



Board Agenda Item 15

DATE: March 1, 2016

TO: Board of Supervisors

SUBMITTED BY: Bernard Jimenez, Interim Director
Department of Public Works and Planning

SUBJECT: Resolution of Necessity for Fowler Avenue from Elkhorn Avenue to South Avenue

RECOMMENDED ACTION(S):

Conduct a Public Hearing to adopt a Resolution of Necessity authorizing Eminent Domain proceedings and authorizing deposit of funds (\$42,800) with the Fresno County Superior Court for the Fowler Avenue from Elkhorn Avenue to South Avenue Construction Project. (4/5 Vote)

Approval of the recommended action will permit the County to institute Eminent Domain proceedings to acquire certain real property interests and to deposit funds with the Fresno Superior Court.

ALTERNATIVE ACTION(S):

The Board may elect not to approve the Resolution of Necessity, which would prevent the County from obtaining possession of the remaining right-of-way necessary to construct the project. If the County does not obtain possession of the right-of-way, it will not be possible to construct the project and the project will be cancelled. If the project is cancelled, the County will be required to refund all money it has received for the project from the Federal Highway Administration.

FISCAL IMPACT:

There will be no net County cost associated with the recommended action. Warrants or checks in the aggregate amount of \$42,800, or lesser amount as certified by the Director of Public Works and Planning or his or her designee will be issued from Fund 0010, Subclass 11000, Org 4510, Account 7880, Project E23172, made payable to the individual grantors listed in Exhibit A, attached. This project is eligible for reimbursement under the Congestion Mitigation Air Quality Improvement (CMAQ) Project No. CML 5942 (211). The CMAQ Program, which is part of the Moving Ahead for Progress in the 21st Century (MAP-21), will provide 88.53 percent of the project funding. The remaining 11.47 percent of the project costs will be paid out of the Road Fund. Sufficient funds for the project are included in the Public Works and Planning-Roads Org 4510 FY 2015-16 Adopted Budget.

DISCUSSION:

On January 12, 2016, the Board adopted a resolution setting the public hearing for today at 11:00 A.M. to consider adoption of Resolution of Necessity for condemnation as required by law, precedent to the commencement of eminent domain proceedings in order to meet construction commitments for the Fowler Avenue from Elkhorn Avenue to South Avenue Construction Project. The Resolution authorizes and directs County Counsel to institute eminent domain proceedings to acquire certain real property interests, and the Auditor's office to draw warrants or checks for court deposit. The proposed project scope consists of constructing eight foot wide paved shoulders on each side of Fowler Avenue from Elkhorn Avenue to South

Avenue. Fowler Avenue is a rural two-lane undivided road that has approximately 24 feet of paved travel way with eight foot wide maintained dirt shoulders on each side. With the proposed project, the new pavement width will be 40 feet. It is anticipated that construction will commence in the spring of 2017; however, the project will be delayed until possession can be obtained through eminent domain.

The center-line of the existing road, as originally constructed, deviates significantly from the planned section line varying from 0 feet to as much as 49 feet. With the acquisition of these parcels, the road right-of-way will be clearly identified by obtaining Grants of Easement for 30-feet on each side of the existing roadway center line.

The project requires acquiring easements and/or temporary construction permits from portions of 24 parcels. Of those 24 partial acquisitions, 17 have been successfully purchased and seven remain to be acquired. Written offers to purchase the additional right-of-way have been presented to each property owner. Real Property staff has had several follow-up contacts with the property owners. During the eminent domain process, Real Property staff will continue its efforts to reach a mutually satisfactory agreement with each property owner.

The eminent domain process cannot proceed unless the Board approves today's action, and in order to provide such approval, the Board must make the following findings:

- Public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The real property interests described in the Resolution are necessary for the proposed project.
- The offer required by section 7267.2 of the Government Code has been made to the owners of record of this property which is the subject of real property acquisition associated with the proposed project.

The Department asserts and recommends that such findings would be accurate and appropriate.

It is important to note that, in accordance with applicable codes and regulations, today's hearing is expressly not for consideration of matters involving compensation. Although property owners who may attend may wish to discuss compensation and related issues, it is recommended that the Board limit the discussion strictly to the validity of the findings stated above.

The eminent domain acquisition process mandates specific timelines for the process; a process that takes many months. During this process, Real Property staff will continue its efforts to reach a mutually satisfactory agreement with the property owners.

The names and addresses of the property owners whose property is proposed to be subject to eminent domain are shown on the attached Exhibit A. The location of the properties is shown on the attached Exhibit B.

REFERENCE MATERIAL:

BAI# 66, May 22, 2012

BAI# 39, February 10, 2015

BAI# 41, February 24, 2015

BAI# 36, April 7, 2015

BAI# 49, May 5, 2015

BAI# 64, July 14, 2015

BAI# 54, September 22, 2015

BAI# 52, October 27, 2015

BAI#29, January 12, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

Location Map

Exhibit A - B

On file with Clerk - Resolution

On file with Clerk - Affidavit of Mailing

CAO ANALYST:

John Hays