

811A



**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FROM: Department of Facilities Management and Transportation **SUBMITTAL DATE:**
Department January 20, 2009

SUBJECT: Resolution No. 2009-048, Agreement to Hear Future Resolutions of Necessity for the
State Route 79 Widening Project from Thompson Road to Domenigoni Parkway

RECOMMENDED MOTION: That the Board of Supervisors Approve Resolution No. 2009-048,
Agreement to Hear Future Resolutions of Necessity for the State Route 79 Widening Project from
Thompson Road to Domenigoni Parkway

BACKGROUND: (Commences on Page 2)

Departmental Concurrence

Juan C. Perez, Director
Department of Transportation

Robert Field, Director
Department of Facilities Management

FINANCIAL DATA	Current F.Y. Total Cost:	\$0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$0	For Fiscal Year:	08/09

SOURCE OF FUNDS: Not Applicable	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input checked="" type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY:
County Executive Office Signature Jennifer L. Sargent

FORM APPROVED COUNTY COUNSEL
BY: Glenn R. Beloit
DATE: 2/15/09

Dept't Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

01-20-09 10:17 AM ID: 33

Prev. Agn. Ref.: _____ District: 3 _____ Agenda Number: _____

3.14

BACKGROUND:

Winchester Road (SR-79) is one of the key north-south corridors in Southwest Riverside County. Due to significant regional and local growth, a project to widen SR-79 from Thompson Road to Domenigoni Parkway has been proposed. The project would widen this section of SR-79 from two to four lanes in order to address the traffic needs of the area, enhance interregional travel, relieve traffic congestion, improve traffic safety, and reduce response time for emergency service vehicles. The need for improving SR-79 has been recognized by Riverside County Transportation Department, the City of Murrieta, the City of Temecula, and the California Department of Transportation.

The County of Riverside is the lead agency responsible for the completion of this project, and acquisition of parts of 22 properties is necessary for this project. The County will appraise and negotiate in good faith with all property owners with the goal of reaching mutually agreeable settlements. In the event that Eminent Domain is necessary on some acquisitions in order to keep this regionally critical project moving forward, this resolution sets the Board of Supervisors as the hearing body for such actions. The acquisitions are subject to the requirements and procedures of the Caltrans Right-Of-Way Manual and, in particular, are subject to the requirements and procedures of Sections 17.04.09.00 through 17.04.09.09 of that manual, which states, in part "State statute allows the California Transportation Commission, cities and counties to hear and adopt resolutions of necessity for the acquisition of property needed for projects on the State Highway System....If the county is to hear the resolutions, then the county must pass a resolution, by four-fifths vote, agreeing to hear the Resolution of Necessity for the project."

This Form 11 has been reviewed and approved by County Counsel as to legal form.

FINANCIAL DATA:

There are no costs associated with this Resolution.

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3 Resolution No. 2009-048
4 Agreement to Hear Future Resolutions of Necessity for the State Route 79 Widening Project
5 from Thompson Road to Domenigoni Parkway (Caltrans EA 464600)

6 WHEREAS, the County of Riverside ("County") is empowered to acquire property by
7 eminent domain pursuant to Article I, Section 19 of the California Constitution, and pursuant to
8 various statutes including Sections 1230.010 et seq. of the California Code of Civil Procedure;

9 WHEREAS, pursuant to California Streets and Highways Code Section 102, the State of
10 California, acting by and through its Department of Transportation ("Caltrans"), may acquire by
11 eminent domain any property necessary for state highway purposes;

12 WHEREAS, the County, in cooperation with Caltrans, has proposed a project to improve
13 the public highway of State Route 79 ("SR 79"), from Thompson Road to Domenigoni
14 Parkway, including a widening along the existing alignment from one mixed flow lane in each
15 direction into two mixed flow lanes in each direction with a center median (the "SR 79
16 Project");

