

*Before the Board of Supervisors
County of Monterey, State of California*

RESOLUTION NO. 22-460

Adopt a Resolution of Necessity Finding and Determining that:

- a. The Public Interest and Necessity Require the Davis Road Bridge Replacement and Road Widening Project (Project).
- b. The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- c. The property sought to be acquired is necessary for the Project.
- d. Portions of the subject property may be subject to existing public uses, and the subject property is being acquired pursuant to California Code of Civil Procedure section 1240.510 for a public use set forth herein which is compatible with the existing public uses.
- e. The acquisition and public use herein described of the subject parcel will not unreasonably interfere with or impair the continuance of any possible public use as it exists or may reasonably be expected to exist in the future, as required by California Code of Civil Procedure section 1240.510.
- f. In the alternative, the subject parcel and interests therein described are being acquired pursuant to California Code of Civil Procedure section 1240.610 for a more necessary public use.

CEQA Action: An Environmental Impact Report (EIR) was certified by the Board of Supervisors for the Project on July 11, 2016. An EIR Addendum for the Project was prepared to amend the Project design details to incorporate design modifications following the Value Analysis Study Report prepared in 2017. The EIR Addendum was filed and approved by Caltrans on May 8, 2020.

Project Location: Davis Road between Blanco Road and Reservation Road, south of the City of Salinas.

Property Owners of record: CUS Holding Trust

(Applicable to Property: APN 207-042-005)

WHEREAS, on November 8, 2022, the Board of Supervisors held a public hearing to consider adoption of a Resolution of Necessity (RON) for the acquisition of a permanent easement for a (1.207 acre) portion of APN 207-042-005 (subject property) which is owned by CUS Holding Trust (hereafter, “owner” or “CUS”). During the November 8 hearing on the RON, attorneys for CUS appeared before the Board to oppose adoption of the RON. The Board continued the

hearing to November 22, 2022, to allow staff two weeks to discuss the items presented by CUS and to negotiate a resolution if possible; and,

WHEREAS, the public interest and necessity require the proposed Davis Road Bridge Replacement and Road Widening Project; and

WHEREAS, the power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- a. The Public Interest and Necessity Require the Davis Road Bridge Replacement and Road Widening Project (Project).
- b. The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- c. The property sought to be acquired is necessary for the Project; and
- d. Portions of the subject property may be subject to existing public uses, and the subject property is being acquired pursuant to California Code of Civil Procedure section 1240.510 for a public use set forth herein which is compatible with the existing public uses.
- e. The acquisition and public use herein described of the subject parcel will not unreasonably interfere with or impair the continuance of any possible public use as it exists or may reasonably be expected to exist in the future, as required by California Code of Civil Procedure section 1240.510.
- f. In the alternative, the subject parcel and interests therein described are being acquired pursuant to California Code of Civil Procedure section 1240.610 for a more necessary public use.

WHEREAS, the roadway easements to be acquired are located within the unincorporated area of the County of Monterey and consist of a Permanent Roadway Easement, Temporary Construction Easement, and Utility Easement (1.207 acres, 2.073 acres, and 0.916 acres respectively) fronting Davis Road; and

WHEREAS, the Department of Public Works, Facilities, and Parks (PWFP) is proposing the DAVIS ROAD BRIDGE REPLACEMENT AND ROAD WIDENING PROJECT, COUNTY BRIDGE NO. 208, STATE PROJECT NO. 44C-0068, FEDERAL AID PROJECT NO. BRLS-5944 (068) (Project) to replace the existing two-lane, low-level Davis Road Bridge (Bridge No. 44C-0068) over the Salinas River with a longer bridge that meets current American Association of State Highway and Transportation Officials (AASHTO) requirements and widen Davis Road from two (2) lanes to four (4) lanes for approximately 2.1 miles between Blanco Road on the north and Reservation Road on the south; and

WHEREAS, permanent Roadway Easements and Temporary Construction Easements are needed from sixteen (16) adjacent properties to construct the Project. Permanent Roadway Easements and Temporary Construction Easements from six (6) of the sixteen (16) properties have been approved and the corresponding Permanent Roadway Easements have been recorded with the County Recorder. The remaining easements are under negotiation with the corresponding property owners.

