental Quality Act (CEQA). The Project has been found in compliance with the CEQA requirements and the Board certified the Mitigated Negative Declaration (IS/MND) on December 18, 2018 (Legistar 18-1182, Item 41). A full copy of the adopted IS/MND is hereby incorporated by reference into this proceeding. The fee property owner (Wanda H. Nagel) and the Newtown Preservation Society sued the County challenging the certified IS/MND. The El Dorado County Superior Court ruled in favor of the County on February 11, 2020. That decision is hereby incorporated by reference into this proceeding. The fee property owner and

the Newtown Preservation Society appealed this decision to the 3<sup>rd</sup> District State of California Appellate Court arguing, among other things, that the Project would have significant impacts on fire evacuation routes during construction and thus the County was required to adopt an Environmental Impact Report. In *Newtown Preservation Society v. County of El Dorado* (2021) 65 Cal.App.5th 771, the Appellate Court also ruled in favor of the County and held that the petitioners failed to meet the burden of showing substantial evidence existed that supported a fair argument that the Project would have a significant environmental impact. That decision, including its analysis of the IS/MND, is hereby incorporated by reference into this proceeding.

### **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:**

Transportation recommends that the Board of Supervisors (Board) open the hearing and take testimony on these matters in consideration of the 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.

By adopting the proposed Resolution of Necessity, the Board will authorize the filing of an eminent domain action to acquire the Subject Property. 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 CIP adopted by the Board in May of 2009 and has been included in the CIP Book since 2009. The bridge replacement Project is necessary for reasons including but not limited to the following:

- a) The existing bridge/culvert system does not meet any current hydraulic standards. The existing bridge/culvert system does not have adequate capacity to allow either 50-year or 100-year floods to pass through it.
- b) The inlet headwall on the existing bridge/culvert system is comprised of simple stacked rocks without mortar. This is the exact same type of inlet headwall that failed and caused the 2017 culvert failure just downstream where Fort Jim Road crosses South Fork Weber Creek.
- c) Caltrans designated the bridge/culvert system as functionally obsolete as a result of their June 28, 2007, inspection. This designation was assigned due to insufficient bridge deck width.
- d) Both abutments have been scoured to the point that the abutment foundations are visible. Now that all protective material around the footings has been washed away, the material under the footings will begin to wash away. This will eventually cause the footings to be undermined, which will cause the bridge to fail.
- e) Both the bridge and the culvert have passed their respective useful life durations. This can be seen by the concrete delamination present on the bridge soffit and spalled concrete at several locations, as well as the concrete placed along the bottom of the pipe to mitigate the corrosion that destroyed the bottom of the culvert. The presence of the culvert and the excessive age and deteriorating condition of the bridge concrete preclude a widening or rehabilitation project. Further, a widening or rehabilitation project would leave in place a substandard bridge/culvert system that is hydraulically deficient.

The Project includes replacement of the existing bridge/culvert system, widening approach roadway, installation of the metal beam guardrail, and construction of retaining wall & storm drain facilities. These improvements will install a new bridge on an important county road and provide an enhanced level of traffic safety. The new bridge will have the adequate hydraulic capacity for 50-year and 100-year flood events, adequate deck width, and improved roadway geometrics on both bridge approaches. More extensive analysis of the Project need can be found in the Project's approved IS/MND.

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

Several project alignment and bridge-type alternatives were considered during the planning and CEQA stages of the project. The location of the proposed Project will result in the maximum benefit to the public by (a) greatly reducing the amount of time Newtown Road will be closed, and (b) minimizing impacts to protected resources, and (c) minimizing project cost. Transportation staff considered the project alternatives during the planning phase of the project prior to the preparation of the IS/MND. More detailed analysis of the alternative selection can be found in the IS/MND that was approved by the Board on December 18, 2018.

Transportation has designed the proposed Project to cause the least private injury, which is demonstrated by the small size of the proposed acquisitions.

The County also planned the Project to ensure adequate evacuation in the case of an emergency, such as a wildfire. This issue was discussed in detail in the IS/MND and was upheld by both the trial and appellate court.

In addition, this Project will not displace or require the relocation of any private property owner on the Subject Property as a result of this proposed acquisition.

## **3. The Property interests described in the Resolution of Necessity are necessary for the**

## **Project.**

The Subject Property adjoins Newtown Road at its intersection with South Fork Weber Creek. The Project cannot be implemented without the County acquiring **0.03 acres of fee right of way and 0.05 acres of slope and drainage easement**. 0.19 acres is also required for a temporary construction easement, but this property will remain unencumbered with the property owner once construction is complete. As can be seen with the very small acquisitions, the County has made a considerable effort to minimize the amount of land required on the Subject Property, but the geometrics of the proposed bridge and the severe skew between the alignments of the creek and Newtown Road make it impossible to replace the existing bridge/culvert system without these small proposed acquisitions.

The Owners have objected to the adoption of the proposed Resolution on the basis that the adoption of the Resolution is premature because the County has yet to finalize construction plans for the Project. Before initiating any right of way acquisition process, staff ensures that the construction plans are at an adequate level of completion to ensure that the rights of private property owners are protected. A current copy of those construction plans are hereby incorporated by reference into this proceeding. Staff has previously provided to owners a full copy of the current construction plans, which are currently at approximately 60 percent (60%) complete. There is no requirement in law that construction plans be at one hundred percent (100%) completion in order for the County to adopt a Resolution of Necessity. Based on that, Transportation is certain that the construction plans are at a sufficient level for Staff to determine that the four elements of a Resolution of Necessity are met with regard to this acquisition.

