

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: JASON NUTT, ASSISTANT CITY MANAGER
SUBJECT: A RESOLUTION OF NECESSITY FOR THE ACQUISITION BY
EMINENT DOMAIN OF TEMPORARY EASEMENT AND FEE
SIMPLE INTERESTS IN PORTIONS OF REAL PROPERTY
COMMONLY KNOWN AS 1975 CLEVELAND AVENUE, APN 012-
490-052, FOR THE HIGHWAY 101 BICYCLE AND PEDESTRIAN
OVERCROSSING PROJECT

AGENDA ACTION: PUBLIC HEARING AND RESOLUTION

RECOMMENDATION

It is recommended by the Transportation and Public Works Department that the Council conduct a public hearing and adopt a Resolution of Necessity, by a two-thirds vote, declaring the necessity of acquisition, by eminent domain, of a fee simple interest (709 square feet) and a temporary construction easement interest (3,495 square feet) (collectively, the "Subject Property") in portions of certain real property, more particularly described as Assessor Parcel No. 012-490-052, for the Highway 101 Bicycle and Pedestrian Overcrossing Project ("Project") in the City of Santa Rosa, Sonoma County, California.

EXECUTIVE SUMMARY

In line with the Council's goals to build and maintain sustainable infrastructure, acquisition of the above-described property interests will help facilitate closure of a gap in east-west bicycle and pedestrian travel caused by U.S. Highway 101 (Hwy 101) in the Santa Rosa Junior College (SRJC) area. The proposed bicycle & pedestrian overcrossing will facilitate bicyclists and pedestrians safely crossing over Hwy 101 while reducing vehicle and pedestrian conflict on College Avenue and Steele Lane and providing more opportunities for alternative transportation.

BACKGROUND

The City of Santa Rosa, in coordination with the California Department of Transportation (Caltrans), has been in plans for several years to construct a bicycle/pedestrian shared-use overcrossing spanning Hwy 101.

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The Project is needed to accommodate and provide safe access to bicyclists and pedestrians in areas east and west of Hwy 101 in the northern half of Santa Rosa.

The Subject Property is necessary to complete the Project on the western side of Hwy 101. The Subject Property is a portion of property commonly known as 1975 Cleveland Avenue and more particularly described as Assessor Parcel Number 012-490-052 ("Property") and is owned by Michael E. Hornstein and Ellen F. Hornstein, as Trustees of The Michael & Ellen Hornstein 1998 Revocable Trust ("Property Owner").

The Property is 3.56 acres in size and is zoned as CG (General Commercial) by the City of Santa Rosa.

The Property is a finished site that is improved with a build-to-suit retail commercial building (occupied by Dicks Sporting Goods) and a build-to-suite bank branch (occupied by Patelco Credit Union) built in 2015. The site is improved with asphalt paved parking (about 172 parking spaces), light posts, and landscaping. The building improvements are not impacted in any way by the Project.

The City obtained an appraisal of the real estate from Michael E. Lockard, MAI, R/W-AC of RowLand Valuation and the appraisal was reviewed by Associate Right of Way Services. The City made an offer of just compensation to the Property Owner for the acquisition of the property interests, pursuant to California Government Code section 7267.2. The acquisition of the Subject Property will not require the relocation of any residences or businesses.

PRIOR CITY REVIEW

On July 21, 2020, the City Council provided input on the draft environmental document for the Bicycle and Pedestrian Overcrossing. On September 15, 2020, the City Council, by Resolution No. RES-2020-151, approved a cooperative agreement between Caltrans and the City of Santa Rosa for independent quality management assessment during the preparation of the project plans, specification, and estimate for the improvements to the Highway 101 Bicycle and Pedestrian Overcrossing.

On April 27, 2021, the City Council, by Resolution No. RES-2021-060, approved a professional services agreement to provide professional design and right of way services for the preliminary engineering phase of the overcrossing.