17 WHEREAS, the SR 79 Project has been designated by Caltrans (for reference
18 purposes) as Caltrans EA 464600;

19 WHEREAS, County projects to condemn property for state highway purposes are
20 subject to the requirements and procedures of the Caltrans Right-Of-Way Manual and, in
21 particular, are subject to the requirements and procedures of Sections 17.04.09.00 through
22 17.04.09.09 of that manual (true and correct copies of which are attached hereto as Exhibit "A"
23 and are incorporated herein by this reference); and

24 WHEREAS, Section 17.04.09.00 of the Caltrans Right-Of-Way Manual states (in
25 pertinent part) as follows:

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“State statute allows the California Transportation Commission, cities and counties to hear and adopt resolutions of necessity for the acquisition of property needed for projects on the State Highway System....If the county is to hear the resolutions, then the county must pass a resolution, by four-fifths vote, agreeing to hear the Resolution of Necessity for the project.”

Now, therefore, BE IT RESOLVED by the Board of Supervisors of the County of Riverside, State of California (the “Board”), not less than four-fifths of all members concurring, in regular session assembled on March 24, 2009, that this Board hereby agrees as follows:

1. This Board hereby agrees to hear and determine Resolutions of Necessity regarding the SR 79 Project.

2. The County Counsel of the County of Riverside is hereby designated to prepare (in conformance with applicable law), to review, to approve, and to otherwise process resolution of necessity packages for the SR 79 Project (including the Notice of Intention to Adopt Resolution of Necessity and the Resolution of Necessity) prior to those matters being heard by the Board.

JRF:ra
020509
218TR
12.433

FORM APPROVED COUNTY COUNSEL
BY: Glenn R. Beloian 2/15/09
GLENN R. BELOIAN DATE

Exhibit "A"

17.04.09.00 Condemnation for LPA Projects - General

The power of eminent domain can only be exercised if the condemning authority can establish:

- The necessity of the project,
- The project location is most compatible with the greatest public good and least private injury,
- And, the property is necessary for the project.

State statute allows the California Transportation Commission, cities and counties to hear and adopt resolutions of necessity for the acquisition of property needed for projects on the State Highway System. The exercise of eminent domain to acquire property for state highway purposes can be accomplished only by the state (Department) or by the county or city in which the property is located. (Also see Exhibit 17-EX-10 in this Chapter.)

The steps involved in taking resolution requests to a local board begin during the draft cooperative agreement phase. The local agency must have entered into negotiations to draft an agreement for the project. There must be a draft cooperative agreement. The decision to take Resolutions of Necessity to the Local Board of Supervisors or City Council is made for the project in its entirety. In addition to any language that may appear in the Cooperative Agreement, the local entity must obtain approval in writing from Headquarters Right of Way to proceed to take Resolutions of Necessity before the appropriate local body.

If the LPA is to hear the resolutions, then the city council must pass a resolution, by two-thirds vote, agreeing to hear the Resolutions of Necessity for the project. If the county is to hear the resolutions, then the county must pass a resolution, by four-fifths vote, agreeing to hear the Resolution of Necessity for the project.

If the county or city elects not to undertake this activity on behalf of another LPA (e.g., a Transportation Authority), then the Department should assume this task. The cost for providing legal services is reimbursable and the requirement for this service must be included in the Cooperative Agreement or Right of Way Services Agreement. In addition, prior budgetary authority for reimbursable work must be obtained.

17.04.09.01 Approval for Local Agencies to Hear Resolutions of Necessity

The Region/District will help to facilitate the submission of an approval package to the Chief of the Division of Right of Way in Headquarters. The package must include all of the following:

- Justification for the request
- Documentation of the resolution from the governing body of the city or county agreeing to acquire property for State Highway purposes and to hear resolutions
- Description of the project, i.e., number of parcels, maps, proposed construction project
- Proposed schedule for acquisition
- Draft copy of the cooperative agreement

The package will be logged in at Headquarters Right of Way and forwarded to the appropriate office chief, either Acquisition or Local Programs for review and recommendation. Final decision will rest with the Chief, Division of Right of Way.

A log will be kept in Headquarters of the approvals and denials. Once Headquarters has notified the Region/District of approval, then the Region/District is responsible for notifying the local agency in writing that they may proceed with the acquisition of real property or interest therein. The notification must designate the limits of the project under recommendation.

