



County of Fresno

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Fresno, California
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Legislation Details (With Text)

File #: 18-1363

On agenda: 3/12/2019

Final action: 3/12/2019

Enactment date:

Enactment #:

Title: Conduct a public hearing to consider the adoption of a Resolution of Necessity, per California Code of Civil Procedure, section 1245.340, authorizing eminent domain proceedings and the deposit of funds (\$7,100) with the State of California - Condemnation Deposit Fund, to facilitate the Travers Creek Bridge Replacement on Lincoln Avenue, Federal Project No. BRLO-5942(226) (4/5 vote)

Attachments: 1. Agenda Item, 2. Exhibit A, 3. Exhibit B, 4. Location Map, 5. Resolution of Necessity, 6. Affidavit of Mailing

Date	Ver.	Action By	Action	Result
3/12/2019	1	Board of Supervisors		

DATE: March 12, 2019

TO: Board of Supervisors

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

SUBJECT: Resolution of Necessity to facilitate the Travers Creek Bridge Replacement Project on Lincoln Avenue

RECOMMENDED ACTION(S):

Conduct a public hearing to consider the adoption of a Resolution of Necessity, per California Code of Civil Procedure, section 1245.340, authorizing eminent domain proceedings and the deposit of funds (\$7,100) with the State of California - Condemnation Deposit Fund, to facilitate the Travers Creek Bridge Replacement on Lincoln Avenue, Federal Project No. BRLO-5942(226) (4/5 vote).

Approval of the recommended action would allow your Board to consider whether the findings can be made for the adoption of the proposed resolution. If the findings are made, the resolution will authorize and direct County Counsel to institute eminent domain proceedings, pursuant to Government Code, section 25350.5, Streets and Highways Code, section 943, and California Code of Civil Procedure, section 1230.010, et seq. The proposed resolution would also authorize and direct the Auditor-Controller/Treasurer-Tax Collector to deposit funds (\$7,100) with the State of California - Condemnation Deposit Fund, to acquire necessary real property interests to facilitate the Travers Creek Bridge Replacement Project on Lincoln Avenue. The hearing is not for consideration of matters involving compensation. This item pertains to a location in District 4.

ALTERNATIVE ACTION(S):

Not approving the recommended action will result in cancellation of the project and de-obligation of the allocated Federal funding. Any funds received by the County for this project to date would require reimbursement to the Federal Highway Administration from the Road Fund.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended action. The total estimated cost for real property interests subject to a proposed resolution is \$7,100. This project is eligible for 100% reimbursement under the Federal Highway Bridge Program (HBP). Funds for the necessary parcel are included in the Road Fund 0010, Subclass 11000. Sufficient appropriations are included in the Department of Public Works and Planning's Org 4510 FY 2018-19 Adopted Budget.

DISCUSSION:

On February 12, 2019, your Board adopted Resolution No. 19-046, setting the public hearing for March 12, 2019 at 9:00 a.m., or as soon thereafter as practicable. During the hearing, your Board will consider the adoption of a Resolution of Necessity for condemnation as required by California Code of Civil Procedure, section 1245.340. The resolution is required precedent to the commencement of eminent domain proceedings to meet construction commitments for the Travers Creek Bridge Replacement Project (Project) on Lincoln Ave. If approved, the proposed resolution will authorize and direct County Counsel to institute eminent domain proceedings to acquire certain real property interests, and the Auditor-Controller/Treasurer-Tax Collector's Office to issue a check, in the amount of \$7,100, for deposit in the State of California - Condemnation Deposit Fund.

The Project would allow replacement of the structurally deficient wooden two-lane bridge on Lincoln Avenue, with a new two-lane concrete box culvert that meets current standards. The Project requires real property interests from portions of five parcels; all but one permanent easement have been acquired through negotiation.

An appraisal was obtained by a third party consultant. The appraisal complied with all statutory requirements. Based on the appraisal, just compensation for the subject property was established. The just compensation established and the offer were equal to the appraisal amount of the subject property.

On May 10, 2018, the initial offer (\$7,100) was made to vested owners, Jacob Mirzaei and Patricia Rogers, which represented the full amount of the approved and reviewed appraisal. On August 28, 2018, the property owners sent a counter offer to the County's on-call Real Property Consultant for \$65,000 without justification or a supporting appraisal report. The Real Property Consultant informed the property owners verbally and in writing that the County would reimburse them up to \$5,000, per California Code of Civil Procedure, section 1263.025, to hire a licensed and independent appraiser to conduct an appraisal of the subject real property interest.

The eminent domain process cannot proceed unless your Board approves the recommended action. To provide such approval, your Board must make the following findings:

- The 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 property sought to be acquired, as described in the resolution, is necessary for the proposed project.
- An appraisal was obtained by a third party consultant. The appraisal complied with all statutory requirements. Based on the appraisal, just compensation for the subject property was established. The just compensation established and offer was equal to the appraisal amount of the subject property.

The Department asserts and recommends that such findings would be accurate and appropriate. Your Board is authorized to acquire certain real property interests by eminent domain pursuant to California Government Code, Section 25350.5, California Streets and Highways Code, Section 943, and California Code of Civil

Procedure, Section 1230.010, et seq.

With your Board's adoption of the Resolution of Necessity, the Department's Real Property staff will continue efforts to reach a mutually satisfactory agreement with the property owners during eminent domain proceedings.

The name and address of the property owners subject to the public hearing, to consider the adoption of a Resolution of Necessity, as required by law, precedent to the commencement of eminent domain proceedings is included on Exhibit A. The property owners identified in Exhibit A were mailed a Notice of the public hearing, including the date, time, and location of the hearing. The location of the property is shown on Exhibit B. The general location of the project is shown on the location map.

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

REFERENCE MATERIAL:

BAI #34, February 12, 2019
BAI #45, October 23, 2018
BAI #47, August 21, 2018
BAI #36, August 25, 2015
BAI #34, September 17, 2013

ATTACHMENTS INCLUDED AND/OR ON FILE:

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

CAO ANALYST:

Sonia M. De La Rosa