On August 17, 2021, the City Council, by Resolution No. RES-2021-146, authorized the filing of an application for grant funding through the Metropolitan Transportation Commission (MTC) Active Transportation Program and authorized \$2.5M of SB1 funds

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and \$550,000 of Transportation Development Act (TDA) funds to match federal funds being requested for construction.

On October 26, 2021, the City Council, by Resolution No. RES-2021-180, authorized the filing of an application for MTC State Transportation Improvement Program (STIP) funding in the amount of \$3.4M for construction.

On April 26, 2022, the City Council, by Resolution, requested MTC allocate \$600,000 of FY 22/23 TDA3 funds, increase appropriations by \$600,000 of TDA3 funds, and authorize submittal of the project to CTC in order to receive FY22/23 apportionment of SB1 funds in the amount of \$3,914,094.00.

On August 9, 2022, the City Council, by Resolution, approved Cooperative Agreement No. 04-2837 between the State of California, acting through its Department of Transportation (Caltrans), and the City of Santa Rosa authorizing Caltrans to provide quality management assessment for right of way support, right of way acquisition, and utility relocation activities for the Project.

ANALYSIS

The fee simple interest (709 sq ft) and temporary construction easement interests (3,495 sq ft) in portions of Assessor Parcel Number 012-490-052, are necessary for the Project to be built.

The City acquisition and negotiations process has transpired over the course of the past eight (8) months, including but not limited to the following dates:

- 8/1/2022**--The Notice of Decision to Appraise--was sent to owner by Associated Right of Way Services, Inc. ("Consultant");
- 9/14/2022**- Property Owner accompanied Original Appraiser during inspection of Property ("Site Visit");
- 10/28/2022**- Original Appraiser received new right of way acquisition exhibit with revised land areas;
- 11/21/22**-The Original Appraiser valued the fee simple and temporary construction easement interests ("Original Appraisal");
- 12/7/22**-An offer was made to Property Owner in the amount of Original Appraisal;
- 2/14/2023**- Property Owner's counsel Matteoni O'Laughlin & Hechtman send counteroffer to City

The City and the Property Owner are unable to come to agreement on the price and terms of the acquisition of the Subject Property interests at this time but continue to negotiate.

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Based on the current schedule, the Subject Property will be necessary for construction by approximately April 2024, 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 Property Owner.

FISCAL IMPACT

Approval of this action does not have a fiscal impact on the General Fund. Funds for the purchase of the Subject Property were previously appropriated into Journal Ledger account number 17381.

ENVIRONMENTAL IMPACT

The Highway 101 Bicycle and Pedestrian Overcrossing Project has been reviewed in compliance with the California Environmental Quality Act (CEQA) and an Initial Study/Mitigated Negative Declaration (IS/MND) was prepared and distributed for the required 30-day public review period on June 22, 2020. The Project has also been reviewed pursuant to the National Environmental Policy Act (NEPA) and qualifies for a Categorical Exclusion. As the lead CEQA and NEPA agency for this project, Caltrans certified the final environmental documents and posted a Notice of Determination (NOD) to the State Clearinghouse Office of Planning and Research in March 2021.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

Following standard public records and due diligence searches for ownership information, a notice of the public hearing was mailed to the owner of record on June 14 and June 20, 2023, by regular U.S. Mail.

HEARINGS AND REQUIRED FINDING

The recommended actions of the City Council pertain to the acquisition of fee simple and temporary easement interests in portions of the property identified as Assessor Parcel No. 012-490-052, owned by Michael E. Hornstein and Ellen F. Hornstein, as trustees of The Michael & Ellen Hornstein 1998 Revocable Trust. California eminent domain law provides that a public entity may not commence an eminent domain proceeding until its governing body has adopted a Resolution of Necessity, which resolution may only be adopted after the governing body has given

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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.
4. The offer of just compensation has been made to the property owner.

All notices of hearing were mailed on June 14 and June 20, 2023, by first class mail to the Property Owner in accordance with Section 1245.235 of the California Code of Civil Procedure.