## **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.**

Code of Civil Procedure section 1245.230 requires that either the offer required by Government Code section 7267.2 has been made to the owner or owners of record or the offer has not been made because the owner cannot be located with reasonable diligence. Owners' counsel has objected to this Resolution on the basis that it is their opinion the offer was not based on fair market value of the Subject Property and was therefore not in compliance with Government Code section 7267.2. However, an offer is in compliance with Government Code section 7267.2 if substantial evidence exists the following has occurred:

- a. The County has made an offer based on the County's determination of what constituted adequate compensation and that offer was not less than the appraised value of the property.
- b. The offer was made to the owner or owners of record.
- c. The offer included a written statement of, and summary of the basis for, the amount of just compensation.

If the Board finds that substantial evidence exists that the above three requirements are met, then the County has complied with Code of Civil Procedure section 1245.230 and Government Code section 7267.2. It is not an appropriate topic in a hearing to adopt a Resolution of Necessity to discuss the adequacy of compensation because the owners are entitled to have that matter decided by a jury and the County will respect that right.

The County made our initial offer to the owners of record on September 21, 2020. The appraised value of fair market value for the fee property owner was \$3,035.83, and the appraised value of the fair market value for the easement property owner was \$1,000.00. The County set the amount of the just compensation in our offer for the fee property owner at \$3,100.00 and the easement property

owner at \$1,000.00. Attached to that offer for both parties a written statement of, and summary of the basis for, the amount of just compensation. The County also went beyond the requirements of Government Code section 7267.2 and provided a full copy of the appraisal to the fee owner of the Subject Property.

The County received no counter-offer from the owners after September 21, 2020. After making diligent efforts to negotiate the acquisition, the County sent a Notice of Intent to Condemn on July 8, 2021. In response, the owners' counsel notified the County in July of 2021 that the appraisal did not propose compensation for trees removed in the acquisition areas. At owner's request and in hopes of reaching a settlement, County ordered a revised appraisal to include compensation for the trees.

A revised offer was sent to owners of record on January 27, 2022, at the address listed with the County Assessor. The appraised value of fair market value for the fee property owner was \$10,364.12, and the appraised value of the fair market value for the easement property owner was \$1,000.00. The County set the amount of the just compensation in our offer for the fee property owner at \$10,400.00 and the easement property owner at \$1,000.00. Attached to that offer was a written statement of, and summary for, the amount of just compensation. The County also provided a full copy of the appraisal to the fee owner of the Subject Property.

The County made every effort to negotiate in good faith with the owner from September 21, 2021, until May 25, 2022, as discussed above.

## **ALTERNATIVES**

If eminent domain proceedings do not commence to acquire the necessary right of way for the proposed Project, the Project will not be able to move forward. The County would almost certainly be required to repay approximately \$1,750,000 in Federal funding that has already been expended.

## **PRIOR BOARD ACTIONS**

May 5, 2009 (Item 36, Legistar 09-0454) - Project adopted as part of the Fiscal Year 2022 CIP as CIP Project #77122

October 26, 2010 (Item 22, Legistar 10-1072) - Board authorized to proceed with ordering and payment of title report

May 22, 2012 (Item 21, Legistar 11-1213) - Board approved and authorized the Chair to sign the agreement for services (11-53271/491-S1211) with Sycamore Environmental Consultants, Inc.

May 19, 2015 (Item 6, Legistar 12-1440) - Board approved and authorized the Chair to sign amendment I to agreement for legal service between El Dorado County and Meyers Nave

December 6, 2016 (Item 11, Legistar 11-1213) - Board approved and authorized the Chair to sign the first amendment to agreement 11-53721 with Sycamore Environmental Consultant for allocating budgets between projects

December 18, 2018 (Item 41, Legistar 18-1182) - Board Adopted CEQA Mitigation Negative Declaration and Mitigation Monitoring & Reporting Plan, and approved the Project as described in the CEQA Initial Study/Mitigation Negative Declaration

January 29, 2019 (Item 18, Legistar 18-1830) - Board approved and awarded the design contract to the successful proposer Drake Haglan and Associates, Board also approved and authorized chair to sign agreement for services 3551 with Drake Haglan and Associates to provide structure design and geotechnical services

February 6, 2019 (Item 21, Legistar 19-0192) - Conference with Legal Counsel-Existing Litigation

(closed session)

April 23, 2019 (Item 8, Legistar 19-0635) - Conference with Legal Counsel-Existing Litigation (closed session)

March 10, 2020 (Item 17, Legistar 20-0224) - Board approved the first amendment to agreement 3551 which provides structural design and geotechnical support services for the Project

August 4, 2020 (Item 46, Legistar 20-1016) - Board authorized Department of Transportation staff to engage in negotiations with the property owners (closed session)

August 10, 2021 (Item 16, Legistar 21-0878) - Board approved and authorized the Chair to sign second amendment to agreement for services 11-53271 with SWCA Environmental Consultants, modifying various administrative details related to their acquisition of Sycamore Environmental Consultants Inc., and updating contract language per California Department of Transportation federal funding requirements

January 4, 2022 (Item 37, Legistar 22-0037) - Conferences with Real Property Negotiator (closed session)

### **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 2022 CIP, which was approved by the Board on June 14, 2022 (Item 48, Legistar 22-0521). The Project is funded by a combination of Highway Bridge Program Funding (78%), Regional Surface Transportation Program Exchange Funds (3%) and Tribe Funds (9%), and to be determined anticipated grant funds (9%) and to be determined anticipated local funds (1%). The Project is included in the Fiscal Year 2022-23 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, Headington Engineering, attention Matt Gourley, for further processing.

### **STRATEGIC PLAN COMPONENT**

Infrastructure

### **CONTACT**

Rafael Martinez, Director Department of Transportation