



Board Agenda Item 15

DATE: June 20, 2017

TO: Board of Supervisors

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

SUBJECT: Public Hearing to consider adopting a Resolution of Necessity authorizing Eminent Domain proceedings to facilitate the American Avenue - SR 99 to Temperance Avenue Road Improvement Project - Federal Project No. HPLUL 5942(171) and (172)

RECOMMENDED ACTION(S):

Conduct a Public Hearing to consider adopting a Resolution of Necessity authorizing Eminent Domain proceedings and the Deposit of Funds (\$108,000) with the State of California - Condemnation Deposit Fund, to facilitate the American Avenue - SR 99 to Temperance Avenue Road Improvement Project. (4/5 Vote)

Approval of the recommended action will authorize the County to institute Eminent Domain proceedings and deposit funds with the State of California - Condemnation Deposit Fund, in order to acquire necessary real property interests to facilitate the American Avenue - SR 99 to Temperance Avenue Road Improvement Project from the following property owners: R.K. Ltd., a California Limited Partnership (R.K. Ltd.) - Parcel 1, 3764 E. American Avenue, Fresno, CA 93725, located on the northwest corner of American Avenue and Golden State Boulevard; Ralph Kazarian, Jr., Trustee of the Sadie Saghatelian GST-Exempt Trust, created under the Sadie Saghatelian Living Trust (the Sadie Saghatelian GST-Exempt Trust) - Parcel 2, 3947 E. American Avenue, Fresno, CA 93725, located on the southwest corner of American Avenue and Golden State Boulevard; and Pacific Telephone and Telegraph Company, DBA AT&T (Pacific Bell/AT&T) - Parcel 5, 4795 S. Peach Avenue, Fresno, CA 93725, located on the northeast corner of American Avenue and Peach Avenue.

ALTERNATIVE ACTION(S):

The Board may reject the adoption of the Resolution. Rejecting the adoption of the Resolution will prevent the County from obtaining possession of the necessary road easements and temporary construction permits to proceed with the project. If possession of the necessary road easements and temporary construction permits is not obtained, the project will be cancelled. If the project is cancelled, the Federal Highway Administration will require the County to return all reimbursements for prior work on the project.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action. Warrants or checks in the aggregate amount of \$108,000, or lesser amount as certified by the Director of Public Works and Planning or his or her designee, will be issued from the Public Works and Planning - Roads Org 4510, made payable to the State of California - Condemnation Deposit Fund, on behalf of the individual property owners listed in Exhibit A, attached. This project is eligible for 80% reimbursement under the Federal High Priority Project Demonstration program. The remaining 20% will be paid out of the Road Fund. Sufficient appropriations for this project are included in the FY 2016-17 Public Works and Planning - Roads Org 4510 Adopted Budget.

Of the total estimated compensation pursuant to this Agenda Item, \$32,212 is for temporary construction permits with a useful life of 36 months from the signing date, and \$75,788 is for permanent roadway easements.

DISCUSSION:

The purpose of the Demonstration funding for the project is to provide improvements to roadways which connect State Routes 41 and 99, and the proposed project will improve the flow of traffic and will also provide enhanced safety. The proposed project involves the improvement of approximately 1.4 miles of American Avenue, from the eastern right-of-way of SR 99 to Clovis Avenue, and the placement of an asphalt concrete overlay over 2 miles of American Avenue from Clovis Avenue to 100 feet east of Temperance Avenue. The work includes realignment and signalization of American Avenue and Golden State Boulevard. In addition, new railroad crossing guard gates and lights will be installed to improve public safety.

On May 16, 2017, your Board adopted a resolution setting the Public Hearing for today at 9:00 a.m., or as soon thereafter as practicable to consider the adoption of a Resolution of Necessity for condemnation as required by law, precedent to the commencement of eminent domain proceedings. This is in order to meet construction commitments for the American Avenue - SR 99 to Temperance Avenue Road Improvement Project. The Resolution authorizes and directs County Counsel to institute eminent domain proceedings to acquire certain real property interests, and the Auditor-Controller/Treasurer-Tax Collector's office to draw warrants or checks for deposit in the State of California - Condemnation Deposit Fund.

All property owners and, if represented, their legal counsel, subject to the recommended Resolution of Necessity were mailed a Notice of the Public Hearing, including the date, time, and location of the hearing. It is anticipated that construction of the project will commence in the spring of 2018; however, the project will be delayed until possession of the three remaining partial acquisitions for road easements and the two temporary construction permits can be obtained.