The above four required findings are addressed as follows:

1. The Public Interest and Necessity Require the Proposed Project

The northern half of Santa Rosa needs better bicycle and pedestrian connectivity between the areas west of U.S. Highway 101 and the academic, residential, commercial, and recreation areas east of U.S. Highway 101. The highway creates a barrier between bikeways on both sides. Steele Lane and College Avenue are the only crossings of U.S. Highway 101 for about three miles, which is too far for pedestrians and cyclists. Pedestrian/vehicle conflict points need to be reduced, and alternative modes of travel need to be provided to alleviate traffic congestion and parking shortages. There is also a need for improved pedestrian and bike connectivity in the SRJC/Coddington Area and to the new SMART rail transit station recently constructed on the west side of U.S. Highway 101 at Guerneville Road. Not building this Project would allow challenging crossing conditions for pedestrians and cyclists at the interchange ramps to persist, while failing to encourage a mode shift away from motorized forms of transportation and alleviating congestion.

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

Several locations were studied, and the Elliott Avenue and Edwards Avenue location is the preferred location because it provides direct connections between commercial areas on the west and a college campus and residential areas on the east. The location also provides a direct connection to the SMART corridor along existing bike and pedestrian-friendly streets. Other locations were studied but they were determined to be non-viable due to challenges in safely routing bicycle traffic and accommodating a ramp structure and safe touch-down area on the west side of the U.S. Highway 101. Moreover, when the proposed location of the SMART Station

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moved northward to Guerneville Road, the City determined that the southern alternative locations would only marginally satisfy a key aspect of the Purpose and Need of the project, which is to provide a clear connection to the now constructed station.

Additionally, in the study completed by Caltrans the Edwards- Elliott location would require a total of 8,815 square feet of right of way to be purchased on the east and west sides of Highway 101 and was deemed to have a lower construction cost than that alternative Bear Cub Way. No impacts are expected to the parking lot layout or pedestrian circulation patterns at the Edwards- Elliott location, and only minimal visual impacts affecting visibility of commercial signage are anticipated. During the public comment period, this location received more public support, and was perceived as closer to public amenities and the SMART station. This location was also preferred by the Santa Rosa Junior College due to the proximity of future resident housing. Comments received from residents and business associated with the Edwards Avenue neighborhood were noted and considered and, in some cases, it was determined that additional avoidance minimization measures should be added to the Project.

The alternative Bear Cub Way location that was also studied required 26,470 square feet of right of way to be purchased, had a higher construction cost and would remove parking spaces from two businesses. During the public comment period, this alternative location received less public support and was perceived as non-viable for pedestrian use and too far from the SMART station.

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

The real property, described in the exhibits attached to the Resolution of Necessity, as fee simple and temporary construction easement interests in portions of Assessor's Parcel Number 012-490-052, is needed for the Highway 101 Bicycle and Pedestrian Overcrossing Project and is necessary for the Project to be built

The Subject Property interests are a very small portion of the property needed to accommodate the overpass. The City has coordinated closely with the Property Owner to limit impacts. Primary impacts on planned uses by the proposed project would be reconfiguration of subsurface utilities, and conversion of a bio swale to a subsurface water retention system. No impacts are expected to the parking lot layout or pedestrian circulation patterns, and only minimal visual impacts affecting visibility of commercial signage are anticipated.

4. The Offer of Just Compensation Has Been Made

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The Original Appraisal was used to establish the fair market value of the property interests the City is seeking to acquire. An offer of just compensation was made to the record owner to purchase the fee simple and temporary construction easement interests as established by the appraisal and as required by Section 7267.2 of the California Government Code. Although negotiated settlements may still be possible for the property interests cited above, it would be appropriate to commence the procedures to acquire the necessary property interests through eminent domain, to ensure that the City has possession of the Subject Property, which is necessary in order for the City to continue timely construction of the Project.

ATTACHMENTS

- Resolution/ Exhibit A – Legal Definitions

PRESENTER

Jill Scott, Real Estate Manager
Lisa Welsh, Supervising Engineer
Greg Mariscal, Supervising Engineer