



Legislation Details (With Text)

File #: ID 24-467 **Version:** 1 **Name:**

Type: Action Item **Status:** Passed

File created: 3/27/2024 **In control:** City Council

On agenda: 4/18/2024 **Final action:** 4/18/2024

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) 444-314-20S, owned by Bettina Daniels Cervantes and Tracy Deshler, as successor trustees of the Brackin-Daniels Trust dated January 19, 2008, 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 444-314-20S, owned by Bettina Daniels Cervantes and Tracy Deshler, as successor trustees of the Brackin-Daniels Trust dated January 19, 2008, 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. 24-467 Resolution of Necessity (RON).pdf, 2. 24-467 Resolution of Necessity Requirements.pdf, 3. 24-467 Vicinity Map.pdf, 4. 24-467 Location Map.pdf

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

REPORT TO THE CITY COUNCIL

FROM: RANDALL W. MORRISON, PE, Director
Capital Projects Department

SCOTT L. MOZIER, PE, Director
Public Works Department

BY: JESUS AVITIA, PE, Assistant Director
Capital Projects Department, Transportation Project Management Division

NANCY BRUNO, Supervising Real Estate Agent
Capital Projects Department, Capital Administrative Division

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) 444-314-20S, owned by Bettina Daniels Cervantes and Tracy Deshler, as successor trustees of the Brackin-Daniels Trust dated January 19, 2008, 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 444-314-20S, owned by Bettina Daniels Cervantes and Tracy Deshler, as successor trustees of the Brackin-Daniels Trust dated January 19, 2008, 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) 444-314-20S, a 0.680-acre (29,621 square foot) improved parcel (Property), for the construction of the Blackstone McKinley BNSF Grade Separation Project (Project), owned by Bettina Daniels Cervantes and Tracy Deshler, as successor trustees of the Brackin-Daniels Trust dated January 19, 2008 (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 444-314-20S will provide the City with fee title interest of the real property located at 1611 North Blackstone 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 444-314-20S, improved with a retail establishment known as Carl's Jr. Store #7550, owned by Bettina Daniels Cervantes and Tracy Deshler, as successor trustees of the Brackin-Daniels Trust dated January 19, 2008. The City needs to acquire the Property interest described above to certify the Project and construct the proposed Project improvements.

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. 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 Hamner, Jewell and Associates (HJA) to acquire parcels on its behalf for the

Project. HJA retained Valbridge Property Advisors (VPA) to prepare an appraisal report of fair market value of the properties for the Project. On October 6, 2022, VPA prepared an appraisal report determining the fair market value of the Property to be \$2,500,000 as defined by Section 1263.320 of the Code of Civil Procedure. The appraisal was reviewed by RowLand Valuation (RLV), who concurred with the value given by VPA. 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 owners of the Property on September 1, 2023, and delivered by certified mail with a signed return receipt sent back to the City on September 11, 2023. The offer was also provided by email on September 12, 2023, to both trustees of the Brackin-Daniels Trust.

HJA retained Desmond, Marcello & Amster (DM&A) to provide an appraisal report of the improvements pertaining to the realty (IPRs) of Carl's Jr. Store #7550. DM&A determined the total fair market value of the IPRs is \$317,900. On January 5, 2024, a subsequent supplemental offer to purchase the IPRs on the Property was made in the amount of \$317,900. The IPR offer was made unsegregated between the Owner and the Carl's Jr. Franchisee because the City had not received a response as to which entities have rights to the compensation offered. The total combined purchase price for the Property and IPRs offered to the Owner is \$2,817,900.

Since the date of the initial offer, HJA acquisition consultants have contacted the Owner and their representatives, the franchisee representatives, and Carl's Jr. corporate office a total of 30 occasions by 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 (Council Districts 1 and 7).

Attachments:

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