

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: January 19-20, 2005

Reference No.: 2.4a.(1)
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Brice D. Paris
Division Chief
Right of Way and Land Surveys

Ref: APPEARANCE

RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-18986, which is the subject of this Appearance. The summary below identifies the location of and designates the nature of the property rights covered by the Resolution of Necessity. In accordance with statutory requirements, the owners have been advised that the Department is requesting a resolution at this time. Adoption of Resolution of Necessity C-18986 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-18986 - Pablo Guerrero, et al.

06-Fre-180-KP 88.20 - Parcel 84741-1; 84741-01-01- EA: 342339-3000C - Certification Date: 03/01/06 (Freeway - new alignment). Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, land in fee which is a remnant and would have little market value, and all of those certain improvements which straddle the right of way line with an easement to enter the remaining ownership to remove such improvements. Located near the city of Fresno at 2640 West Whitesbridge Road.

SUMMARY OF ISSUES

Pablo Guerrero is the owner of Westside Auto Dismantlers, located on the north side of Route 180, 200 meters east of Marks Avenue. Neither Mr. Guerrero nor his legal counsel, Mr. Fitzgerald attended the combined First and Second Level Hearing. The combined First and Second Level Hearing was held on November 23, 2004 in Fresno at the Department's Right of Way District office. Mr. Fitzgerald was notified by telephone of the hearing date with a follow-up letter to discuss rescheduling of the hearing. Mr. Fitzgerald declined attending the meeting and did not want to reschedule the hearings. The following objections appeared in a letter dated September 21, 2004 to the Commission from Mr. Fitzgerald with the Department's response.

The following is a description of the concerns, which Mr. and Mrs. Guerrero's legal counsel has expressed and the Department's response.

Owner:

"That adoption of the amendment to the resolution would be in violation of law because the Commission has failed to comply with applicable statutory procedures which are prerequisites to such a resolution, including the requirements of the California Environmental Quality Act."

Department Response:

The Department has followed all environmental guidelines of both California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA). An Environment Assessment to construct a freeway/expressway facility on Route 180 between Brawley Avenue and Route 99 was approved by the Federal Highway Administration (FHA) on May 20, 1996. A Finding of No Significant Impact was approved on August 29, 1996. An Environmental Reevaluation was approved on March 7, 2000. Due to funding constraints the project was split into two segments. Construction of Segment 1, from the Hughes-West Diagonal to Route 99, was completed in May 2004. A subsequent Environmental Reevaluation for Segment 2, from 0.3 km west of Brawley Avenue to 0.2 km east of West Avenue, was approved by FWHA on November 8, 2004. The Reevaluation states that the Finding of No Significant Impact remains valid. For CEQA, an Initial Study was completed May 20, 1996, and a Negative Declaration was signed August 15, 1996. An addendum for the project was completed March 7, 2000, and another addendum for Segment 2 was completed October 25, 2004. Changes in the project were not expected to result in significant adverse impacts, provided mitigation was implemented.

Owner:

"The failure to furnish a proper Appraisal Summary Statement."

Department Response:

At the property owner's request, a written offer for the full amount of the Department's approved appraisal was mailed by Certified Mail to Mr. Fitzgerald, the property owner's attorney, on July 27, 2004, in full compliance with Government Code 7267.2.

Owner:

“The failure to conform to procedural requirements.”

Department:

The Department followed all legally required procedures, as well as Department policies and standard procedures, in their attempt to acquire the parcel.

Owner:

“The failure to make a proper Government Code 7267.2 offer.”

Department:

At the property owner’s request, a written offer for the full amount of the Department’s approved appraisal was mailed to Mr. Fitzgerald, the owner’s attorney, on July 27, 2004, in full compliance with Government Code 7267.2. Subsequently a modified offer clarifying the hazardous waste issue was sent to Mr. Fitzgerald on December 1, 2004.

Owner:

“The failure to provide a form of the proposed resolution which effectively precludes any comment, objection, etc., by the owners, exacerbated by the inability to attend a meeting without sufficient notice.”

Department:

The owners and their legal counsel were given the opportunity to participate in a First and Second Level review process, as a forum to effectively communicate issues and concerns, and to discuss and resolve project and acquisition issues. The combined First and Second Level Review was held on November 23, 2004. Mr. and Mrs. Guerrero and their legal counsel declined to participate in the meeting, despite both written and telephone notifications to Mr. Fitzgerald.