WHEREAS, an Environmental Impact Report (EIR) was certified by the Board of Supervisors for the Project on July 11, 2016. An EIR Addendum for the Project was prepared to amend the Project design details to incorporate design modifications following the Value Analysis Study Report prepared in 2017. The EIR Addendum was filed and approved by Caltrans on May 8, 2020 (the certified EIR and EIR Addendum are on file with the County PWF and incorporated by this reference); and

WHEREAS, the current Davis Road bridge is a low-level crossing that is regularly overtopped during the larger flow of the Salinas River and the Project will to construct an all-weather crossing over the Salinas River; and

WHEREAS, the need for widening Davis Road is articulated in the Regional Transportation Plans developed by the Transportation Agency for Monterey County (TAMC) to address regional traffic needs; and

WHEREAS, on June 24, 2015 the TAMC Board adopted the Marina-Salinas Multimodal Corridor Conceptual Plan that included the all-weather crossing and the four-laning on Davis Road between Reservation Road and Blanco Road; and

WHEREAS, the Project proposes to provide class II bike lanes along Davis Road, and a bus queue-at the intersection of Blanco and Davis Roads to further the multimodal aspect of the corridor; and

WHEREAS, the Project will also reconstruct the intersections of Reservation Road/Davis Road by replacing the existing signal with a roundabout to offset the additional traffic from the East Garrison Development; and

WHEREAS, staff has struggled with obtaining the Permanent Roadway Easement and Temporary Construction Easement from parcel APN 207-042-005 owned by CUS Holding Trust (hereafter, "subject property") because of difficulty in getting the owners to respond to County communications; and

WHEREAS, the County has retained the services of Overland Pacific & Cutler, LLC, (OPC) to perform the appraisals and conduct the right-of-way negotiations for the easements. OPC staff, in consultation with Caltrans Local Assistance staff has recommended that Monterey County adopt a Resolution of Necessity pursuant to California Code of Civil Procedure Section 1240.030 et seq. to timely secure the Project construction funding due to unexpected delays; and,

WHEREAS, due to challenges with obtaining the needed Permanent Roadway Easement, Temporary Construction Easement and Utility Easement from a portion of APN 207-042-005 owned by CUS which have resulted from the difficulty in getting CUS to respond to PWF and OPC's communications, federal highway funding is now in jeopardy; and,

WHEREAS, adoption of a Resolution of Necessity is a step in the eminent domain process for acquiring the easements for the subject property. Pursuant to California Government Code sections 7260 et seq., 7267.2 and 37350.5, and California Code of Civil Procedure Section 1230.010 et seq. and Section 19, Article I of the California Constitution, and other applicable authorities, the County is authorized to acquire the property by eminent domain, provided certain procedural steps are followed; and

WHEREAS, County PWFP and OPC staff have been in contact with the owner's representative over the past three years trying to engage the owners to sign the easement purchase agreement. However, based on recent communications with the owner's representative, and lack communication with the owner, in consultation with OPC, staff has determined that the only remaining option to timely obtain the easements is through initiation of the eminent domain process; and

WHEREAS, Adoption of the Resolution of Necessity is needed to timely secure grant funding for the construction of the Project. Caltrans and FHWA Program staff are requiring adoption of a Resolution of Necessity prior to programming the estimated \$41.5 Million in Project construction funding; and

WHEREAS, on July 11, 2016, The Board of Supervisors certified the Environmental Impact Report (EIR) for the Project and directed County staff to proceed with the Project's final design and related activities to be able to construct the Project; and

WHEREAS, an EIR Addendum for the Project was prepared to amend the Project design details to incorporate design modifications following the Value Analysis Study Report prepared in 2017. The EIR Addendum was filed and approved by Caltrans on May 8, 2020. The Project is scheduled to begin construction in the Spring of 2023, provided that funding is secured and easements are obtained; and

WHEREAS, on November 8, 2022, the Board of Supervisors held a public hearing to consider adoption of the proposed RON. Attorneys for the CUS Holding Trust appeared before the Board to oppose adoption of the RON. The Board continued the hearing to November 22, 2022, to allow staff two weeks to discuss the items presented by CUS. The concerns raised by CUS holding Trust representatives centered around four (4) items which are summarized below; and

WHEREAS, following the November 8 Board hearing, a Zoom meeting was scheduled for November 10 to commence negotiations between CUS Attorneys Gary Varga and Rick Friess and County representatives, including staff from, OPC, PWFP and the Office of the County Counsel

WHEREAS, during the November 10 Zoom meeting, CUS Attorney Rick Friess requested the following four (4) items:

1. Fee Title. CUS has requested fee title to the replacement property.
2. Acreage. CUS has requested "like for like" replacement acreage.

