



Board Agenda Item 35

DATE: February 12, 2019

TO: Board of Supervisors

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

SUBJECT: Adoption of Ordinance Delegating Authority to the Director of the Department of Public Works and Planning to Acquire Interests in Real Property for Projects Performed by the Department of Public Works and Planning

RECOMMENDED ACTION(S):

Conduct second hearing on and adopt an Ordinance amending the Ordinance Code of Fresno County, Chapter 2.52 - Department of Public Works and Planning to add Paragraph N to Section 2.52.040 - Duties of director of public works and planning, 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.

Approval of the recommended action will authorize the Director of the Department of Public Works and Planning to purchase real property and to solicit temporary access to real property for various Board-approved transportation and non-transportation projects. The intent of the proposed ordinance is 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. 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 continue to be approved by the Board on a case-by-case basis through individual agenda items.

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. For non-transportation projects, expenditures from the Department's Roads Org 4510 will be reimbursed by various Special Districts budgets.

DISCUSSION:

On January 29, 2019, your Board conducted the first hearing to amend the Ordinance Code of Fresno

County, Chapter 2.52, to delegate certain authority to the Director of the Department of Public Works and Planning to acquire, on behalf of the Board, subject to the 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.

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 delegate authority to the Director to acquire each type of property right, namely: (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 or 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 provide 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 \$100,000, provided however, the splitting or segmenting 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, including, but not limited to, notice to the public, notice to the property owner(s), appraisal of the subject real property, and offer to purchase.
- 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, 2023.

The intent of the proposed ordinance is 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. For example, a shoulder widening project in the design phase will require easements from 37 parcels. Although many settlements will be consolidated for approval pursuant to individual agenda items, some properties will settle relatively quickly while others may take several months to settle. It is important to conclude the process and provide each owner with his/her payment as soon as practicable after settlement. Consequently, this single project could result in 20 or more separate agenda items for the acquisition of easements. The proposed ordinance would allow the approval and settlement of those 37 easement agreements without unnecessarily taking the Board's and staff's time, and would provide the property owners with payment much more efficiently. It should be noted that the counties of Madera, Tulare, and Stanislaus have similar ordinances authorizing individuals to purchase right-of-way rights on behalf of their respective boards of supervisors.

If approved, the ordinance will go into effect 30 days after approval.

REFERENCE MATERIAL:

BAI #10, January 29, 2019

ATTACHMENTS INCLUDED AND/OR ON FILE:

Ordinance

CAO ANALYST:

Sonia M. De La Rosa