Owner:

“The Notice fails to satisfy the time requirements of California Civil Code of Procedure (CCP) 1245.235 and CCP 1013.”

Department:

CCP 1245.235 addresses the adoption of a resolution of necessity by a governing body of a public entity. It requires that each person whose name appears on the last equalized county assessment roll, and whose property is to be acquired by eminent domain, receive a notice by first class mail at least fifteen days prior to said meeting of the intent of the governing body to adopt the resolution, and the right of each person to appear and be heard. CCP 1013 addresses the procedure of service by mail, Express Mail or facsimile. CCP 1245.235 and CCP 1013 mailing requirements were met.

The Notice of Intent for the October 27-28, 2004 Commission meeting was mailed September 10, 2004 to Mr. and Mrs. Guerrero, and their attorney, 47 days prior to the October 27-28, 2004 Commission meeting. A subsequent notice was mailed on December 2, 2004, 48 days prior to the upcoming January 19-20, 2005 Commission meeting. In both cases, the Department clearly exceeded the notice requirements stated in the statutes.

Owner:

“The failure to conduct a hearing at convenient situs more readily available than Sacramento to the owners.”

Department:

The Commission has jurisdiction for the entire State of California and therefore Commission meetings are held at various locations throughout the state. The initial noticed Commission meeting on October 27-28, 2004 was held in Sacramento. The January 19-20, 2005 Commission meeting will be held in Sacramento.

Owner:

“The proposed project is not planned or located in a manner that will be the most compatible with the greatest public good and least private injury. The Commission has not properly or adequately evaluated or considered the private injury that will occur to the owners from the project, and has not weighed or balanced other alternatives, which would lessen the private injury while permitting the proposed project.

Department:

Several alternatives were considered early in the project development process. This proposal meets the project need, is the most cost effective and has the least impact on the environment. The alignment, adopted several years ago, is consistent with local planning.

Attachments

Resolution of Necessity Appearance Fact Sheet

| | |
|--------------------------------|---|
| <u>PROJECT DATA:</u> | 06-Fre-180-KP R86.0/R89.8 (PM R53.4/R55.8) |
| <u>Location:</u> | State Route 180 in and near the City of Fresno, in Fresno County |
| <u>Limits:</u> | From 0.3 km west of Brawley Avenue to 0.2 km east of West Avenue |
| <u>Cost:</u> | Right of Way cost estimate \$8,900,000 Construction cost estimate \$36,550,000 |
| <u>Funding Source:</u> | Locally Funded State Highway Projects 400.000 (Tax Measure) |
| <u>Number of Lanes:</u> | Existing: 2 lanes Proposed: 4-6 lanes on new alignment |
| <u>Proposed Major Features</u> | Interchanges: Marks Avenue Grade Separation: Hughes-West Diagonal. Other: A frontage road, north of the freeway, between Marks Ave and Hughes-West Diagonal |
| <u>Traffic:</u> | Construction Year (2008) Existing Average Daily Traffic (ADT) (year 2008): 20,400 Proposed ADT (year 2028): 69,000 |
| <u>PARCEL DATA:</u> | |
| <u>Property Owner:</u> | Amelia O. Guerrero and Pablo Guerrero |
| <u>Parcel Location:</u> | Assessor's Parcel Number (APN) 458-080-030, is located 200 meters east of Marks Avenue on the north side of State Route 180 |
| <u>Present Use:</u> | Business - Westside Auto Dismantlers |
| <u>Area of Property:</u> | 39,754 square meters (9.82 Acres) |
| <u>Area Required:</u> | Parcel 84741-1 = 14,667.6 square meters (3.62 Acres) in fee Parcel 84741-01-01 = 1,725.7 square meters (0.43 Acres) excess Total Area = 16,393.3 square meters (4.05 Acres) |

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Resolution of Necessity Review Panel (Panel) met November 23, 2004 in Fresno. The Panel members consisted of Vern Rhinehart, Department Headquarters (HQ's) Right of Way; Richard B. Williams, Department HQ's Legal Division; Linda Fong, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Right of Way, was Secretary to the Panel. Neither Mr. Guerrero nor his legal counsel, Mr. Fitzgerald, were present at the meeting.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Chief Engineer.

