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**Title:** Actions pertaining to the fee interest acquisition of a parcel to construct the Blackstone McKinley BNSF Grade Separation Project (Council Districts 1 and 7):

1. HEARING to consider a Resolution of Necessity for acquisition of fee title interest of Assessor's Parcel Number (APN) 451-071-35, owned by Art A. Terzian, for the construction of the Blackstone McKinley BNSF Grade Separation Project;
2. \*\*\*RESOLUTION - Determining that public interest and necessity require fee title interest acquisition of APN 451-071-35, owned by Art A. Terzian, for the construction of the Blackstone McKinley BNSF Grade Separation Project and authorizing eminent domain proceedings for public use and purpose (Requires 5 affirmative votes) (Subject to Mayor's Veto).

**Sponsors:** Capital Projects Department, Public Works Department

**Indexes:**

**Code sections:**

**Attachments:** 1. 24-469 Resolution of Necessity (RON).pdf, 2. 24-469 Resolution of Necessity Requirements.pdf, 3. 24-469 Vicinity Map.pdf, 4. 24-469 Location Map.pdf, 5. 920 A.M. ID 24-469 Supplement Packet

Date	Ver.	Action By	Action	Result
4/18/2024	1	City Council	ADOPTED	Pass

**REPORT TO THE CITY COUNCIL**

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**SUBJECT**

Actions pertaining to the fee interest acquisition of a parcel to construct the Blackstone McKinley BNSF Grade Separation Project (Council Districts 1 and 7):

1. HEARING to consider a Resolution of Necessity for acquisition of fee title interest of Assessor's Parcel Number (APN) 451-071-35, owned by Art A. Terzian, for the construction of the Blackstone McKinley BNSF Grade Separation Project;
2. \*\*\*RESOLUTION - Determining that public interest and necessity require fee title interest acquisition of APN 451-071-35, owned by Art A. Terzian, for the construction of

the Blackstone McKinley BNSF Grade Separation Project and authorizing eminent domain proceedings for public use and purpose (Requires 5 affirmative votes) (Subject to Mayor's Veto).

## RECOMMENDATIONS

Staff recommends that the Council: (1) Conduct a public hearing to consider the adoption of a Resolution of Necessity for the acquisition of Assessor's Parcel Number (APN) 451-071-35, a 0.880-acre (38,333 square foot) improved parcel (Property), for the construction of the Blackstone McKinley BNSF Grade Separation Project (Project), owned by Art A. Terzian, (Owner), and (2) Adopt the attached Resolution of Necessity, which states the public interest and necessity require fee title acquisition of real property for the construction of the Blackstone McKinley BNSF Grade Separation Project; and authorize an eminent domain action to acquire the fee title acquisition pursuant to California Code of Civil Procedure §1245.230.

## EXECUTIVE SUMMARY

The acquisition of APN 451-071-35 will provide the City with fee title interest of the real property located at 1730 East McKinley Avenue, Fresno, California, necessary to construct the Blackstone McKinley BNSF Grade Separation Project, which will eliminate two existing at-grade crossings by grade separating North Blackstone Avenue and East McKinley Avenue under the BNSF Railway Mainline Track. The Project requires the fee title acquisition of APN 451-071-35, improved with an owner-occupied business called A&T Ceramics owned by Art A. Terzian. The City needs to acquire the Property interest described above to certify the Project and construct the proposed Project improvements.

On April 5, 2022, Mr. Terzian executed a Trust Transfer Deed (Deed), purportedly transferring title to the Granett Investment Trust Dated 8-8-85, c/o Avedis A. Terzian, Trustee. On April 6, 2022, the Deed was recorded with the Fresno County Recorder as Document Number 2022-0044152. The transfer was not insured or verified by a title company. The City has been unable to obtain a copy of the Trust to verify the transfer.

The Resolution of Necessity authorizes the City Attorney to initiate an eminent domain action and obtain an order of possession of the Property. In order to obtain fee title interest in the Property, the City must obtain a court order through the Eminent Domain process. This action requires five affirmative votes and is subject to veto by the Mayor.

## BACKGROUND

The Blackstone Avenue and McKinley Avenue corridors serve as primary routes for the community, as well as the City's Bus Rapid Transit system and emergency vehicles. They are also part of the Blackstone Smart Mobility Plan, which provides Class IV protected bicycle facilities along Blackstone Avenue through the Project area. The Project location has experienced the highest traffic volumes and number of accidents of any at-grade crossing on the BNSF corridor. The Project will eliminate two existing at-grade crossings by grade separating North Blackstone Avenue and East McKinley Avenue under the BNSF Mainline Track. The City is progressing through the engineering design stage and has begun the right of way acquisition stage of the Project.

The City retained Universal Field Services (UFS) to acquire parcels on its behalf for the Project. UFS

retained CBRE Valuation and Advisory Services (CBRE) to prepare an appraisal report of fair market value of the properties for the Project. On July 14, 2023, CBRE prepared an appraisal report, determining the fair market value of the Property to be \$2,200,000 as defined by Section 1263.320 of the Code of Civil Procedure. The appraisal was reviewed by David S. Mason, Inc. (DSM), who concurred with the value given by CBRE. Pursuant to section 7267.2 of the Government Code, an offer of just compensation in the full amount of the appraisal was presented to the owner of the Property on October 11, 2023.

UFS retained Desmond, Marcello & Amster (DM&A) to provide an appraisal report of the improvements pertaining to the realty (IPRs) of A&T Ceramics. DM&A determined the total fair market value of the IPRs is \$59,500. On December 14, 2023, a subsequent supplemental offer to purchase the IPRs on the Property was made in the amount of \$59,500. The total combined purchase price for the Property and IPRs offered to the Owner is \$2,259,500

Since the date of the initial offer, UFS acquisition consultants have contacted the Owner and their representatives, on a total of 16 occasions by personal visits, email, mail, and telephone to discuss the offer to purchase and to move forward with the acquisition process. The owner has not engaged in negotiations nor provided a counteroffer.

Staff recommends beginning the process of acquiring the Property from the Owner through the eminent domain process. Starting the eminent domain process now allows the City to obtain an order of possession from the court while giving the Owner a forum in which to make their claim for just compensation. For each property interest to be acquired, a Resolution of Necessity must be adopted prior to the commencement of eminent domain proceedings (See Attachment, Resolution of Necessity Requirements).

The City Attorney's Office has reviewed and approved the Grant Deed and Resolution of Necessity as to form.

## **ENVIRONMENTAL FINDINGS**

This Project was found to be statutorily exempt by Fresno City Council on June 25, 2020, pursuant to California Public Resources Code Section 21080 .13(a) and 15282(g) of the California Environmental Quality Act (CEQA) Guidelines. The Notice of Exemption was thereafter recorded with the Fresno County Clerk on July 30, 2020. The statute of limitations for challenges to this exemption has run pursuant to CEQA Guideline Section 15062(d). This Project will eliminate two railroad crossings and grade separate North Blackstone Avenue and East McKinley Avenue under the BNSF Mainline Track.

## **LOCAL PREFERENCE**

Local preference was not considered because this agreement does not include a bid for or award of a construction or services contract.

## **FISCAL IMPACT**

The proposed Blackstone McKinley BNSF Grade Separation Project is within Council Districts 1 and 7. These acquisitions will have no impact to the General Fund. All Project costs for the right of way phase are funded with Measure C and California Local Partnership Program Formulaic grant funds. All funds necessary for the acquisition are included in the current fiscal year budget as previously

adopted by the City Council.

**Attachments:**

Resolution of Necessity (RON)  
Resolution of Necessity Requirements  
Vicinity Map  
Location Map