3. Survey. CUS has requested that the County stake both the areas it wants to acquire, and the area proposed by CUS in a March 2021 diagram.
4. Access. CUS has indicated that the County's proposal to supply a continuous, all-weather, gravel road under Davis Road to the Storm Ranch gate currently used by CUS to access its parcel until the County finishes the permanent access should suffice, as long as the County can assure that (i) it will maintain the access road, (ii) CUS will have unimpeded access, and (iii) there will be coordination of the various parties who will be using that road (i.e., CUS, the County's contractors, and other property owners); and

WHEREAS, regarding CUS' request for fee title, the County has secured an easement replacement area, consisting of 3.185 acres, from a neighboring parcel which is greater in size than the portion of the CUS parcel (APN 207-042-005) from which the County seeks a permanent easement of 1.207 acres. The Project design and construction phasing allow for continuous access to CUS' property. During negotiations between CUS and OPC, CUS requested that the County obtain an easement area to replace the permanent easement property which is needed from CUS for the project. The County has negotiated the requested easement, consisting of a 3.185 acre Utility Easement from a neighboring property, in response to CUS' request for a replacement easement area. However, CUS representatives are now asking that the replacement area be transferred "in fee" and not as an easement. Staff is investigating this "in fee" option with a neighboring property owner; and

WHEREAS, regarding acreage, the County is investigating CUS' request for "like for like" replacement acreage; and

WHEREAS, regarding the CUS' request for the County to stake the property which has been surveyed by the County Surveyor, the County has initiated staking and re-staking to identify the locations of the proposed permanent easement area and replacement easement area; and

WHEREAS, regarding access, the County cannot guarantee access will not be interrupted by third parties nor can the County guarantee that parties other-than-the-County will coordinate efforts. The County can only control its own actions; therefore, the following clarifying language is recommended.

Access: The County's proposal to supply a continuous, all-weather, gravel road under Davis Road to the Storm Ranch gate currently used by CUS to access its parcel until the County finishes the permanent access should suffice, as long as the County can assure that (1) it will maintain that road, (2) the County will not interrupt CUS's access, and (3) the County will coordinate with various parties who use that road (i.e., CUS, the County's contractors, and other property owners); and

WHEREAS, the proposed Project is planned or located in a manner that will be most compatible with the greatest public good and least private injury; and

WHEREAS, the subject property is necessary for the proposed Project; and

WHEREAS, the taking of the Property is necessary for the proposed Project and such taking is authorized by, *inter alia*, Section 19, Article I of the California Constitution; Sections 37350.5 and 40401 *et seq.* and 40404 of the California Government Code, Sections 5100 *et seq.* and 10102 of the California Streets and Highways Code Sections 1230.010 *et seq.* and 1240.140(b) of the California Code of Civil Procedure, and other applicable law; and

WHEREAS, the Project funding is at risk due to delays in acquiring and recording the required roadway easements; and

WHEREAS, a purchase offer required by Section 7267.2 of the Government Code was made to the property owners of record and to those persons determined by County staff in consultation with OPC to be potential owners of and/or heirs to the subject property; and

WHEREAS, the County of Monterey has complied with Code of Civil Procedure Section 1245.235 regarding the provision of notice to those whose names and addresses appear on the last equalized county assessment roll concerning the subject property; and

WHEREAS, pursuant to Code of Civil Procedure Section 1240.030, the County has provided notice to the property owners of record of the County's intent to approve a Resolution of Necessity and of the reasonable opportunity to appear and be heard at the hearing on this Resolution; and

WHEREAS, portions of the subject property may be subject to existing public uses, and the subject property is being acquired pursuant to California Code of Civil Procedure section 1240.510 for a public use set forth herein which is compatible with the existing public uses; and,

WHEREAS, the acquisition and public use herein described of the subject parcel will not unreasonably interfere with or impair the continuance of any possible public use as it exists or may reasonably be expected to exist in the future, as required by California Code of Civil Procedure section 1240.510.

WHEREAS, in the alternative, the subject parcel and interests therein described are being acquired pursuant to California Code of Civil Procedure section 1240.610 for a more necessary public use.

WHEREAS, the County of Monterey has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the "right to take") to acquire the Property.

NOW, THEREFORE IT IS HEREBY RESOLVED, ORDERED AND FOUND by the Board of Supervisors of the County of Monterey, State of California, that said Board Finds and Determines that:

- a. The Public Interest and Necessity Require the Davis Road Bridge Replacement and Road Widening Project.

- b. The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- c. The property sought to be acquired is necessary for the Project.
- d. Portions of the subject property may be subject to existing public uses, and the subject property is being acquired pursuant to California Code of Civil Procedure section 1240.510 for a public use set forth herein which is compatible with the existing public uses.
- e. The acquisition and public use herein described of the subject parcel will not unreasonably interfere with or impair the continuance of any possible public use as it exists or may reasonably be expected to exist in the future, as required by California Code of Civil Procedure section 1240.510.
- f. In the alternative, the subject parcel and interests therein described are being acquired pursuant to California Code of Civil Procedure section 1240.610 for a more necessary public use.

PASSED AND ADOPTED on this 22nd day of November 2022, by roll call vote:

AYES: Supervisors Alejo, Lopez, Askew, and Adams

NOES: Supervisor Phillips

ABSENT: None

(Government Code 54953)

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting on November 22, 2022.

Dated: November 23, 2022

File ID: RES 22-207

Agenda Item No. 16.1

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California



Emmanuel H. Santos, Deputy