



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen
James R. Helmer

**SUBJECT: PUBLIC USE AND NECESSITY
HEARING – UNION PACIFIC
RAILROAD**

DATE: 05-24-04

Approved

Date

Council District: 4

RECOMMENDATION

Adoption of a resolution:

1. Determining that public use and necessity require the acquisition of property owned by Union Pacific Railroad for: (a) Roadway easements to portions of properties located on Oakland Road between Charles and Gish Road (APNs: 237-06-069 & 241-12-007) and located on Oakland Road between Fox and Wayne Avenues (APNs: 244-22-009 & 237-03-031);
2. Finding that: (a) The property interests to be taken are necessary for the completion of the Oakland Road street widening project; (b) The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury; (c) City staff established an amount of just compensation not less than the full amount of the approved appraisal; (d) City staff made an offer to the owners for the full appraised amount; (e) As required by Code of Civil Procedure Section 1240.510, the proposed project will not unreasonably interfere with or impair the continued railroad use of the property as it now exists or may reasonably be expected to exist in the future; and (e) The proposed taking and use are authorized by law;
3. Directing the City Attorney to file an eminent domain action to acquire these property interests.

CEQA: Negative Declaration, PP03-06-209.

BACKGROUND

The objective of the Oakland Road widening project is to provide sufficient traffic capacity in the corridor for the purpose of serving existing and planned uses, consistent with the Land

Use/Transportation Diagram of the adopted San José 2020 General Plan. Oakland Road is designated as a “Major Arterial Roadway” in the General Plan, defined as a roadway having three traffic lanes in each direction.

The project is intended to reduce or eliminate “bottlenecks” at choke points where Oakland Road currently narrows to one traffic lane in each direction, to improve traffic circulation and safety, and to meet the traffic volumes projected to occur with development of vacant sites and redevelopment of existing “under-utilized” parcels in the project area.

The project will widen the portion of Oakland Road crossing the subject railroad tracks from two lanes, one in each direction, to a divided six-lane road, with three lanes of traffic in each direction. Bicycle lanes and center turn pocket lanes will also be added in the immediate area of the subject properties. Upon completion of this project, Oakland Road will be approximately 104 feet wide from back of sidewalk to back of sidewalk. Street frontages are to be constructed with City-standard curb, gutter, sidewalk and curb cuts. The project will substantially benefit the public by increasing traffic safety for motorists, bicyclists and pedestrians and improving traffic circulation in the project vicinity.

The project is scheduled for contract award in March 2005 and construction to begin in late spring 2005.

ANALYSIS

Three easements are being acquired for the Faulstich Court crossing. Each roadway easement will lie within the ultimate Oakland Road right-of-way and the easements are 36, 644, and 511 square feet, respectively. The three proposed roadway easements for the Wayne crossing are 6,725 and 658 square feet in area on the west side of the property and 6,067 square feet on the east side of the property. The proposed easement areas are depicted on the attached map.

The Offers of Just Compensation, based on the full-appraised value of each taking as determined by independent, licensed fee appraisers, were presented to Union Pacific Railroad on February 23, 2004 and February 27, 2004, respectively. Because the two appraisers retained by the City have slightly different opinions regarding the magnitude of “nominal value,” the offers differed. The offer for APNs: 237-06-069 & 241-12-007 was \$100 and the offer for APNs: 244-22-009 & 237-03-031 was \$2,500. Union Pacific responded in a letter dated March 11, 2004 rejecting both offers as being totally inadequate.

All five acquisitions are for the widening of existing “transverse crossings” that currently do not materially affect the railroad’s operations. The road widening will not materially change the situation. This lack of interference with the railroad’s operations is material to both the valuation of the property and the City’s authorization to take these property interests under Code of Civil Procedure section 1240.510. The valuation principle guiding the appraisal approach and conclusion is “that the public has a legal right to construct street crossings for nominal

consideration when the crossing does not interfere with the railroad's use." The appraisers have ascertained that the widened transverse crossings will not diminish the value of the railroad's rights to use the land for legitimate railroad purposes. Because the crossing will not substantially interfere with the railroad's use for legitimate railroad purposes, the compensation is nominal. Similarly, because the widened crossings will not unreasonably interfere with or impair the railroad's use of its tracks, the City's widened road is a compatible public use for which the City is entitled to take the subject easement interests by Section 1240.510.

In the interest of fairness, on April 8, 2004, the City of San José sent an amended offer regarding APNs 244-22-009 & 237-03-031 increasing the offer on those properties to equal the \$2,500 offer on the other crossing. Union Pacific Railroad did not respond to the amended offer.

This project can only be completed with the proposed right-of-way easement acquisitions. The proposed acquisition clearly represents the greatest public good with the least private injury.

PUBLIC OUTREACH

Staff conducted a community meeting on October 2, 2003 to introduce the project to the public and received positive feedback. The owner of the subject parcels did not attend the meeting, but has been kept informed of the project.

COORDINATION

Preparation of the memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office and the Department of Planning, Building and Code Enforcement.

COST IMPLICATIONS

Deposit of \$5,000 into the State Treasury Condemnation Fund and any additional funds that the court may determine.

1. AMOUNT OF RECOMMENDATION: \$5,000
2. SOURCE OF FUNDING: 429 - Building and Structure Construction Tax Fund
3. FISCAL IMPACT: This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy. The proposed operating and maintenance costs for this project have been reviewed, and it has been determined that the project will have no significant adverse impact on the General Fund operating budget.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. for Contract	2003-04 Adopted Budget Page	Last Budget Action (Date, Ord.No.)
429	6339	Oakland Road: Route 101 to Montague	059583	\$5,012,000	\$5,000	815	10/14/2003 (Annual Report)

CEQA

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KATY ALLEN
Director, Public Works Department

JAMES R. HELMER
Director of Transportation

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Attachment