



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/19/2024

ITEM NO: 7

DATE: November 5, 2024
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Consider Adoption of a Resolution of Necessity to Authorize Acquisition of Private Property Through Eminent Domain for the Shannon Road Capital Improvement Project (CIP No. 811-0008)

RECOMMENDATION:

Consider adoption of a Resolution of Necessity (Attachment 2) to authorize acquisition of private property through eminent domain for the Shannon Road Capital Improvement Project (CIP No. 811-0008).

EXECUTIVE SUMMARY:

This staff report is submitted for review by the Town Council of the Town of Los Gatos in connection with a hearing to consider adoption of a Resolution of Necessity (Attachment 2). Under California law, the Town cannot acquire private property via eminent domain unless and/or until the Council has adopted a Resolution of Necessity by a four-fifths majority vote. The statutory requirement that a public entity adopt a Resolution of Necessity before initiating a condemnation action is designed to ensure that public entities will verify and confirm the validity of their intended use of the power of eminent domain prior to the application of that power in any one particular instance.

Staff recommends that the Council adopt a Resolution of Necessity (Attachment 2) to authorize the acquisition by eminent domain of a fee interest in a portion of 14915 Shannon Road, Los Gatos, CA (APN 537-27-047) (the "Larger Parcel") for the Shannon Road Capital Improvement Project (the "Project"). Specifically, an approximately 29,807 square foot portion of the Larger Parcel (the "Subject Property") comprised of (a) an approximately 21,929 square foot strip of land within the existing Shannon Road right of way; and (b) an approximately 7,878 square foot strip of land along the Larger Parcel's frontage on Shannon Road. The Subject Property is more

Reviewed by: Town Manager, Assistant Town Manager, Parks and Public Works Director, and Finance Director

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particularly described and depicted in the attachments to the Resolution of Necessity. As described in more detail below, the Project is necessary to repair the roadbed, increase Shannon Road's pavement width, install guardrails, and install retaining walls on the north side of Shannon Road.

The hearing on the Resolution of Necessity affords the property owner the opportunity to address the Town Council on the necessity of acquiring the Property for the Project. However, the amount of compensation the property owner is entitled to receive should not be discussed at the hearing. That does not mean that negotiations for the acquisition of the Subject Property are at an end. If the Town adopts the Resolution of Necessity, after the hearing, negotiations for the acquisition of the Subject Property may continue.

BACKGROUND:

The Larger Parcel and the Subject Property

The Larger Parcel is comprised of approximately 27.09 acres that is improved with a single-family home, barn, and outbuildings. The Larger Parcel is mostly raw, vacant land on the north side of Shannon Road. The buildings are along the Larger Parcel's frontage on Shannon Road and will not be impacted by the proposed acquisition. The first approximately 150 feet of the Larger Parcel immediately north of Shannon Road is relatively level to moderately sloping. The rest of the Larger Parcel is relatively steeply sloped (30-50%) as the Larger Parcel extends north up a hillside. Shannon Road runs along the Larger Parcel's southern property line. The Shannon Road right of way is 40 feet wide, 20 feet of which are on the Larger Parcel in a road easement. Figure 1 depicts the Larger Parcel.

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Figure 1. 14915 Shannon Road Property Boundary

