



Board Agenda Item 15

DATE: November 7, 2023

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Continued delegation of authority to acquire interests in real property for projects performed by the Department of Public Works and Planning

RECOMMENDED ACTION(S):

- 1. Conduct first hearing on an Ordinance amending the Ordinance Code of Fresno County, Chapter 2.52 - Department of Public Works and Planning to update Paragraph N to Section 2.52.040 - Duties of Director of Public Works and Planning, to continue to delegate certain authority to the Director of the Department of Public Works and Planning to acquire, on behalf of the Board, subject to approval of County Counsel as to legal form and as to accounting form by the Auditor-Controller/Treasurer-Tax Collector, any interest in any real property necessary for certain transportation projects and for certain non-transportation projects for which the Board has expressly authorized funding or has otherwise expressly approved the project; waive reading of the proposed Ordinance in its entirety; set the second hearing for November 28, 2023; and**
- 2. Designate County Counsel to prepare a fair and adequate summary of the proposed Ordinance; and**
- 3. Direct the Clerk of the Board to post and publish the required summary in accordance with Government Code, Section 25124(b)(1).**

Approval of the recommended actions will authorize the Director of the Department of Public Works and Planning to continue to purchase real property and to solicit temporary access to real property for various Board-approved transportation and non-transportation projects. Any associated agreements, easements, and right of entry documentation shall be subject to review and approval of County Counsel as to legal form and as to accounting form by the Auditor-Controller/Treasurer-Tax Collector. The purchase price of any individual acquisition from any single parcel shall not exceed \$125,000 and the authority granted to the Director shall expire on December 31, 2028. This item is countywide.

ALTERNATIVE ACTION(S):

Your Board may elect not to approve the recommended actions, in which case, the acquisition of property rights for Department projects will revert to being approved by the Board on a case-by-case basis through individual agenda items after Ordinance N expires on December 31, 2023.

FISCAL IMPACT:

There is no change in Net County Cost associated with the recommended actions. Sufficient appropriations

to purchase real property will continue to be included in the Department's Roads Org 4510 Adopted Budget. For non-transportation projects, expenditures from the Department's Roads Org 4510 Adopted Budget will continue to be reimbursed by various Special Districts budgets.

DISCUSSION:

Transportation and non-transportation projects often require the purchase of right-of-way, which may be in the form of: (1) acquisition of fee title to property; (2) permanent easement, which provides for a perpetual right to use a property or portion thereof; or, (3) temporary construction permit, which provides for the temporary use of a property or portion thereof for a prescribed period at a calculated "rental" rate. Additionally, property owners may be asked to provide access pursuant to "temporary rights of entry" for the purpose of matching driveway grades or to allow various studies to be conducted.

The proposed ordinance would continue to delegate authority to the Director to acquire each type of property right: (1) permanent easements, including easements for utility relocation to be performed to facilitate a project, (2) temporary construction permits, and (3) rights of entry, but only when related to projects performed by the Department which have been expressly approved by the Board, either by inclusion in the Board-approved Road Improvement Program for transportation projects, or by Board-approval of an agenda item related to funding or otherwise approving the project for non-transportation projects. Such delegation would be in accordance with California Government Code, Section 25350.60, which states:

- a) The board of supervisors of a county may, by ordinance, authorize a county officer it deems appropriate to perform any and all acts necessary to approve and accept for the county the acquisition of any interest in real property.
- b) The authorization shall specify procedures for the exercise of the authority by the officer so designated and shall establish a dollar limit on any purchase price.
- c) A county officer's authority granted by ordinance under this section may not be effective for more than five years.

The recommended ordinance will maintain that the Director shall, on behalf of the Board, perform any and all acts necessary to solicit, approve, purchase, and accept for the County any temporary or permanent interest in, or access to, any real property necessary for any activity related to certain transportation and non-transportation projects. Such authority shall be exercised subject to the following procedures and limitations:

- Exercise of the Director's authority shall be in accordance with the provisions of California Government Code, Section 25350.60.
- For transportation projects, such interest in real property shall be for projects undertaken by the Department and included in the Board-adopted Road Improvement Program, or for projects the pursuit of which has been expressly authorized by the Board.
- For non-transportation projects, such interest in real property shall be for projects undertaken by the Department for which the Board has expressly authorized funding or has otherwise authorized the project.
- The purchase price of any individual acquisition from any single parcel shall not exceed \$125,000, provided however, the splitting or segmenting of any acquisition of a real property interest to circumvent such dollar limit is prohibited.
- Any associated agreements, easements, and right of entry documentation shall be subject to review and approval of County Counsel as to legal form and as to accounting form by the Auditor-Controller/Treasurer-Tax Collector.

- The Director shall comply with all applicable laws and county policies pertaining to the acquisition of the real property interest as would otherwise apply to the County's acquisition for same.
- The Director shall, to the fullest extent reasonably practicable, obtain in recordable form from the other party(ies) any agreements, deeds, instruments, easements, or right of entry, that may be recordable, and record such agreements, deeds, instruments, easements, or right of entry in the office of the County Recorder with respect to the affected interest in real property.
- The Director is not authorized to acquire any interest in real property that is subject to eminent domain proceedings pursuant to the California Code of Civil Procedure, section 1245.210, et seq.
- Nothing in the grant of authority to the Director shall divest or otherwise limit the Board of its authority, which the Board fully reserves its right to exercise its discretion, to acquire interests in real properties including, but not limited to, for the same transportation or non-transportation project, or with respect to any other projects or matters of any type.
- The authority granted to the Director shall expire on December 31, 2028.

The intent of the proposed ordinance is to continue to decrease the number of agenda items that must be processed, thereby saving Board and Department staff time and resources by delegating routine actions to the Director, while maintaining the Board's established policies. As an example, three (3) projects currently in the design phase will require acquisition of easements from a combined total of approximately one hundred twenty (120) parcels in the next twelve (12) to eighteen (18) months. Although many settlements will be consolidated for approval in individual agenda items, some will settle relatively quickly while others may take several months to settle. Due to the variability of settlement periods with property owners, and to maintain integrity of the project timeline and budget, combining numerous acquisitions into a single agenda item is not always feasible. Consequently, these three (3) projects could result in approximately one hundred (100) separate agenda items. The recommended actions will allow acquisitions under \$125,000 to conclude in a timely manner and provide each parcel owner with payment as soon as practicable following settlement.

Between implementation in March 2019 and the present, under the current grant of authority to the Director, property rights for approximately one hundred ten (110) permanent or temporary easements and rights of entry have been acquired as part of Board-approved Public Works and Planning projects. While a majority of the right-of-way acquisitions fall below the current \$100,000 threshold, the proposed increase to \$125,000 would account for external factors (i.e. inflation) to acquisition costs while ensuring the Board is not overburdened by additional agenda items required for acquisitions over the limit. The proposed five (5) year grant of authority will allow the Department to acquire property rights for several projects in the design phase.

The second reading of the recommended ordinance is scheduled for November 28, 2023, and, if approved, the recommended ordinance will take effect immediately following the expiration of the existing grant of authority scheduled to expire on December 31, 2023.

REFERENCE MATERIAL:

BAI #35, February 12, 2019
BAI #10, January 29, 2019

ATTACHMENTS INCLUDED AND/OR ON FILE:

Ordinance
On file with Clerk - Ordinance Summary

CAO ANALYST:

Salvador Espino