



DATE: May 23, 2019

CATEGORY: Public Hearing

DEPT.: Public Works

TITLE: **Adopt Resolutions of Necessity and Authorize the Initiation of Eminent Domain Proceedings**

RECOMMENDATIONS

It is recommended that the City Council open the hearing on the Resolutions of Necessity, take testimony, close the hearing, and consider adopting the following Resolutions authorizing the acquisition of the identified properties by eminent domain for the Shoreline Boulevard Reversible Transit Lane Project:

1. Adopt a Resolution to Determine the Necessity to Acquire a Portion of Property Located at 790 Shoreline Boulevard (APN 150-31-002) by Eminent Domain for the Construction of the Shoreline Boulevard Reversible Bus Lane Project; to Authorize Commencement of Litigation to Acquire Property by Eminent Domain; and to Seek an Order of Possession (Code of Civil Procedure Section 1245.220), to be read in title only, further reading waived (Attachment 1 to the Council report). (Five votes required)
2. Adopt a Resolution to Determine the Necessity to Acquire a Portion of Property Located at 807 Shoreline Boulevard (APN 153-16-001) by Eminent Domain for the Construction of the Shoreline Boulevard Reversible Bus Lane Project; to Authorize Commencement of Litigation to Acquire Property by Eminent Domain; and to Seek an Order of Possession (Code of Civil Procedure Section 1245.220), to be read in title only, further reading waived (Attachment 2 to the Council report). (Five votes required)
3. Adopt a Resolution to Determine the Necessity to Acquire a Portion of Property Located at 808 Shoreline Boulevard (APN 153-14-002) by Eminent Domain for the Construction of the Shoreline Boulevard Reversible Bus Lane Project; to Authorize Commencement of Litigation to Acquire Property by Eminent Domain; and to Seek an Order of Possession (Code of Civil Procedure Section 1245.220), to be read in title only, further reading waived (Attachment 3 to the Council report). (Five votes required)

4. Adopt a Resolution to Determine the Necessity to Acquire a Portion of Property Located at 883 Shoreline Boulevard Common Area (APN 153-16-021 through 153-16-044) by Eminent Domain for the Construction of the Shoreline Boulevard Reversible Bus Lane Project; to Authorize Commencement of Litigation to Acquire Property by Eminent Domain; and to Seek an Order of Possession (Code of Civil Procedure Section 1245.220), to be read in title only, further reading waived (Attachment 4 to the Council report). (Five votes required)
5. Adopt a Resolution to Determine the Necessity to Acquire a Portion of Property Located at 917/943 Shoreline Boulevard (APN 153-16-045) by Eminent Domain for the Construction of the Shoreline Boulevard Reversible Bus Lane Project; to Authorize Commencement of Litigation to Acquire Property by Eminent Domain; and to Seek an Order of Possession (Code of Civil Procedure Section 1245.220), to be read in title only, further reading waived (Attachment 5 to the Council report). (Five votes required)
6. Authorize the City Attorney to take all steps necessary to commence legal proceedings in a court of competent jurisdiction to acquire the portions of the properties described herein by eminent domain, if necessary, and petition the court for immediate Order of Possession.

BACKGROUND

The Shoreline Boulevard Reversible Transit Lane Project (“Project”) is the first step in transforming Shoreline Boulevard into a multi-modal corridor as envisioned in the “Shoreline Boulevard Corridor Study” approved by the Mountain View City Council in November 2014. That study provided for a phased program of transportation improvements to accommodate anticipated increases in employment and development in the North Bayshore Area.

The Project will install a dedicated, center-running, reversible transit lane to reduce travel time and improve transit efficiency and reliability. The new 12’ wide lane will have a 2’ wide raised buffer separating it from adjacent lanes and will be installed in the center of Shoreline Boulevard between Middlefield Road and Pear Avenue. The new lane will replace the existing two-way left-turn lane or landscaped median. It will not eliminate any existing vehicle through-lanes. The transit lane will operate northbound in the morning peak hours and southbound in the afternoon peak hours on weekdays. Bus stops are planned at Terra Bella Avenue and Pear Avenue.

A protected bike lane with 2' raised buffers will be installed between Middlefield Road and Terra Bella Avenue. The bike lanes between Terra Bella Avenue and Pear Avenue will be enhanced with safety measures, such as high-visibility green bike lane treatment at certain locations. Pedestrian improvements include sidewalks varying from 5' to 8' wide, protective sidewalk improvements at the Middlefield Road intersection, and modifications to crosswalks at the Highway 101 interchange. The cross-section shown in Figure 1 illustrates the nature of the improvements.

