



Legislation Text

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REQUEST FOR CITY COUNCIL ACTION

DATE: 07/21/2021

TO: Honorable Mayor and City Council Members

FROM: Public Works Department

SUBJECT:

Public Hearing and Resolution declaring the Necessity of acquisition, by eminent domain, of temporary ingress and egress easement interests, located on North McKinley Street, south of the State Route 91 eastbound on-ramp for the McKinley Street Grade Separation Project.

EXECUTIVE SUMMARY:

Public Hearing to consider the adoption of a Resolution declaring the Necessity of acquisition, by eminent domain, temporary ingress and egress easement interests in a portion of certain real property identified as Assessor Parcel No. 172-050-006 and located on North McKinley Street north of Magnolia Avenue and south of the State Route 91 East Bound On-Ramp for the McKinley Street Grade Separation Project, No. 2012-12.

RECOMMENDED ACTION:

That the City Council:

- a. Conduct a public hearing to consider the adoption of a Resolution declaring the Necessity of acquisition, including providing all parties interested in the affected property and their attorneys or their representatives an opportunity to be heard on the issues relevant to the Resolution of Necessity.
- b. Make the following findings as hereinafter described in this report:
 - a. The public interest and necessity require the proposed project;
 - b. The project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
 - c. The real property to be acquired is necessary for the project, and;
 - d. The offers of just compensation have been made to the property owners.
- c. Adopt Resolution 2021-094, declaring the Necessity of acquisition, by eminent domain, of

temporary ingress and egress easement interests, located on North McKinley Street, south of the State Route 91 eastbound on-ramp for the McKinley Street Grade Separation Project.

BACKGROUND & HISTORY:

The City will construct a new four-lane overhead grade separation at the McKinley Street/BNSF Railway double tracks, north of the intersection with Sampson Avenue, in the City of Corona, in Riverside County, California ("the Project"). The north/south limits of improvement and required property generally extend along McKinley Street, which is consistent with the City's zoning of Support Commercial/Light Manufacturing - industrial land uses.

The acquisition of additional temporary easement interests in Assessor Parcel No. ("APN") 172-050-006 is necessary for the construction of the Project. Specifically, the City must acquire temporary ingress and egress easement interests necessary to support the construction, operation, and long-term maintenance of roadway, temporary loss of access to McKinley Street during construction, and temporary/permanent loss of parking stalls due to construction of the Project, as well as real property improvements within the limits of acquisition. The interests are further identified in Exhibit 1 attached to the Resolution of Necessity submitted herewith (the "Subject Property").

The portion of the Subject Property now sought to be acquired is in addition to property already acquired from APN 172-050-006. The City has identified a need for the additional temporary ingress and egress easement in order to maintain access for the neighboring Castro/Inland Empire Adult Day Health Care Center property during construction. Since the adoption of Resolution 2020-019 on August 19, 2020, APN 172-050-006 has changed, thus necessitating the adoption of an additional Resolution of Necessity.

Following standard public records and due diligence searches for ownership information, a notice of this public hearing was mailed to the property owner on June 30, 2021, by first class mail in accordance with Section 1245.235 of the California Code of Civil Procedure. The Subject Property, identified as Assessor Parcel No. 172-050-006, is now owned by Henry Chung ("Chung").

Description of the Property:

The Chung property, APN 172-050-006, is located on the east side of McKinley Street north of Magnolia Avenue and south of Sampson Avenue and the BNSF railroad tracks and is consistent with the City's zoning of Support Commercial/Limited Commercial - industrial land uses. The affected parcel is within the city limits. The Project has not yet started but is expected to be started by December 1, 2021.

Hearings and Required Findings:

The recommended actions of the City Council pertaining to the Subject Property owned by Chung and identified as Assessor Parcel No. 172-050-006.

California eminent domain law provides that a public entity may not commence eminent domain proceedings until its governing body has adopted a Resolution of Necessity, which resolution may only be adopted after the governing body has given each party with an interest in the affected

property or their representatives a reasonable opportunity to appear and be heard on the following matters:

1. The public interest and necessity require the proposed project;
2. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
3. The real property to be acquired is necessary for the project; and
4. The offer of just compensation has been made to the property owner.

