

2047-15-24

(R-2024-678)

RESOLUTION NUMBER R- 315677

DATE OF FINAL PASSAGE JUL 15 2024

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF REAL PROPERTY INTERESTS FOR THE INSTALLATION OF THE COASTAL RAIL TRAIL PROJECT; AUTHORIZING THE CITY ATTORNEY TO COMMENCE PROCEEDINGS IN EMINENT DOMAIN AND TO OBTAIN AN ORDER FOR IMMEDIATE POSSESSION; AND AUTHORIZING EXPENDITURE OF FUNDS FOR THE REAL PROPERTY INTERESTS TO BE ACQUIRED.

WHEREAS, the Coastal Rail Trail Project involves the installation of a one way cycle track (Class IV bicycle facility) along both sides of an approximate 1.8 mile segment of Gilman Drive between La Jolla Colony Drive to La Jolla Village Drive, as well as a continuous sidewalk along the west side of Gilman Drive over a distance of approximately 8,800 linear feet between the University of California, San Diego (UCSD) campus and the Rose Canyon Bikeway in the La Jolla and University Community Plan Areas (Project); and

WHEREAS, to accommodate the cycle tracks, the Project would include roadway widenings on the west side of Gilman Drive from Villa La Jolla Drive southerly to an existing private driveway (an approximate distance of 3,000 linear feet). Roadway widenings would occur on the east side of Gilman Drive from Via Alicante to the Interstate 5 southbound off-ramp (an approximate distance of 4,500 linear feet) along with construction of a 2-foot recovery slope adjacent to the cycle track along portions of the natural area from Via Alicante to Interstate 5; and

WHEREAS, retaining walls will be required on the west side of Gilman Drive from north of Villa La Jolla Drive to Via Alicante (an approximate distance of 1,054 linear feet) and from a

point south of Via Alicante to a private driveway at La Jolla Hideaway private apartments (an approximate distance of 1,120 linear feet); and

WHEREAS, the proposed action to adopt a Resolution of Necessity to commence the eminent domain process to acquire permanent easements and temporary construction area easements for the Coastal Rail Trail Project, CIP Project S-00951, has been reviewed for consistency with the Mitigated Negative Declaration (MND) dated October 1, 2021, prepared for the Coastal Rail Trail Project No. 644885/SCH No. 2021060230. This activity is a subsequent discretionary action and is therefore not considered to be a separate project for the purposes of CEQA review as defined in State CEQA Guidelines Section 15378(c). Pursuant to Section 21166 of CEQA, there is no change in circumstance, additional information, or project changes to warrant additional environmental review for this action; and

WHEREAS, Permanent Bicycle Trail Easements, Permanent Slope Easements, and Temporary Construction Area Easements on APN 346-802-13 (Parcel 1) and APN 346-802-14 (Parcel 2) (collectively, Acquisition Area) are necessary to allow for the Project's installation of a continuous, uninterrupted protected cycle track along the east side of Gilman Drive. The City has acquired all other property interests necessary for the Project with the exception of those property interests on Parcel 1 and Parcel 2. The City will be unable to complete the Project without the Permanent Bicycle Trail Easements, Permanent Slope Easements and Temporary Construction Area Easements on Parcel 1 and Parcel 2; and

WHEREAS, the City needs to acquire a Permanent Bicycle Trail Easement, a Permanent Slope Easement, and a Temporary Construction Area Easement over a portion of Parcel 1 to proceed with the construction of the Project, more specifically described in Exhibit 1 (inclusive of Exhibit A – Legal Description and Exhibit B – Plat Map thereto):

- a. A 7,435 square foot Permanent Bicycle Trail Easement;

- b. A 70,573 square foot Permanent Slope Easement; and
- c. A 32,969 square foot Temporary Construction Area Easement; and

WHEREAS, the City needs to acquire a Permanent Bicycle Trail Easement, a Permanent Slope Easement, and a Temporary Construction Area Easement over a portion of Parcel 2 to proceed with the construction of the Project, more specifically described in Exhibit 2 (inclusive of Exhibit A – Legal Description and Exhibit B – Plat Map thereto):

- a. A 171 square foot Permanent Bicycle Trail Easement;
- b. A 3,390 square foot Permanent Slope Easement; and
- c. A 870 square foot Temporary Construction Area Easement; and

