



MEMORANDUM

TO: City Council

FROM: Bill Robeson, Assistant City Manager/Public Works Director

BY: Shannon Sweeney, City Engineer

SUBJECT: Public Hearing to Consider a Resolution of Necessity for Acquisition by Eminent Domain of Temporary Construction Easement Interests in Certain Real Property for the Traffic Way Bridge Replacement Project

SUMMARY: Temporary Construction Easements for Assessor Parcel Numbers 007-482-006, 007-481-011, 007-482-026, 006-311-056, and 006-311-067, for the Traffic Way Bridge Replacement Project, in Arroyo Grande, California, and Finding that No Further Environmental Review is Required Pursuant to Public Resources Code Section 21166 and State CEQA Guidelines Section 15162.

DATE: April 23, 2024

SUMMARY OF ACTION:

Temporary construction easements (TCEs) are needed across nine properties for access to and staging for the Traffic Way Bridge Replacement Project (Project), scheduled for construction in 2025. To keep this schedule, right-of-way certification associated with these TCEs must be completed so that right-of-way for the project can be certified by Caltrans by August 31, 2024 to keep funding available for construction in 2025. As of April 11, 2024, four of the nine properties signed agreements granting TCEs across their properties. Offers were made to the remaining five properties at their appraised values, but as of April 18, 2024, these remaining property owners have not yet signed agreements. Failure to execute the remaining agreements prior to August 31, 2024, will jeopardize this and other projects' construction schedules. Given the current condition of the Traffic Way Bridge and its importance to traffic circulation and the public, the City may need to utilize eminent domain as a last resort to secure the remaining TCEs. The first step to doing so is holding this Hearing of Necessity.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

Adequate funding for right-of-way acquisition costs at the properties' appraised values was appropriated in the FY 2023-25 CIP Budget.

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RECOMMENDATION:

Conduct a public hearing and adopt a Resolution of Necessity declaring that the acquisition by eminent domain of TCE interests in certain real property, more particularly described as Assessor Parcel Numbers 007-482-006, 007-481-011, 007-482-026, 006-311-056, and 006-311-067 (collectively the “Property”), may be necessary for the Project..

This Resolution of Necessity to initiate eminent domain proceedings is a necessary step towards the construction of the Project, as analyzed in the adopted Mitigated Negative Declaration (State Clearinghouse No. 2022060452) (“MND”). There are no substantial changes to the Project such that revisions to the previously adopted MND are required. Thus, none of the conditions requiring subsequent environmental review called out in State CEQA Guidelines section 15162 or Public Resources Code section 21166 are present, and no further environmental review is required.

BACKGROUND:

Traffic Way Bridge was first constructed over Arroyo Grande Creek in 1932. Its piles, which are concrete posts driven into the ground for support (see Figure 1), were originally embedded (set firmly into the ground) 23 feet into dirt.