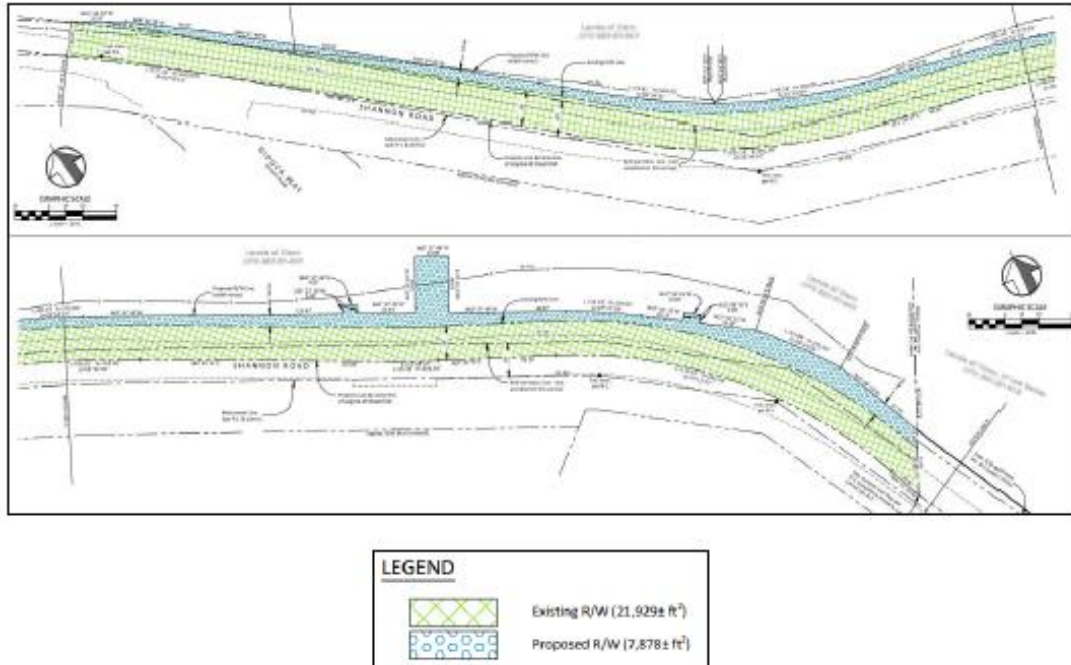


As mentioned above, the Subject Property is comprised of (a) an approximately 21,929 square foot strip of land within the existing Shannon Road right of way (i.e., within the Town’s existing roadway easement); and (b) an approximately 7,878 square foot strip of land along the Larger Parcel’s frontage on Shannon Road. Figure 2 depicts the approximately 21,929 square foot portion of the Subject Property that is within the Town’s existing right of way (green) and the approximately 7,878 square foot portion of the Subject Property that is along the Larger Parcel’s Shannon Road frontage. The properties depicted in Figure 2 are those that are required for implementation of the Shannon Road Repair project and the subject of this hearing.

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Figure 2. Property of 14915 Shannon Road Required for Shannon Road Repair



The location of the proposed acquisition in relation to the Larger Parcel is depicted in Figure 3.

Figure 3. Location of Proposed Acquisition



A. The Project

The Town annexed the relevant portion of Shannon Road from the County of Santa Clara in 2018. This section of Shannon Road has failed repeatedly in the past. Before Shannon Road was annexed, the County repaired the relevant section of Shannon Road by injecting epoxy foam

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into the roadbed. However, that repair has since failed, and the roadbed has continued to deteriorate.

The Project will implement a permanent repair to Shannon Road. The Project will install retaining walls, increase the pavement width from 22 to 23 feet, and install guardrails and provide area for a shoulder on the south side of Shannon Road.

B. Negotiations to Date

The Town obtained an appraisal of the Subject Property from appraiser Terry Larson, MAI. On June 4, 2024, the Town sent the property owner a Government Code offer letter (Attachment 1) offering the full amount of that appraisal as just compensation for the proposed acquisition.

The Town had been in negotiations with the Property's prior owner, Bud Elam, until October 2024, when the Property was foreclosed on. Since then, the Town has contacted the Property's new owner regarding its interest in acquiring the Subject Property. The Town sent the Property's new owner a Government Code offer letter on October 14, 2024. However, to date, the Property's owners have not engaged the Town in negotiations for the voluntary acquisition of the Subject Property. Therefore, staff recommends that the Town Council adopt a resolution of necessity to initiate eminent domain proceedings.

DISCUSSION:

As described above, to adopt a resolution of necessity, the Council must make the following findings¹:

1. The public interest and necessity require the proposed project;
2. The property described in the resolution is necessary for the proposed project;
3. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and
4. That either the offer required by Section 7267.2 of the Government Code has been made to the owner(s) of record or the offer has not been made because the owner cannot be located with reasonable diligence.

This staff report provides data and information addressing each of these issues.

¹ Code Civ. Proc. § 1245.230.

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A. The Public Interest and Necessity Require the Project

First, the Town Council must find that the public interest and necessity require the Project. The Town acquired the relevant section of Shannon Road from the County of Santa Clara in 2018 and immediately identified areas of pavement failure. Various engineering studies and analysis revealed that the subbase below the northern travel lane (westbound travel) has numerous voids and is unstable.