The above four required findings are addressed as follows:

1. The Public Interest and Necessity Require the Proposed Project

McKinley Street is one of the principal north/south arterials within the City. It connects the south side of the City with State Route 91 (SR-91). The at-grade conflict with the BNSF railroad has significantly impacted traffic circulation in the area. There are approximately 68 trains traversing this intersection on a daily basis, resulting in the crossing gates being down for over 100 minutes per day. Vehicles idling at the grade crossing when gates are down emit pollutants. Train frequency and length will continue to grow. Future projections (Year 2035) expect that train volumes will increase to approximately 137 trains per day, increasing gate-down time to over 4 hours per day. Nine incidents at this grade crossing have been recorded with the Federal Railroad Administration, including five fatalities.

The Project will require the construction of a grade separation structure, retiring the existing at-grade crossing, and providing a signalized intersection at the proposed relocated junction of McKinley Street and Sampson Avenue. The Project will:

1. Improve safety by separating vehicles, pedestrians, and cyclists from trains at the railroad crossing;
2. Provide unhindered access for emergency vehicles;
3. Reduce traffic congestion;
4. Reduce air and noise pollution;
5. Minimize impacts to adjacent property owners and the surrounding public to the maximum extent possible, both during and after construction of a grade-separated intersection at the BNSF crossing; and
6. Reduce impacts to railroad operations.

In 2006 and again in 2008, the Riverside County Transportation Commission developed a grade separation priority funding strategy. The McKinley Street Grade Separation was ranked in the top-tier priority group. A 2017 companion study noted that this grade separation was the number one grade separation priority for the City of Corona and again maintained the Project in the top tier priority group among all Riverside County grade separation projects.

2. The Project is Planned or Located in a Manner That Will be Most Compatible with the Greatest Public Good and the Least Private Injury

In September 2007, the City Council authorized a Project Study Report ("PSR"), which was finalized

in 2011. The PSR considered several alternatives, including an overpass, an underpass, and the raising of the BNSF railroad tracks. Ultimately, the overpass (a grade separation of McKinley Street over the existing railroad tracks) was determined to be the most practical approach to achieving the goals of the Project, from the standpoint of cost, displacement, operations, and maintenance. With respect to McKinley Street, the PSR considered various alternatives, including widening McKinley to three lanes in each direction.

Based on concerns about estimated Project costs and other issues, in January 2019, the City Council formed the McKinley Grade Separation Peer Review Ad Hoc Committee. The purpose of the Ad Hoc Committee was to establish a McKinley Grade Separation Peer Review Team to take an independent look at the proposed project, including the financial, technical, and schedule feasibility of a “rail over road” alternative and the options thus far studied for the “road over rail” alternative, and to determine whether a reasonable range of feasible alternatives had been studied. The Peer Review Team prepared an Independent Review and Assessment Report dated March 14, 2019 (“Peer Report”), which was presented at the City Council Meeting on March 20, 2019, and responded to by Biggs Cardosa at a March 27, 2019, City Council Study Session.

One of the recommendations in the Peer Report was to conduct a Value Engineering Workshop, and a Value Engineering team was then formed in an effort to reduce overall project cost and impact. The Value Engineering team discussions resulted in design changes that were presented to the City Council at its August 21, 2019, meeting. One of the substantial changes was the reduction of a six-lane facility to a four-lane facility reducing overall impacts to the project footprint, however still resulting in acquisition needs from the Subject Properties. Substantial analysis in traffic control and construction staging has been performed by the project team starting in August 2019 to minimize impacts and access restrictions during construction to the Subject Properties.

Based on the design resulting from these many substantial efforts, acquisition of the Subject Property that is the subject of this Resolution of Necessity hearing is necessary.

3. The Real Property to be Acquired is Necessary for the Proposed Project

In order to accommodate the construction of the State Route 91 eastbound McKinley Street off-ramp and retaining wall infrastructure improvements located in the southeast quadrant of the Project area that is necessary due to the separation of the McKinley/Sampson intersection, the City must acquire property interests that include temporary ingress and egress easement interests in a portion of the Subject Property consistent with Caltrans requirements, within the Project limits. The interests the City must acquire within the property owned by Chung is described in Exhibit “1” attached to the Resolution of Necessity. City staff, working with City consultants, determined this property interest to be most suitable for the Project to maintain street access for the neighboring Castro/Inland Empire Adult Day Health Care Center property during construction.