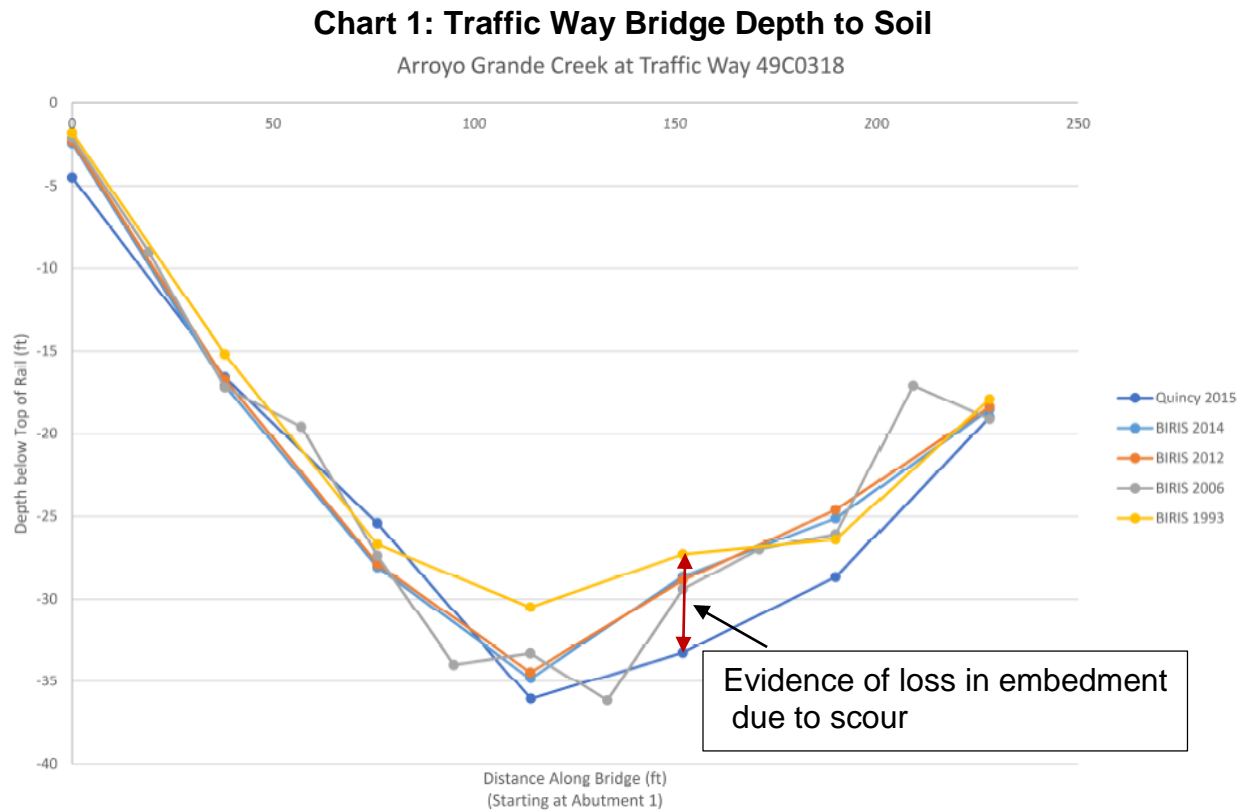
Figure 1: Traffic Way Bridge Piles



Scour, which is the washing away of soils and creek materials due to creek flow, has resulted in a loss of embedment. Loss of embedment negatively impacts the structural

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integrity of the bridge. Chart 1 shows increased depth to soils over time at each of the piles, starting with data collected in 1993.



A scour evaluation and plan of action prepared in October 2015 indicated that the scour at some of the piles has reached a level where the capacity of those piles is only two-thirds of the design load, necessitating planned bridge replacement. Regular inspections have and will continue to occur, especially after large storms that can aggravate scour conditions, until the bridge is replaced. The concern is that additional scouring will require immediate closure if the bridge isn't replaced in a timely manner. Traffic Way Bridge is a critical element of traffic circulation, and its unplanned closure will be significantly disruptive to traffic flow and reduce emergency fire response times to large portions of the City. Following the January 2023 storms there have been some additional changes in the piles embedment which are being monitored.

On [July 24, 2018](#), the City Council approved agreements to allow the City to seek reimbursement from the Local Highway Bridge Program for the Project. This funding will cover 88.53% of the bridge replacement cost, with the balance coming from local funds.

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Bridge replacement design and plans and specifications development is underway and approaching the 95% completion level. These design plans confirm that TCEs across nine properties are needed to complete Project construction.

On January 25, 2023, City staff received notice from Caltrans that the Federal Highway administration authorized right-of-way funding for the Project, which allowed the City to begin reimbursable work for the right-of-way phase of the Project.

The City entered into an agreement with Hamner, Jewell, and Associates on September 26, 2023. Since then, the right-of-way consultant has been working diligently to procure preliminary title reports and third-party appraisals. In March 2024, the consultant presented offers based on appraisals to all nine property owners with TCE offer letters. As of April 18, 2024, four of the property owners have signed TCE agreements.

Negotiations continue with the five remaining property owners. However, if the City is unable to finalize agreements with these property owners before the August Caltrans funding deadline, it may become necessary to secure the TCEs using eminent domain. The first step of the eminent domain process is a Hearing of Necessity.

ANALYSIS OF ISSUES:

The power of eminent domain is used by the City only as a last resort to obtain interests necessary for projects after 1) negotiations have stalled; 2) the owner has requested that the City proceed directly to eminent domain for tax or other advantages; or 3) the eminent domain process is necessary to clear title to the property. In this case, an offer of just compensation was made to each of the owners for the full Fair Market Value of their properties as determined by an independent appraiser. City staff has attempted to negotiate voluntary acquisitions in good faith and will continue to do so throughout the process.

Description Of TCE Interests to be Acquired

Property affected by the proposed acquisitions of land are located within the City of Arroyo Grande, California and are described within the Resolution and accompanying Exhibit "A".

Hearings and Required Findings

The recommended actions of the City Council pertain to the acquisition of property owned by 1) The Dohi Trust, 2) M.E.S. Hansen, 3) Raffi M. Kaloosian, 4) Pacific Fuel Group, LLC, and 5) Adam H. Saruwatari.

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 each

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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.