17.04.09.02 **Notice of Intent**

The local agency is required to follow the Department's Notice procedures. Please see Section 9.01.04.00. A Notice of Intent to adopt a Resolution of Necessity can only be served after the grantor has been given a reasonable amount of time to consider the offer presented. The Notice of Intent cannot be served immediately following the offer to acquire.

NOTE: In all cases, a copy of each Notice of Intent is to be sent to the Region/District Right of Way Local Programs Coordinator.

17.04.09.03 **Resolution of Necessity**

In all cases the resolution package must be reviewed and approved by the appropriate Legal Office in accordance with the authorizing agreement prior to being heard. The resolution must satisfy all of the requirements of the Code of Civil Procedures (CCP), Title 7, Chapter 4, Article 2. In the case where the LPA performs the legal activities, the LPA's Legal Counsel may be designated by the agreement to process the resolution package.

The Resolution of Necessity must contain a general statement of the public use for which the property is being acquired and must reference the appropriate statute for the property rights to be acquired by eminent domain. Frequently cited references are:

- Streets and Highways Code Section 102 allows for acquisition by eminent domain for state highway purposes
- CCP Section 1240.410 – the acquiring agency is acquiring a remnant of such size, shape or condition that it will have little market value
- CCP Section 1240.510 – the property is being acquired from another public agency for a compatible use
- CCP Section 1240.610 – the property is being acquired from another public agency for a more necessary public use
- CCP Section 1240.220 – the public agency is acquiring additional property for future use, requires owner's consent
- CCP Section 1240.150 – entire parcel is to be acquired when the remainder would be of little value to the owner, requires owner's consent

The resolution must also contain a general location and extent of property rights to be acquired to allow for reasonable identification. The resolution document must declare the public finds each of the following:

- Public interest and necessity require the project
- The project is located in a manner to provide the greatest public good and least private injury
- The property is necessary for the project
- An offer has been made to purchase the property in accordance with Section 7267.2 of the Government Code

Upon passage of a resolution, a copy of that resolution must be sent to Region/District Right of Way Local Programs.

17.04.09.04 **Request to Appear**

Statute allows the property owner fifteen days within which to request an appearance before the board hearing the resolution request. If a Request to Appear is not timely, then the right to appear has been waived and the resolution will be heard as a consent item. Exceptions to timely requests may be granted jointly by the delivering agency and the governing body. The reasons for exception will be documented in every case. Possible reasons are documented illness or documented travel.

If the owner requests an appearance, then the local agency must follow a review process. The review process may require postponement of the date the resolution is heard before the CTC, County Board of Supervisors or City Council.

The Condemnation Evaluation Meeting and Condemnation Panel Review Meeting provide a forum where property owners can meet with Local Agency Right of Way and Design managers in an effort to resolve design issues. These reviews address the concerns of the property owner. It is important that a decision-maker be included in the review process. Occasionally, certain acceptable design exceptions with minor impact can satisfy the property owner's concerns. The Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting may be combined only when there are no design issues. If there are no design issues, then the decision to combine the two meetings is made by the LPA.

17.04.09.05 **Reviews Prior to Appearance (Heard by California Transportation Commission)**

When a request for an appearance is on a Resolution of Necessity to be heard by the California Transportation Commission (CTC), regardless of who is performing the right of way and design activities, the Department will conduct the Reviews, and will make the presentation before the Commission. Appropriate local agency staff shall participate in the reviews and may be asked to be present at the Commission meeting.

17.04.09.06 **Reviews Prior to Appearance (Heard by City Council or County Board of Supervisors)**

Refer to Exhibit 17-EX-10.