4. The Offer of Just Compensation Has Been Made

An appraisal was prepared by Bradford Thompson, MAI, AI-GRS, SR/WA, as to the additional portion of the Subject Property needed for the ingress and egress easement. In May of 2021, based on Thompson’s appraisal, and in accordance with California Government Code Section 7267.2, the City made an offer of just compensation to the record owner to purchase interests in the Subject

Property (i.e., the temporary ingress and egress easement interest) as required by Section 7267.2 of the California Government Code. Although a negotiated settlement may still be possible for the Subject Property cited above, it would be appropriate to commence the procedures to acquire the Subject Property through eminent domain, to ensure that the City has possession of the needed property interest to begin construction of the Project and meet funding and certification deadlines for the Project.

ANALYSIS:

The temporary ingress and egress easement interests are necessary for the Project to maintain street access for the neighboring Castro/Inland Empire Adult Day Health Care Center property during construction. The City acquisition and negotiations process to date has included the following:

1. Pre-appraisal site inspection with the property owner: April 1, 2021.
2. Completion of an independent appraisal to establish a fair market value for required property interests: April 9, 2021.
3. Just compensation approval established via City Council approval: April 21, 2021.
4. In accordance with California Government Code Section 7267.2, offers of just compensation dated May 10, 2021, were made to Chung to purchase the Subject Property as required by Section 7267.2 of the California Government Code.
5. Communication and correspondence as follows between May 10, 2021, and June 30, 2021:
 - a. Emails - 5
 - b. Telephone Calls - 6

Chung and his representatives have not responded to emails/telephone calls as of May 21, 2021. Based on the current schedule, the Subject Project will be necessary for construction by approximately June 2022, so the City must start the eminent domain process immediately to avoid potential delays or change orders from the contractor should the City not succeed in obtaining a settlement agreement with Chung. The City will continue routine calls, emails, and site visits until either an agreement is obtained, or possession is secured through eminent domain.

FINANCIAL IMPACT:

Available funding for the Project is as follows:

Project Funding	
Funding Source	Amount
State Senate Bill 132	\$84,450,000
Gas Tax	\$229,724
Transportation Development Act	\$2,000,000
Transportation Uniform Mitigation Fees	\$1,630,114
Riverside County Transportation Commission Measure A	\$2,000,000
BNSF Railway Company Contributions	\$3,810,000*
CTC – Trade Corridor Enhancement Program (TCEP)	\$10,300,000
CPUC Section 190	\$5,000,000
CTC – Highway Railroad Crossing Safety Account (HRCSA)	\$2,876,000
Western Municipal Water District Contributions	\$1,400,000
Total	\$113,695,838

*Denotes the City has concluded the negotiations with BNSF for their share of contributions and is currently in the process of executing the Overpass Agreement as authorized per the City Council on May 19, 2021. The total BNSF contribution is \$3,810,000 and is no longer estimated.

The City has identified the following costs as part of the current Project budget:

Project Expenditures	
Expenditure Source	Amount
Design	\$12,023,838
Project Management	\$3,330,505
Construction Management and Inspection Services	\$11,000,000
Estimated BNSF Railway Company Fees/Costs	\$1,718,858
Demolition of Structures Located at 151 and 165 N. McKinley St	\$206,283
Construction, Right of Way, and Utility Relocation	\$85,416,354
Total	\$113,695,838

All acquisition activities, including eminent domain, have been planned to be included within available project expenditures as listed above.

ENVIRONMENTAL ANALYSIS:

This action is statutorily exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Public Resources Section 21080.13, which states that CEQA shall not apply to any railroad grade separation project that eliminates an existing grade crossing or that reconstructs an existing grade separation. This action involves the approval of a resolution indicating an intent to acquire, by eminent domain, certain real property interests needed for a railroad grade separation project that will eliminate an existing grade crossing on McKinley Street. Therefore, no environmental analysis is required.

PREPARED BY: JOSHUA COSPER, P.E., P.L.S., CONSULTANT PROJECT MANAGER FOR THE MCKINLEY GRADE SEPARATION PROJECT

REVIEWED BY: SAVAT KHAMPHOU, PUBLIC WORKS DIRECTOR

Attachments:

1. Exhibit 1 - Resolution No. 2021-094