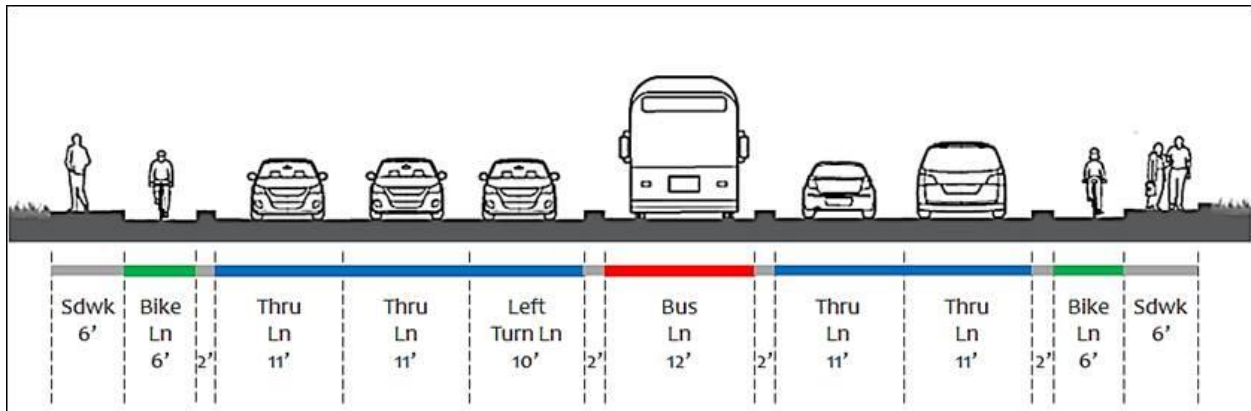
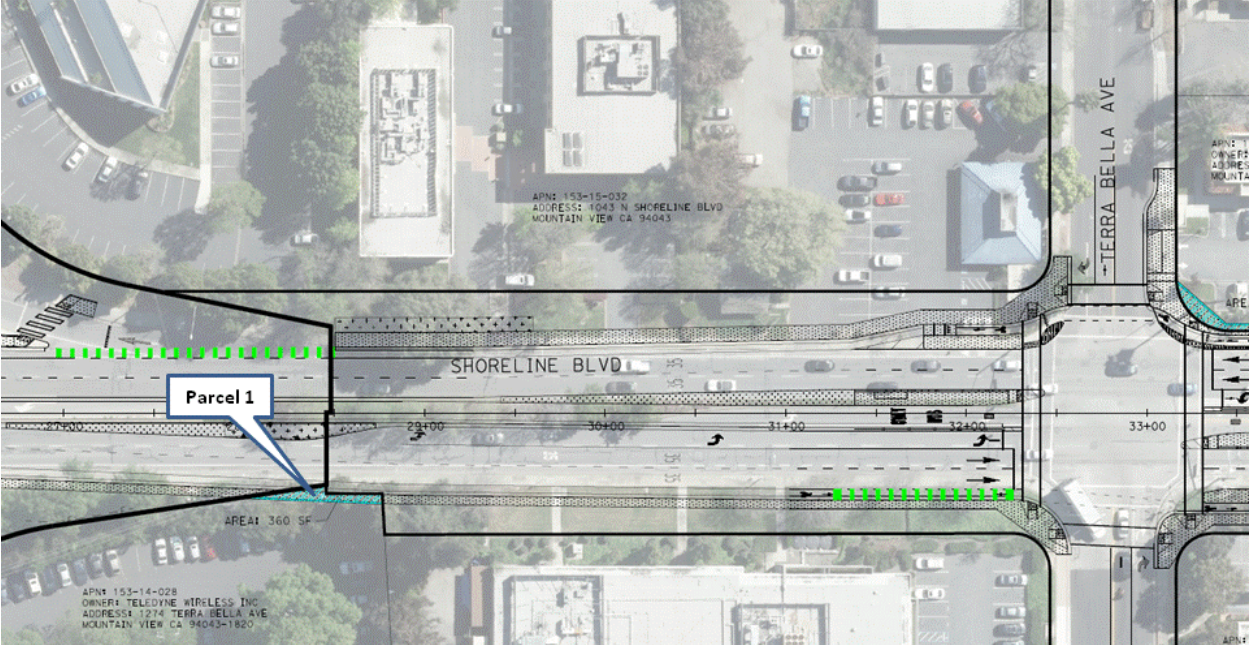