WHEREAS, the anticipated duration of the Temporary Construction Area Easements is for 12 months. The Temporary Construction Area Easements will include the right of access, use, control, and occupy the temporary construction areas to perform all activities as may be necessary for construction of the Project including use and temporarily place and operate tools, equipment, machinery, and materials on and within the temporary construction areas; trim, cut, or clear away any trees, brush, or other vegetation or flora within the temporary construction areas; remove existing hardscape structures, fencing and vegetation; construct transitional grading; perform revegetation activities; and park vehicles and store materials and equipment as needed. The Temporary Construction Areas are to be returned to their original condition(s) upon termination of the Temporary Construction Area Easements. Any landscaping, irrigation or other improvements will be replaced in kind if impacted by the Project; and

WHEREAS, the acquisition of Permanent Bicycle Trails Easements, Permanent Slope Easements, and Temporary Construction Area Easements over a portion of Parcel 1 and a portion of Parcel 2 serves the public interest and is necessary for the development of the Coastal Rail Trail Project. The Project provides a safe bicycle track lane that will be vital for connecting

the Gilman Drive segment to the region-wide 44-mile bike route which extends from Oceanside to downtown San Diego. The Gilman Drive corridor will provide connectivity between established trails, including the existing Rose Canyon Bikeway on the south and UCSD bike path on the north. An interconnected bicycle network would enable residents to ride on more direct routes, with greater safety and convenience within and between major regional destinations and activity centers. No alternative route exists which would provide the same benefits; and

WHEREAS, the Project was planned and designed in a manner that is most compatible with the greatest public good and least private impact. The Project initially underwent a thorough analysis to identify the most feasible and least impactful location for this segment of the Coastal Rail Trail. A Project Planning Study evaluated multiple alignment alternatives through the immediate region that would service the goals of the project. The analysis included a thorough community outreach effort and involved key stakeholders in the development of the study. The study evaluated key factors in the selection of the optimal alignment, including public support, schedule, consistency with the regional project goals, proximity to transit, and project feasibility. A total of seven (7) alternative alignments were considered with variable facility types. Public support and project feasibility with regards to schedule and environmental impacts, as well as consistency with the City of San Diego Bicycle Master Plan, led to the selection of the alignment through Gilman Drive. The Project is designed to minimize the impact on private property, limiting the Acquisition Area to the minimum square footage possible to complete the Project; and

WHEREAS, the Acquisition Area is necessary for the Project. For the cycle track to be installed in both directions, Gilman Drive requires widening to accommodate the bicycle trail on the east side of Gilman Drive. The width to the west has been maximized in the segment north of Gilman Court, where retaining walls have been installed to cut into the existing slope to provide

for the travel lanes, sidewalk, and bike lane. The roadway cross-section needs to accommodate two traffic lanes in each direction requiring expansion on both sides, a median, and the cycle track with buffer. The Acquisition Area would provide for the required width to accommodate the necessary transportation elements per engineering standards for a 4-lane collector road, as well as continue to support the road embankment safely; and

WHEREAS, the City obtained a fair market value appraisal of a Permanent Bicycle Trail Easement, a Permanent Slope Easement, and a Temporary Construction Area Easement on Parcel 1 from an MAI appraiser and determined that the total probable compensation to be paid for acquisition of the real property interests sought is \$26,000.00; and

WHEREAS, the City obtained a fair market value appraisal of a Permanent Bicycle Trail Easement, a Permanent Slope Easement, and a Temporary Construction Area Easement on Parcel 2 from an MAI appraiser and determined that the total probable compensation to be paid for acquisition of the real property interests sought is \$130,000.00; and

WHEREAS, if, due to unforeseen circumstances, the Temporary Construction Area Easement for Parcel 1 exceeds 12 months, additional compensation will be made at a rate of \$227.07 per month. No additional compensation will be due for Parcel 2 for an extended Temporary Construction Area Easement time period because the compensation for the property interests acquired equals the value of the larger parcel; and

WHEREAS, the City negotiated with the property owners of Parcel 1 and Parcel 2 and made offers to purchase the Acquisition Area necessary for the Project at an amount consistent with the appraised fair market value of the properties in compliance with California Government Code section 7267.2(a), and the negotiations with the property owners have not been successful as of the date of this Resolution; and

WHEREAS, the funds are available to acquire the necessary real property interests sought for the Project within the existing CIP budget, specifically from WBS S-00951 and will be sourced from Fund 400169 (TransNet); and

WHEREAS, the City is vested with the power of eminent domain by Article I, Section 19 of the California Constitution, California Government Code section 37350.5, and San Diego Charter section 220, to acquire real property interests necessary for a public purpose; and