As a Hillside Collector Street (See General Plan Pages 5-16), Shannon Road is a critical transportation route between San José and Los Gatos. It is a primary emergency evacuation route for areas of east Los Gatos. If repairs are not made, the westbound travel lane may need to be closed for safety reasons. The Project, which will repair the roadway and upgrade it to meet current roadway design safety standards, is in the public interest.

B. The Interests Sought to be Acquired are Necessary for the Project

Second, the Town Council must find that the interests sought to be acquired are necessary for the Project. As previously described, the Subject Property is necessary for the Project. The Project could not be constructed as designed without the acquisition of the Subject Property.

C. The Project is Located in such a Manner as to Offer the Greatest Public Benefit with the Least Private Detriment

Third, the Town Council must find that the Project is located in such a manner as to offer the greatest public benefit with the least private detriment. In connection with the Project's design, staff and the Town's consultants evaluated a variety of options. For example, the Town considered shifting the roadway south to reduce or eliminate the need to acquire private property on the north side of Shannon Road. However, that alternative would have required the Town to "cut" into the hillside on the south side of the existing roadway. That design would have required two retaining walls – one on the south side of Shannon Road to support the cut, and a second on the north side. That design would have significantly increased project costs and environmental impact.

The Project, as currently proposed, offers the greatest public benefit with the least private detriment because: (a) it requires the acquisition of the least possible amount of private property required to permanently repair the impacted section of Shannon Road and upgrade it to meet current roadway design safety standards; (b) the majority of the Subject Property is already within a Town-owned road easement; and (c) it avoids a substantial excavation and installation of a retaining wall on the south side of Shannon Road.

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D. A Government Code Offer Has Been Delivered To the Property Owner

Fourth, the Council must find that the Town has extended an offer for the Subject Property pursuant to Government Code section 7267.2 to the new property owner. On October 14, 2024, the Town sent an offer in conformance with Government Code section 7267.2(a) to the property owner (Attachment 1).² While the property owners have requested a meeting, they have not yet engaged the Town in negotiations.

On November 1, 2024, the Town mailed the new property owner a Notice of Intent to consider adoption of a Resolution of Necessity to acquire the Subject Property by eminent domain at its regular meeting of November 19, 2024. A copy of the notice provided to the property owner is in Attachment 3. The Notice was sent to the address identified on the last equalized county assessment roll, and to the new owner's attorney and agent.

E. Statutory Authority for Acquiring the Subject Property through Eminent Domain

The Town is authorized to acquire the Subject Property for the Project pursuant to statutes including, but not limited to, California Constitution, Article 1, Section 19; the California Eminent Domain Law, Code of Civil Procedure Section 1230.010 *et seq.*, including, but not limited to, sections 1240.010 through 1240.050 inclusive, and sections 1240.110, 1240.120, 1240.150, 1240.220, 1240.320, 1240.330, 1240.350, 1240.410, 1240.510, 1240.610, 1240.650, and 1240.660; Government Code section 37350.5; Streets & Highway Code section 10102; and other provisions of law.

F. Environmental Assessment

The Town fully complied with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, for acquiring the Subject Property when on September 4, 2024, the Town determined that the Project is categorically exempt from CEQA pursuant to 14 California Code of Regulation, sections 15301 (Existing Facilities Exemption) and 15061(b)(3) (Common Sense Exemption). The County filed the Notice of Exemption in accordance with Public Resources Code section 21152 on September 10, 2024. No further environmental review is required.

² The Town's offer included an informational pamphlet describing the eminent domain process and the property owner's rights under the Eminent Domain Law. The Town's offer also (1) contained a written statement of, and summary of the basis for, the amount it established as just compensation; and (2) offered, pursuant to Code of Civil Procedure Section 1263.025, to pay the record owner the reasonable costs, up to \$5,000, for an independent appraisal of the Property. (Gov. Code § 7267.2.)

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COORDINATION:

This report was coordinated with the Town Attorney's Office, Special Counsel Nick Muscolino, and the Department of Public Works.

FISCAL IMPACT:

If this property acquisition proceeds to trial as an eminent domain action, the fiscal impact to the Town will be the property acquisition cost plus attorney fees and costs, which could be up to \$200,000. There is sufficient funding in the project budget to pay for the property acquisition.

Attachments:

1. Government Code Offer Letter
2. Resolution of Necessity
3. Notice of Hearing on Resolution of Necessity