

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: January 21-22, 2004

Reference No.: 2.4a.
Action Item

From: ROBERT L. GARCIA
Chief Financial Officer

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

Ref: APPEARANCE

RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-18880, 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-18880 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-18880 - Key Lease Corporation

01-Lak-29-PM 27.68-Parcel 10903-1,2 - EA: 410200 - Certification Date: 01/31/04 - RTL Date: 01/31/04 - (Conventional highway - safety project, roadway rehabilitation and vertical curve correction). Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, and a temporary easement for highway construction. Located near the city of Kelseyville at 8009 Highway 29.

Attachments

SUMMARY OF ISSUES

Property Owner Concerns:

1. In a letter to the Executive Director of the California Transportation Commission (Commission), dated September 5, 2003, the property owner contends that "Pursuant to *California Code of Civil Procedure* ("CCP") ss. 1230.010 et seq.,"... "CalTrans lacks sufficient legal grounds to take the subject property." This lack is due to "(a) the Project is not required by public interest or necessity; (b) the proposed taking will not accomplish the greatest public good with the least private injury; and (c) the property is not necessary for the Project." Additionally, "(1) the subject is not being acquired for a public use; (2) there is no reasonable probability that the subject property will be used for any public purpose within seven years or within any reasonable period of time; (3) CalTrans has not satisfied the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA); and (5) an adoption of the Resolution of Necessity would constitute a gross abuse of discretion in that (i) CalTrans has irrevocably committed itself to the taking of the subject property through its prior commitments on the Project and (ii) there is lack of substantial evidence to support the Resolution of Necessity." The owner stated "CalTrans has provided no evidence that it has considered other options"... "that would accomplish CalTrans' goals while minimizing private injury."
2. The property owners have indicated that the State's offer of compensation is too low.

Department Response:

1. Legal Grounds: All requirements for a Resolution of Necessity are met under CCP Section 1230.010 to include the elements required in CCP Sections 1240.030 and 1245.235.
 - a) The property is needed for a State highway safety project to improve a vertical curve alignment.
 - b) The property cannot be avoided without increasing injury to other properties in the project area.
 - c) The property is a necessary part of the best of several alternatives studied for this project.
 - 1) The property is being acquired for a State highway safety project.
 - 2) This project will go to construction in fiscal year 2004 – 2005.
 - 3) All environmental requirements under CEQA and NEPA are completed. The project is Categorical Exempt under Class 1 of the State CEQA guidelines and is Categorical Excluded under NEPA. The environmental document was approved December 31, 2002.
 - 4) No abuse of discretion results from seeking a Resolution of Necessity.

- i) The Department is acquiring only that property that is necessary for the transportation project.
- ii) A Resolution of Necessity is needed to keep the project on schedule.

Alternatives:

Four design alternatives were studied. A no-build alternative was the only alternative that would have avoided impacting the subject property entirely. The no-build alternative is unacceptable because it does not address the existing safety issue. The current design is the preferred among the alternatives studied as it provides for increased sight distance to address the higher than average accident rate at this location and allows the existing highway to be widened symmetrically.

- 2. The Commission will not entertain discussions on the issue of property value or of the amount of just compensation.
- 3. Invitations to participate in the Department's First Level Review and Second Level Review procedures on behalf of the owner were rejected by the owner and by the owner's attorney. No additional information from the owner or the attorney to explain the contentions in the letter of September 5, 2003, has been provided to resolve specific areas of the owner's concerns.

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA 01-LAK-29-PM 27.4/28.0-KP 44.1/45.1

Location: SR 29 in Lake County, south of Kelseyville.

Limits: From the intersection of SR 281 southeastward approximately 0.6 mile.

Contract Limits: On SR 29 from Eng. Sta. 110+00 to 133+00

Cost: R/W cost \$200,000. Construction cost \$2.12 million.

Funding Source: State funds, 2002 SHOPP safety program.

Number of Lanes: Existing: 1 lane mixed flow, each direction.
Proposed: 1 lane mixed flow, each direction.

Proposed Major Features: Vertical Curve Modification and shoulder widening.