NEED FOR THE PROJECT

The existing State Route 180 is an east-west two-way highway with straight tangent alignment, level grade and good sight distance. The roadway has two 3.6-m wide lanes and 0.0 to 0.6-m wide shoulders constructed of asphalt concrete (AC). The route is a major highway that provides the primary passage between the cities of Kerman and Fresno with a high volume of local traffic generated by commuters between the two cities. The current Average Daily Traffic (ADT) on State Route 180 is 6,600 vehicles per day (vpd) and the future 20-year ADT is projected to be 12,900 vpd.

Problems, Deficiencies and Justification

1. **Relieve traffic congestion:** Level of Service (LOS) on the existing Route 180 between Brawley Avenue and Hughes-West Diagonal is expected to be F in 2010. The proposed project would provide a LOS D or better in 2028, for 20-year design period, conforming to the target LOS D or better.
2. **Improve safety:** Freeways in general provide safer driving than conventional highways. Freeways would avoid or minimize potential head-on collisions and provide safe passing opportunities. This proposed Route 180 West Freeway project would also improve traffic safety on local streets in the vicinity.
3. **Route continuity:** This project completes the planned Route 180 West Freeway between Brawley Avenue and Route 99. Segment 1 of the Route 180 West Freeway, from Route 99 to Hughes-West Diagonal, was completed in May 2004. This project, also known as Route 180 West Segment 2, will complete the freeway alignment from Brawley Avenue to Hughes-West Diagonal.
4. **Consistent with local planning and development:** City of Fresno has planned build-out of the Roeding Business Industrial Park in the project vicinity, within the 2028 plan year. Changes in local zoning, regional growth patterns, and local growth trends have led to increased traffic demand.

PROJECT PLANNING AND LOCATION

The project is in Fresno County just west of the city of Fresno. The proposed facility begins as a 4-lane freeway from Brawley Avenue to Marks Avenue (on an ultimate 6-lane right of way). It becomes a 6-lane freeway (on an ultimate 8-lane right of way) between Marks Avenue and 0.2 km east of West Avenue, where the facility connects with the existing 6-lane freeway segment, Segment 1, completed May 2004. There will be a partial cloverleaf interchange at Marks Avenue and a grade separation at Hughes-West Diagonal.

The project is to be locally funded (Fresno County Sales Tax Initiative - Measure C). The 2004 construction cost estimates is \$37 million and the right of way cost estimate is \$9 million. The project is scheduled for advertisement in May 2006.

On August 11, 1994, a Project Report was approved for a 2-lane expressway on an ultimate 8-lane right of way between Brawley Avenue and Hughes-West Diagonal and a 4-lane freeway from Hughes-West Diagonal to Route 99 on an ultimate 8-lane right of way.

Segment 2 of the project from Brawley Avenue to Hughes-West Diagonal, previously planned to be an expressway facility, is no longer able to meet the projected 20-year traffic demand due to changes in local zoning, regional growth patterns and local growth trends. A freeway facility alternative was investigated in the 1996 Environmental Assessment, but traffic demand did not warrant selection of the freeway alternative. An Environmental Reevaluation approved on November 8, 2004, and CEQA Addendum approved on October 25, 2004, addressed design changes related to constructing the freeway facility instead of the expressway facility, incorporating construction of the interchange at Marks Avenue and conversion of the interchange at the Hughes-West Diagonal to a Grade Separation, along with cul-de-sacs at Whitesbride Road, Valentine Avenue and Hughes Avenue.

A Supplemental Project Report incorporating these changes was approved on December 15, 2004.

Project schedule:

| | |
|-----------------------------|---------------|
| HQ Design submittal: | December 2005 |
| Right of way certification: | March 2006 |
| Ready To List: | March 2006 |
| Begin construction: | August 2006 |

NEED FOR SUBJECT PROPERTY

A portion (4.05 Acres) of the subject parcel is within the proposed fill sections of Route 180 West Freeway. The original freeway alignment adopted on December 18, 1963, would have taken a larger portion of the property. In 2003, a minor adjustment to the alignment was necessary in the vicinity of Marks Avenue to provide adequate distance between the Marks Avenue on/off ramps and Whitesbride Road intersection with Marks Avenue. This modification has resulted in a reduction of area (approx. 0.8 Acres) required from the subject parcel.