The above four required findings are addressed as follows:

The Public Interest and Necessity Require the Proposed Project

This Project will improve public safety, update the bridge to current standards, and remove scour concerns by eliminating any intermediate supports with a single-span bridge over Arroyo Grande Creek. The replacement bridge will be built on the existing alignment of Traffic Way, within the current City right-of-way.

Traffic Way Bridge is a key component to Arroyo Grande traffic circulation and its premature closure will disrupt traffic, including emergency response vehicles. Staff is working on a temporary route for emergency response to address this issue during construction.

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

The new bridge will provide safe access to traffic over Arroyo Grande Creek at Traffic Way. The Property to be acquired is best suited for the Project and will cause the least private injury. To move this Project elsewhere would require significant land use policy changes, cause a greater impact to property owners, and would effectively be cost prohibitive. Additionally, the impacts of the access is temporary during construction only.

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

The Property affected by the proposed acquisition is located within the City of Arroyo Grande. The Property is necessary for access to and staging for the construction site. Specifically, the acquisition is necessary to allow for the Traffic Way Bridge Project, in Arroyo Grande, California.

The Offer of Just Compensation Has Been Made

Appraisals were prepared by an independent State-licensed Certified General Real Estate Appraiser with Hoffman, Vance, and Worthington, Inc. to establish the Fair Market Value of the TCE interests of each property the City is seeking to acquire. An offer of just compensation was made to the owner of record to temporarily purchase TCE interests in each property to be acquired, as established by the approved appraisal and as required by Section 7267.2 of the California Government Code. Although negotiated agreements are still being pursued and may still be possible for the TCE interests cited above, it is important

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for the City to protect the project funding and schedule by ensuring that the City has the rights needed for the Right of Way Certification process. It would therefore be appropriate to conduct the Necessity Hearing so that the City, if the Resolution of Necessity is approved and adopted, may commence the procedures to acquire the necessary interest through eminent domain.

NEXT STEPS:

City staff and its right-of-way consultant will continue to work with the remaining property owners to reach a mutually satisfactory outcome without the need to resort to eminent domain. The approval of the recommended Resolution of Necessity allows the City to consider eminent domain should the parties not reach agreement on the necessary TCEs by the required Project certification and construction schedule dates described above.

ENVIRONMENTAL ANALYSIS:

On September 26, 2023, the City Council adopted an MND for the Traffic Way Bridge Replacement Project (SCH No. 2022060452). The MND analyzed the environmental impacts of the Project in compliance with the California Environmental Quality Act (CEQA). This Resolution of Necessity, which is part of an important and necessary step towards construction of the Project, will have no direct or indirect physical impacts and does not constitute a substantial change to the Project such that revisions to the previously adopted MND are required. In fact, this Resolution of Necessity is taken pursuant to, and in conformity with, the analysis contained within the previously adopted MND. Thus, none of the conditions requiring subsequent environmental review called out in State CEQA Guidelines section 15162 or Public Resources Code section 21166 are present, and no further environmental review is required.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Conduct a public hearing and adopt a Resolution of Necessity declaring that the acquisition by eminent domain of TCE interests in certain Property (more particularly described as APNs 007-482-006, 007-481-011, 007-482-026, 006-311-056, and 006-311-067), may be necessary for the Traffic Way Bridge Replacement Project to meet its current construction and Caltrans certification schedule; or
2. Do not adopt a Resolution of Necessity, and thus not allow the acquisition by eminent domain of TCE interests of Property if required; or
3. Provide other direction to staff.

ADVANTAGES:

This Hearing of Necessity is the first step in the eminent domain process. Adequate time exists for that City to continue negotiating with property owners for TCE acquisition without the need for eminent domain. However, if securing the remaining TCE does not occur in a timely manner, the Hearing of Necessity will enable the City to pursue eminent

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domain if necessary so that this critical project can remain on schedule. Holding this Hearing of Necessity provides for adequate time for the eminent domain process to occur to ensure the rights needed are secured, so that Caltrans can certify project right-of-way by August 31, 2024, and the construction schedule can proceed.

Maintaining the current schedule for bridge replacement will allow for project completion in an orderly manner and will enable the City to maintain other capital projects schedules, such as the Halcyon Complete Streets Project, which would be impacted if the Traffic Way Bridge Replacement Project is delayed.

DISADVANTAGES:

Concerns about unfair compensation during the eminent domain process have been addressed by obtaining third-party appraisals for the TCEs in question. While the construction project itself will be disruptive to the impacted properties, the impact is temporary and replacement of Traffic Way Bridge in an orderly manner will be less disruptive than closing the bridge prematurely.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2. A Notice of Hearing was mailed on April 8, 2024, by first class mail to the property owners in accordance with Section 1245.235 of the California Code of Civil Procedure.

ATTACHMENTS:

1. Proposed Resolution of Necessity