WHEREAS, on June 26, 2024, the City mailed a notice of hearing, and of its intent to adopt this Resolution of Necessity, to the record owners of Parcel 1 and Parcel 2, and all other persons who may have an ownership interest in the property interests sought; which notice of hearing advised said persons of their right to appear and be heard on the matters referred to therein, on the date and at the time of the place stated therein, and that a waiver of their right to appear and be heard will result upon their failure to file a written request to appear and be heard within 15 days after the date the City mailed the notice, all in compliance with California Code of Civil Procedure section 1245.235; and

WHEREAS, the hearing set out in said notice of hearing was held on July 15, 2024, at the time and place stated in the notice, and all interested parties were given an opportunity to appear and be heard on the following matters: (a) whether the public interest and necessity require the Project; (b) whether the Project is planned or located in a manner which is most compatible with the greatest public good and the least private injury; (c) whether the property interests proposed to be acquired are necessary for the Project; (d) whether an offer meeting the requirements of California Government Code section 7267.2 has been given; and (e) whether all other prerequisites for the exercise of eminent domain to acquire the property rights have been met; and

WHEREAS, the City Council, as a result of said hearing, has determined that the public health, safety and welfare require the City to acquire the property interests described in Exhibit 1 and Exhibit 2 for the Project; and

WHEREAS, under Charter section 280(a)(2), this Resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the public interest and necessity require acquisition of the property interests consisting of a Permanent Bicycle Trail Easement, a Permanent Slope Easement, and a Temporary Construction Area Easement over a portion of Parcel 1, as set forth in Exhibit 1, and a Permanent Bicycle Trail Easement, a Permanent Slope Easement, and a Temporary Construction Area Easement over a portion of Parcel 2, as set forth in Exhibit 2, to implement the Project.

BE IT FURTHER RESOLVED, that the Project is planned or located in a manner most compatible with the public good and least private injury.

BE IT FURTHER RESOLVED, that the property interests proposed to be acquired are necessary for the Project and that such use is a public use authorized by law (inter alia, Charter section 220, California Code of Civil Procedure sections 1240.010, 1240.020, 1240.030, 1240.040, 1240.110, 1240.120, 1240.140, 1240.510, 1240.610 and 1255.410; California Government Code section 5023.1).

BE IT FURTHER RESOLVED, that offers to acquire the real property interests, pursuant to California Government Code section 7267.2, at the appraised fair market value, have been made to each party claiming an ownership interest(s) in the property interests sought.

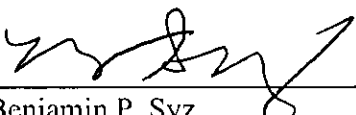
BE IT FURTHER RESOLVED, that the City Attorney of the City of San Diego is hereby authorized and directed to commence an action in the Superior Court of the State of California, in and for the County of San Diego, in the name of and on behalf of the City of San Diego, against all claimants with any interest(s) in the real property interests sought, and to seek immediate possession of the real property interests sought pursuant to California Code of Civil Procedure section 1255.410.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to expend funds as required from CIP Project WBS-00951– Coastal Rail Trail, Fund 400169 (TransNet) to acquire the property interests found necessary for the Project, and to deposit into the State Treasury’s Condemnation Fund the amount of probable compensation to be paid to the property owners, as necessary, to obtain possession of the proposed property interests. The probable amount of just compensation to be paid by the City for the necessary real property interests to be acquired has been determined by an MAI-accredited appraiser to be \$26,000 for Parcel 1 and \$130,000 for Parcel 2 and includes just compensation for the Temporary Construction Area Easements although the final amount of probable compensation will be determined by the Court or through further negotiation with the property owner and is subject to increase once a date of value is established in the eminent domain action or if the Court orders an increase in the amount of probable compensation. This authorization includes payment of any increased property acquisition amounts determined through updated appraisals after the litigation is commenced, further negotiations with the property owner and/or increased deposits ordered by the court.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to expend funds from CIP Project WBS-00951– Coastal Rail Trail, Fund 400169 (TransNet) to pay all

related litigation expenses incurred in the eminent domain action including, but not limited to, expert fees, deposition expenses, and all other litigation related expenses as necessary.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Benjamin P. Syz
Senior Deputy City Attorney

BPS:ctm
June 28, 2024
Or.Dept: City Attorney
Doc. No.: 3706614

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____ **JUL 15 2024** _____

DIANA J.S. FUENTES
City Clerk

By 
Deputy City Clerk

Passed by the Council of The City of San Diego on JUL 15 2024, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Foster III	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 15 2024

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By *Kristell Medina*, Deputy

Office of the City Clerk, San Diego, California
315677
Resolution Number R-_____