The fill slope in this area has been designed to be 1:2 in lieu of the advisory standard of 1:4 to minimize impacts to this and several other businesses in the area. Additionally, this partial acquisition is consistent with that of the partial acquisition of the adjacent two parcels to the east.

Reasons that form the basis of the necessity to acquire this property are:

- Alignment is consistent with the existing Route Adoption.
- Alignment is consistent with City of Fresno & County of Fresno general plans.
- Existing Route 180 freeway is already constructed on this alignment approx. 0.5 miles east of this location.
- City of Fresno requires a Frontage road between Marks Avenue & the Hughes-West Diagonal. The Frontage Road would not be able to be constructed if the alignment were to be shifted north to avoid this parcel.
- Shifting the alignment south would result in greater environmental impacts, greater construction and right of way costs.
- This project is the second phase of a two-phase project. The first phase has been constructed and temporarily terminates at the Hughes-West Diagonal. Without timely construction of the second phase, the termini is expected to experience traffic Level of Service (LOS) F by 2010.
- The funding for this project is from a local sales tax measure. Any delay to the schedule may jeopardize the project since the measure ends in 2009.

The project cannot be deferred or delayed because of its importance to the operations of Route 180 and the local agencies.

Alternatives considered during design phase to minimize impacts:

| Retaining Wall at Southern R/W line, | Build a viaduct over the property |
|--|---|
| <ul style="list-style-type: none">• Lessens take by 0.52 Acres• Additional cost \$1.2 million | <ul style="list-style-type: none">• Additional cost \$ 8.8 million• Requires aerial & ground easements |

Avoidance Alternatives:

A freeway alignment alternative that avoids the parcel was not presented to the public during the Project Approval and Environmental Document phase of the project. Neither significant environmental impacts nor comments from the public, including Mr. Guerrero, caused the Department to consider alternative alignments.

Due to the location and size of the parcel, which extends from Whitesbridge Road northerly through the entire project Right of Way, there are no reasonable or feasible alternative alignments that would completely avoid the parcel without significant consequences.

For purposes of this discussion for the Resolution of Necessity, two alignments were studied. Both alternatives would require changes in local land use planning, new Freeway Agreements, and approval from the City of Fresno and the County of Fresno. They would also require a new Route Adoption by the Commission.

Additionally, either avoidance alternative would delay the project to reopen the Project Approval and Environmental Document phase. The Department's Environmental branch estimates the delay varies from about 18 months to 48 months. The 18 months estimate may be optimistic considering the southern alternative will be outside the Area of Potential Effect (APE) boundary.

The following table outlines some specific impacts and added costs associated with the two Avoidance alternatives:

| Southerly Avoidance Alignment | Northerly Avoidance Alignment |
|--|---|
| <ul style="list-style-type: none"> • Increased Roadway Cost due to increased length (\$2.5 million). • Additional structure cost at Whitesbridge Road. • Running Horse Development impacts – lots are subdivided with one hole of proposed golf course constructed. • FMFCD Basin impacted. • Additional ROW cost \$11.7 million. | <ul style="list-style-type: none"> • Additional Business Impacts (ARC, Tractor business and Auto Auction). • Eliminate proposed Frontage Road. • Increased construction cost due to increased roadway length (\$2.2 million). • Nielsen Avenue realignment may be required. • Impacts the planning and operation of the Roeding Business Park. • Additional ROW cost \$8.4 million. |

The following is a description of the concerns, which Mr. and Mrs. Guerrero’s legal counsel has expressed and the Department’s response.

Owner:

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Department Response:

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Owner:

“The proposed project is not planned or located in a manner that will be the most compatible with the greatest public good and least private injury. The Commission has not properly or adequately evaluated or considered the private injury that will occur to the owners from the project, and has not weighed or balanced other alternatives, which would lessen the private injury while permitting the proposed project.

Department:

Several alternatives were considered early in the project development process. This proposal meets the project need, is the most cost effective and has the least impact on the environment. The alignment, adopted several years ago, is consistent with local planning.