Traffic: Existing (2003): ADT 8,160.
Projected (2005): ADT 8,160

PARCEL DATA:

Parcel number: 10903-1,2
Property owner: Key Lease Corporation
Parcel Location: Along the south side of Highway 29, just east of Highway 281.
Present use: Mini-storage
Area of property: 8.5 acres
Area required: 0.50 acre in fee and 0.09 acre in temporary construction easement.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Resolution of Necessity Review Panel met at 2:30 PM, November 18, 2003 at the Department facility at 2800 Gateway Oaks Drive in Sacramento. Despite repeated attempts by the Department to reschedule the meeting to encourage participation of the property owner, the property owner's attorney wrote to say that neither the owner nor the attorney would attend the review meeting. Panel Members were Linda Fong, HQ Design; Vern Rhinehart, Right of Way Division; and Frank Valentini, San Francisco Legal Section.

NEED FOR THE PROJECT

There is an immediate need for the project. A study of the five-year collision history for State Route (SR) 29 at the SR 281 / Red Hills Road intersection shows 28 collisions at and near the intersection of SR 29 and SR 281, the northern terminus of the project. This collision rate is almost three times the statewide average for similar facilities.

This project will improve traffic safety on SR 29. Vertical curve corrections will add sight distance and widen shoulders in both directions of traffic along the 1.0 -KM (0.6 - mile) length of the project.

Accident rates on this portion of SR 29 exceed the statewide average for similar facilities. Of 28 collisions at the intersections of SR 29 and SR 281, fifteen were collisions of the broadside, "failure to yield," type. Improving the sight distance at this location by correcting two vertical curves will reduce the incidence of these accidents.

SR 29 is a Rural Principal Arterial, the main route between Lakeport and Lower Lake in Lake County. It is of interregional significance, providing the principal routing from US 101 to Interstate 5 in the Central Valley. The SR 29 / SR 53 portion of the highway serves the cities of Lakeport, Clearlake, Upper Lake, Kelseyville and Lower Lake. The present speed limit is 88 km/hr or 55 mph.

PROJECT DESIGN

This project corrects vertical curves southeast of the intersection of SR 29 and SR 281 to provide improved sight distance for northbound and southbound traffic. It widens shoulders to 2.4 meters (8 feet) south of the intersection and provides 1:4 side slopes with a three to five-meter clearance from catch point to the right-of-way line. Improved sight distance and clear recovery areas will help to reduce the incidence of collisions and run-off type accidents at this location. The horizontal alignment of SR 29 will not change in the project location.

Two-way traffic will be maintained throughout construction with detours conducted within the proposed new right of way. Access to the subject property and the mini-storage business will be continuous during the project. Traffic management plans allow for right and left-hand turns entering and exiting the street presently used for access by the business. Environmental clearance has been obtained; treatment of a botanical species, the Valley Elderberry has been incorporated into project plans in keeping with a Categorical Exclusion under NEPA. A Categorical Exemption was also obtained under CEQA.

NEED FOR THE PARCEL

The subject property is an 8.5-acre parcel zoned Planned Development Commercial. Its current use is as a mini-storage business. The portion required for the project is 0.5 acre in fee and 0.09 acre in temporary construction easement along the northeasterly boundary of the property. A commercial sign lies within the proposed right-of-way and must be removed. Widening the right-of-way is required to accommodate the projects proposed shoulders, slope and drainage provisions.

STATUTORY OFFER TO PURCHASE

The Department has appraised the fee interest and temporary construction easement interest and offered the full amount of the appraisal to the owners of record in compliance with Government Code Section 7267.2

PANEL RECOMMENDATION

The attached Summary of Issues addresses the concerns presented to the review panel by the owner's attorney in a letter to the Commission. The Department concludes that the 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, Chief
Office of Project Delivery, Right of Way Division

I concur with the Panel's recommendation:



6³¹ BRENT FELKER
Chief Engineer

PERSONS ATTENDING SECOND LEVEL REVIEW PANEL HEARING ON
November 18, 2003

Department of Transportation:

Vern Rhinehart, Chief, Office of Right of Way Project Delivery
Frank Valentini, San Francisco Legal Section
Linda Fong, HQ Design
Brent Meyer, North Region, Project Engineer
Dina Noel, North Region, Project Manager
Jim Hall, North Region Right of Way
Wendy Ratajczak, North Region Right of Way
John Steele, HQ OPPD
Chuck Carrillo, HQ Right of Way