



County of Fresno

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Fresno, California
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Legislation Text

File #: 19-0451, **Version:** 1

DATE: May 7, 2019

TO: Board of Supervisors

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

SUBJECT: Resolution of Necessity to facilitate the Bridge Preventative Maintenance Program
Scour Mitigation Project

RECOMMENDED ACTION(S):

Conduct a public hearing to consider the adoption of a Resolution of Necessity, per California Code of Civil Procedure, section 1245.210 et seq., authorizing eminent domain proceedings and the deposit of funds (\$53,400) with the State of California - Condemnation Deposit Fund, to facilitate the Bridge Preventative Maintenance Program Scour Mitigation Project, Federal Project No. BPMP-5942(240) (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 (\$53,400) with the State of California - Condemnation Deposit Fund, to acquire necessary real property interests to facilitate the Bridge Preventative Maintenance Program (BPMP) Scour Mitigation Project (Project). 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. Warrants or checks in the aggregate amount of \$53,400, or lesser amount as certified by the Director of the Department of Public Works and Planning, or designee, will be issued from the Department's - Roads Org 4510, made payable to the State of California - Condemnation Deposit Fund, on behalf of the individual property owners listed in Exhibit A. The right-of-way (ROW) phase is paid 100% out of the Road fund. The funds spent on the ROW phase up to \$132,000 can be used towards the Bridge Investment Credit (BIC) program. Upon completion of the Project, the credits can be used toward the local match on future bridge projects.

The total estimated compensation (\$53,400) pursuant to the recommended action is for permanent roadway easements.

DISCUSSION:

On April 9, 2019, the Board adopted Resolution No. 19-123, setting the public hearing for May 7, 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 1245.210 et seq. The resolution is required precedent to the commencement of eminent domain proceedings to meet construction commitments for the Project. 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 aggregate amount of \$53,400, for deposit in the State of California - Condemnation Deposit Fund.

The Project would conduct maintenance activities on 12 bridges as part of the BPMP, extending the service life of the existing structure at each location by installing new or repairing existing scour countermeasures and conducting other maintenance activities at each location.

An appraisal was obtained by a third party consultant, which complied with all statutory requirements. Based on the appraisal, just compensation for the subject properties was established. The Project requires the acquisition of real property interests from portions of 15 parcels, of which, 12 have been acquired through negotiations. The County's real property staff has reached an impasse with the property owners of the three remaining parcels listed on Exhibit A.

Parcels 1 and 4

On July 26, 2017, the initial offer was made to property owner, which represented the full amount of the approved and reviewed appraisal. The property owner's son called and said he would be the main contact on behalf of his father going forward.

After initial discussions with the property owner's son it was determined that revisions needed to be made to the initial offer to include compensation for repairing an irrigation system that will be impacted by the project. On December 15, 2017, a revised offer was sent to the property owner. Between December 16, 2017 and February 21, 2018, numerous correspondences were made with the property owner. The owner's son requested that he get his own bid to replace his irrigation pipeline, which was impacted by the Project. On May 7, 2018, the Department received a written bid from Watson Ag Irrigation, the company selected by the property owner's son, to replace the irrigation pipeline. The bid was accepted and the appraisal was updated. On September 9, 2018, a final offer of \$51,800 was presented to the property owner. On October 9 and 17, 2018, requests were sent to the property owner's son requesting that he review and sign the ROW documents.

On December 1, 2018, the property owner's son sent an email requesting an additional \$5,000 more than the appraised value (\$51,800) to sign the ROW documents. On December 4, 2018, the Department sent a letter to the property owner informing him the County would not be able to accommodate his request and offered an additional \$200 for entrepreneurial incentive to cover costs of the contract review by his attorney. The property owner's son has been non-responsive since this date.

The property owner's son was informed verbally and in writing that the County would reimburse him 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. However, the property owner has not presented an appraisal to the County.

Parcel 12

On July 26, 2017, the initial offer was sent to property owner. On August 7, 2017, an email was received from

the property owner requesting changes to the ROW contract. On November 15, 2017, a revised offer package was mailed to the property owner and two days later the owner stated he “would pass the offer to his legal team and get back to us with any concerns and with the holidays coming up” he may not be able to get it back quickly.

On February 16, 2018, the property owner stated he sent the ROW documents to his lawyer and neither thought it would be a problem. On May 15, 2018, an email was received from the property owner requesting changes to the ROW Contract, including a re-design moving the access point, by which County crews would access an easement on the property owner’s land. Per the owner’s request, Department Engineers drafted another access point that would be utilized during construction/repair phase of the Project. On January 14, 2019, the revised ROW Contract was received from the owner; however, the signed Grant of Easement and tax forms were not included. Two days later, the Department’s on call ROW Consultant emailed a new Grant of Easement and tax forms to the owner for signature. As of March 18, 2019, the County has not received the signed Grant of Easement and tax forms.

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.
- That the offer required by Section 7267.2 of the Government Code has been made to the owners of record of the real property, which is the subject of the proposed project.

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.

Provided your Board adopts 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 names and addresses 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 are 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 locations of the property are shown on Exhibit B. The Project’s general locations are shown on the Location Maps. 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.

Construction is anticipated to commence as early as spring 2020; however, the Project will be delayed until possession can be attained.

REFERENCE MATERIAL:

BAI #39, April 3, 2018
BAI #68, October 17, 2017
BAI #45, August 22, 2017
BAI #58, October 28, 2014
BAI #42, October 23, 2012

ATTACHMENTS INCLUDED AND/OR ON FILE:

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

CAO ANALYST:

Sonia M. De La Rosa