PARCEL DESCRIPTION

The subject parcel (Parcel 84741) is located on the northerly 176,418 square feet (4.05 acres) of Assessor's parcel number (APN) 458-080-53 in the City of Fresno in Fresno County. The total area of the property is approximately 9.8 acres or 428,000 sq. ft. The property is the site of the Westside Auto Dismantlers. It is the second property east of Marks Avenue/Whitesbridge Road intersection, fronting the north side of Whitesbridge Road. The subject parcel is a fairly flat unpaved area being used as storage for wrecked autos to be dismantled.

There is oil and grease contamination of the soil, up to 0.3-meter (1 foot) in depth. A remediation proposal has been submitted to the Department of Toxic Substances Control. Estimated cost of cleanup is \$1.3 million. Approval to acquire this contaminated parcel has been granted by the Department's Acting Chief Engineer on October 22, 2004.

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record.

PANEL RECOMMENDATION

The Panel concludes that the District's design complies with Section 1245.230 of the Code of Civil Procedure in that:

- 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 to be condemned is necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the California Transportation Commission.

VERNON V. RHINEHART
Office Project Delivery
Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

J. MIKE LEONARDO
Acting Chief Engineer

**PERSONS ATTENDING SECOND LEVEL REVIEW PANEL
HEARING ON NOVEMBER 23, 2004**

Vern Rhinehart, Headquarters Right of Way, Panel Chair
Richard B. Williams, Headquarters Attorney, Panel Member
Linda Fong, Headquarters Design, Panel Member
Deborah Gebers, Headquarters Right of Way, Panel Secretary

Jay Norvell, Central Region Acting District Director
Kim Anderson, District 6, Chief Project Development
Randeem Walter, Chief, Central Region Right of Way
Tony McDowell, Central Region, Supervisor Right of Way
Rory Quince, Central Region, Design
Garth Fernandez, Central Region, Design
Bob Hull, Central Region, Project Management
Tak Tsuda, Central Region, Senior Right of Way
Michael Janzen, Headquarters, Design
Lea Spann, Central Region, Environmental Planning
Susan Greenwood, Central Region, Environmental Planning
Vickie Traxler, Central Region, Environmental Planning

T. 14S., R. 19E., M. D. B. & M.

T. 14S., R. 20E., M. D. B. & M.

EXHIBIT A



Section 1

84741-01-01

Section 6

PROPOSED STATE HWY 180

HUGHES WEST DIAGONAL

WEST AVENUE

TO FRE 99

TO KERMAN

(WHITESBRIDGE RD.)

84741-1

BRAWLEY AVENUE

VALENTINE AVENUE

MARKS AVENUE

HUGHES AVENUE

Section 12

Section 7

NO SCALE

RESOLUTION OF NECESSITY
AREA MAP

6-Fre.-180 K.P. 88.20

Section Line
MARKS AVE

T. 14S., R. 20E., M. D. B. & M.

Section 6

POINT OF COMMENCEMENT
S.W. CORNER 6,14/20
FD SCOTT MCKAY MONUMENT
BOLT IN CONCRETE
N 655.937,178
E 1924.584,651

CITY OF FRESNO



PROPOSED STATE HWY 180

Existing RW
EXISTING STATE HWY 180

N89°59'06"E 297.009

Existing RW
Section Line

Proposed RW

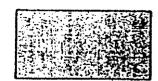
84741-1

KP 88.2

S00°47'14"W

171.200

WHITESBRIDGE ROAD



PARCEL 84741-1 FEE
PARCEL 84741-01-01 EXCESS

TRUE POINT
OF BEGINNING
PARCEL 84741-1

TRUE POINT
OF BEGINNING
PARCEL 84741-01-01

N84°16'41"E
99.333

L=56.799
Δ=168.1618"
R=200.000

RADIAL=525°02'53"W
Property Line

S89°58'27"W 98.501

N00°42'57"E

241.274

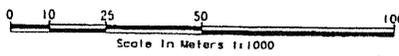
N00°42'57"E

161.338

84741-01-01

CONVERSION FACTOR: This survey is in meters.
Multiply by 3937/1200 to convert to feet.

This survey is based on the California Coordinate
System of 1983, Zone 4. Units are in meters and
bearings and distances are on grid. Divide by
0.9999344797 to convert to ground distances.



RESOLUTION OF
NECESSITY MAP
6-Fre.-180 K.P. R88.2