It was originally anticipated that partial acquisitions from ten properties would be required for road easements and that temporary construction permits would also be required from three of these properties; however, it was later determined that, instead of easements, encroachment permits were required from two of the properties. Consequently, the project requires partial acquisitions for road easements from eight properties. Temporary construction permits are also required from three of these eight properties.

Five of the eight property owners have accepted the County's offer of just compensation for their respective road easements, including a temporary construction permit from one of these five property owners. The County's on-call real property consultant, under the direction of the Department, has reached an impasse with the three remaining property owners listed on Exhibit A (attached). To construct the project, it is still necessary to acquire road easements from Parcels 1, 2 and 5, as well as temporary construction permits from Parcel 1 and Parcel 2. Written offers to purchase the necessary road easements and temporary construction permits were presented to each property owner between July and August of 2016. The Department is utilizing the services of Hamner Jewell & Associates, one of the County's on-call real property consultants to provide acquisition services for the project.

On July 11, 2016, the County's real property consultant's assigned Right of Way Agent had a meeting with, and presented written offers to Michael Kazarian, manager of R.K. Ltd. - Parcel 1, and Ralph Kazarian, Jr., Trustee of the Sadie Saghatelian GST-Exempt Trust, created under the Sadie Saghatelian Living Trust (Ralph Kazarian, Jr.) - Parcel 2, on behalf of the County. Parcels 1 and 2 have a shared family ownership interest. The Right of Way Agent informed both Michael Kazarian and Ralph Kazarian, Jr. verbally, and in writing that the County would pay the reasonable costs, not to exceed five thousand dollars (\$5,000), for an independent appraisal of the subject Real Property Interests conducted by a qualified and licensed appraiser of their choice, pursuant to Cal. CCP § 1263.025. Neither Michael Kazarian nor Ralph Kazarian, Jr. elected to have the road easement and temporary construction permit acquisition areas independently appraised. On August 16, 2016, at Michael Kazarian's request, the Right of Way Agent personally delivered project construction plans to Michael Kazarian's office.

On August 22, 2016, Attorney, Brady McGuinness emailed the Right of Way Agent and notified him that he (Brady McGuinness) had been retained to represent Michael Kazarian and Ralph Kazarian, Jr. Mr. McGuinness rejected the offers made by the County's on-call Real Property Consultant, on behalf of the County, suggesting the compensation offered for the acquisitions was "low." Mr. McGuinness requested, and was supplied with, multiple construction plans, drainage plans, and alternative access points for the residence/rental house on Parcel 2. Mr. McGuinness has been unresponsive to repeated contacts by the Right of Way Agent since February of 2017.

Subsequent to Mr. McGuinness unresponsiveness, he indicated that the Sadie Saghatelian GST-Exempt Trust - Parcel 2, should be compensated for a likely decrease in value of a rental house and well located on the parcel, due to the increased proximity of the house and well to the American Avenue travel lanes, resulting from the widening of American Avenue to facilitate the Project. Given the Department's accelerated schedule to commence construction of the project in the spring of 2018, staff requested the County contracted appraiser to reevaluate the appraisal in light of Mr. McGuinness' claim of a likely decrease in value of the rental house. After reevaluating the appraisal, the appraiser revised the appraisal to include proximity damages based on a potential reduction in the market rental rate of the house, and included compensation for the installation of bollard posts, mitigating the increased proximity of the well to the American Avenue travel lanes. The County's on-call real property consultant mailed the revised written offer to both Mr. McGuinness' office and Ralph Kazarian, Jr., Trustee of the Sadie Saghatelian GST-Exempt Trust on May 15, 2017. Staff will report the status of the owner and his attorney's acceptance or rejection of the revised written offer at today's staff presentation, prior to the Public Hearing.

On May 3, 2016, while the appraisal of the necessary easement was being completed, the Right of Way Agent began making contact with Pacific Bell/AT&T's (Parcel 5) corporate headquarters to determine the appropriate representative to contact regarding the County's intention to acquire the necessary road easement from the Pacific Bell/AT&T communications facility sub-station, located at 4795 S. Peach Avenue, Fresno, CA 93725. On May 17, 2016, Pacific Bell/AT&T's corporate office notified the Right of Way Agent that Chris Chandlee, Regional Manager of the Pacific Bell/AT&T Division of Sales and Acquisitions was responsible for all Pacific Bell/AT&T real property transactions.