17.04.09.07 **Condemnation Responsibilities (Department)**

Following are the usual responsibilities of the respective parties whenever the Department undertakes legal services for the acquiring agency and which must be included in the Cooperative Agreement:

- A. Legal opinions and advice in all matters relating to the right to acquire the property for the project or to the valuation of said property.
- B. Department will obtain the necessary Resolution of Necessity from the CTC, or other appropriate body.
- C. Attorney services in connection with selection of witnesses for trial, the preparation and conduct of the trial, post-trial motions and appellate proceedings in condemnation cases for the acquisition of property or actions to acquire possession of property.
- D. Attorney services as necessary or required for property management and/or relocation assistance proceedings.

17.04.09.08 **Condemnation Responsibilities (LPA)**

In preparation for condemnation, the LPA will *normally* provide the following:

- A. Current title reports with indications of each interest to be named in the lawsuit and updates of such reports as necessary.
- B. Relocation assistance certificates of occupancy indicating names of persons of other entities in possession of the property.
- C. An adequate legal description of the property.
- D. Right of Way/Parcel maps as required for condemnation complaints.
- E. All notices and reports necessary to obtain Resolutions of Necessity including reports and/or presentations where an owner seeks to exercise his right to appear before the appropriate governing body to contest the necessity for the taking.
- F. Documents necessary to deposit the just compensation with the State Treasurer.
- G. Necessary information for obtaining orders of possession.
- H. All efforts required to process suit papers and to file, serve, and prepare proof of service documents for required summons, complaints, and orders for possession.
- I. An authorized representative from the LPA who will appear at the hearing before the appropriate governing body to adopt the Resolution of Necessity.

17.04.09.09 **Condemnation Trials Responsibilities (LPA)**

In preparation for trial, the LPA will *usually* provide the following:

- A. A copy of the LPA's staff appraisal report.
- B. Relevant acquisition files and data, including copies of parcel diaries, correspondence, and other related material.
- C. Engineering witnesses familiar with the property to be acquired, the proposed project and the improvements associated therewith.
- D. All maps, exhibits, and photographs required for trial.

- E. Expert appraisal witnesses, subject to prior approval by the Department's Legal Division. All witnesses shall be made available to Legal for preappraisal and presubmission meetings to ensure they are proceeding on legally proper grounds.
- F. If private sector consultants are used, service of the LPA's acquisition consultant to assist Legal at the trial, to the extent that Right of Way Agents typically provide such services.

The LPA is also responsible for depositing sufficient funds with the Department to cover jury fees, deposits of probable just compensation for orders of possession, all trial preparation costs such as witness fees, deposition fees, and attorneys' fees.

17.04.10.01 Property Management - Income

Pursuant to Streets and Highways Code Sections 104.6 and 104.10, twenty-four percent (24%) of the gross rental income derived from property acquired in the state's name is to be transferred to the county in which rental income is derived. These sections are applicable whenever property is vested in the state's name regardless of the source of money to acquire the property and who will provide the property management services to the LPA. Pursuant to Streets and Highways Code Section 104.13, the Department is responsible for the payment of possessory interest taxes on leased property held for future state highway needs and for excess lands. All funds distributed to a county (24%) pursuant to Section 104.10 are considered to be the full or partial payment of the total possessory interest taxes due.

The above distribution of funds must be clearly detailed in the Cooperative Agreement or Right of Way Services Agreement with the LPA, particularly in situations where another LPA is acting as an agent for the Department in providing the property management services.

If Department is providing the property management, the balance of gross rental receipts (less adjustments for possessory interests and/or 24% allocation) will be transferred to the LPA. Costs incurred in conjunction with property management activities are reimbursable costs and will be part of the advance deposit for estimated support costs. The LPA will not be paid interest on rental income.

17.04.11.01 Local Agency Relocation Assistance Appeals Process

Whenever the LPA is proposing to do their own relocation assistance work, they must have an appeal process that meets the Uniform Act/CFR requirements and is approved by the Department.

The District must approve the process and the Appeals Board members or hearing officers designated by the LPA. The submittal to the Department should include the following:

1. Assurances that all persons receiving relocation assistance will be advised of their right to appeal.
2. The names and qualifications of prospective members of an Appeals Board or appeal review officers. (Note: Appeals Board members should not be persons who are involved in the relocation claims process nor any supervising persons involved in the claims process.)