On July 7, 2016, after several weeks of discussions with the Regional Manager regarding Pacific Bell/AT&T's formal process of due diligence before accepting or rejecting any offer to purchase real property and/or easements from their facilities; the Right of Way Agent mailed a written offer of just compensation, by certified mail, to the Regional Manager offering to purchase the necessary portion of Pacific Bell/AT&T's communications facility sub-station for the proposed road easement.

On August 16, 2016, after giving Pacific Bell/AT&T sufficient time to consider the County's offer, the Right of Way Agent began contacting the Regional Manager weekly to discuss the status of Pacific Bell/AT&T's formal process of due diligence for the County's offer to purchase the necessary portion of Pacific Bell/AT&T's communications facility sub-station for the proposed road easement. In November of 2016, the Regional Manager informed the Right of Way Agent that Pacific Bell/AT&T staff was unable to locate, or confirm where the subterranean communications facilities/lines, if any, were located in the proposed acquisition area. The Regional Manager indicated Pacific Bell/AT&T had conflicting utility maps and would have to send a communications lines locator to the parcel to verify if communications lines existed, and if so, where they existed in the proposed acquisition area.

In April of 2017, the Regional Manager notified the Right of Way Agent Pacific Bell/AT&T staff had located the subterranean communications lines in the proposed acquisition area. Pacific Bell/AT&T's Regional Manager proposed revising the language of the County's standard Grant of Easement and Right of Way Contract limiting the County's access to the proposed road easement and reserving the right to access any communications facilities in, on, or below the proposed road easement without notice to County, on behalf of Pacific Bell/AT&T. This language was neither acceptable nor practical for the County's use of the proposed acquisition area for a road easement. The County of Fresno's Road Maintenance crews must have unrestricted access to the

proposed road easement.

The County's on-call real property consultant, under the direction of the Department, has continued to work with Pacific Bell/AT&T's Regional Manager regarding language modifications to the County's standard Grant of Easement and Right of Way Contract and may reach a mutually acceptable agreement with Pacific Bell/AT&T, prior to, or during the eminent domain proceedings, provided the Resolution is adopted. The Regional Manager has accepted, subject to review by Pacific Bell/AT&T's legal counsel, County staff's proposed minor language modifications to the Grant of Easement and Right of Way Contract to afford Pacific Bell/AT&T access to the subterranean communications lines in the proposed road easement. Said Pacific Bell/AT&T communication facilities/lines will be subject to current applicable law, regulations and/or agreement(s), and treated as all other Pacific Bell/AT&T communication facilities currently within County of Fresno road easements/right-of-way, upon execution of the Right of Way Contract.

The County's on-call real property consultant will continue their efforts to reach mutually satisfactory agreements with the owners of Parcels 1, 2 and 5 and their legal counsel, if represented, before and after the Resolution of Necessity Hearing, and if approved, while County Counsel is filing for possession, as well as during the litigation process.

The name and address of each of the three remaining property owners subject to today's Public Hearing, to consider the adoption of a Resolution of Necessity, as required by law, precedent to the commencement of eminent domain proceedings are shown on Exhibit A. The location of the properties are shown on Exhibit B, and the general location of the properties are shown on the location map.

The eminent domain process cannot proceed unless the Board approves today's action. 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 anticipated that construction of the project will commence in the spring of 2018; however, the project will be delayed until possession of the three remaining partial acquisitions for road easements and the two temporary construction permits can be obtained.

Although property owners in attendance 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. It is important to note that, in accordance with applicable codes and regulations, matters involving compensation are not a finding the Board will be considering during today's Hearing. The property owners have a right to claim greater compensation in a court of law.

OTHER REVIEWING AGENCIES:

Development of this project was coordinated with Caltrans and Caltrans provides oversight on projects where Federal funds are allocated.

REFERENCE MATERIAL:

BAI #61, December 10, 2013
BAI #55, June 21, 2016
BAI #28, October 18, 2016
BAI #40, December 6, 2016
BAI #42, December 6, 2016
BAI #56, May 16, 2017

ATTACHMENTS INCLUDED AND/OR ON FILE:

Exhibit A
Exhibit B
Location Map
On file with Clerk - Resolution
On file with Clerk - Affidavit of Mailing

CAO ANALYST:

John Hays