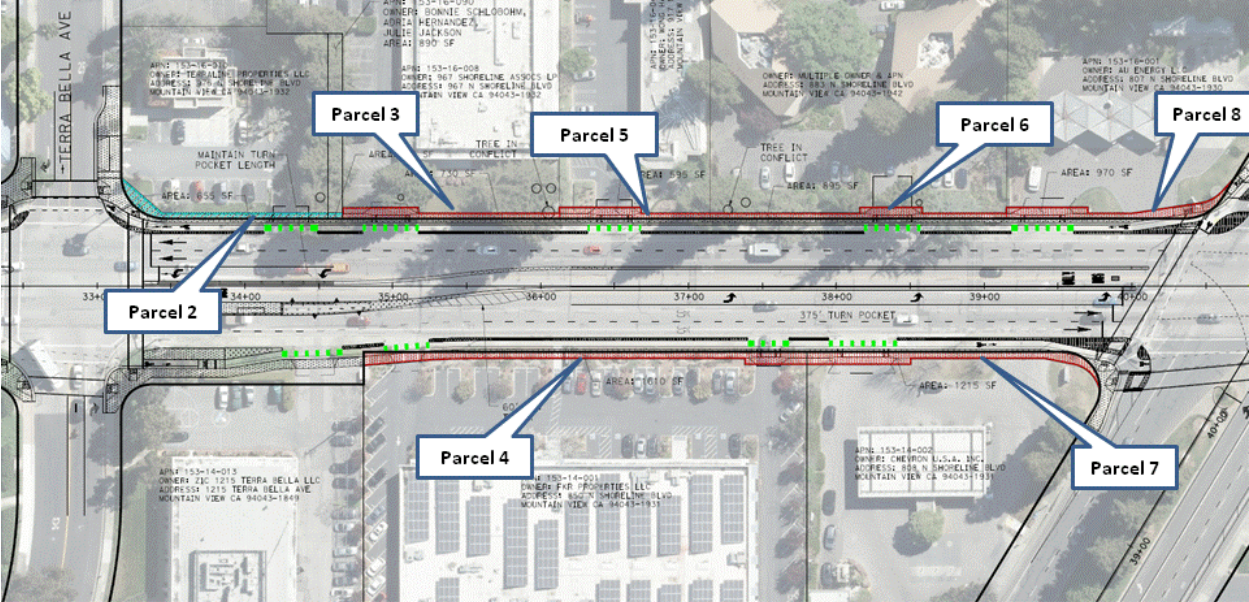
Figure 1

Construction of the Project is scheduled to begin in fall 2019 and is expected to take approximately 18 months.

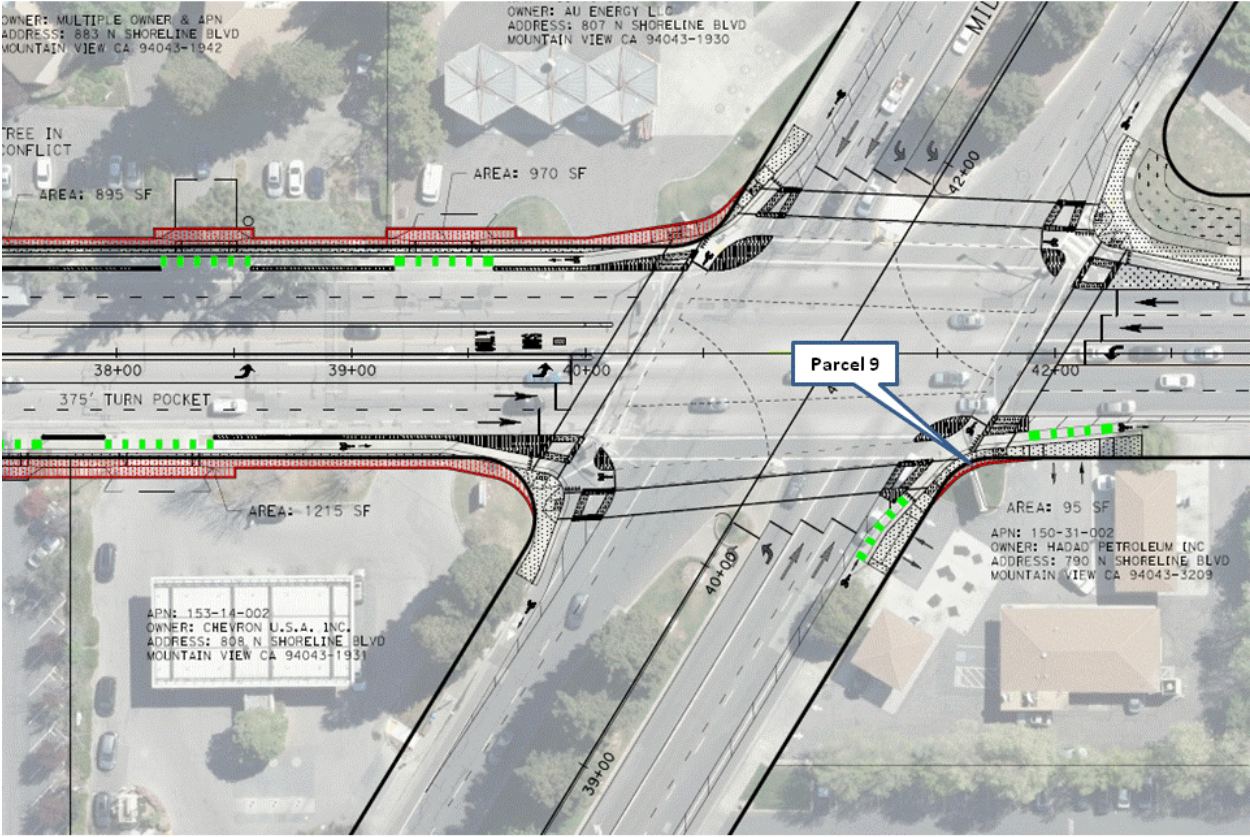
The Project requires the acquisition of additional right-of-way from nine parcels, owned by eight separate owners, between Middlefield Road and Highway 101, to keep the buffer and sidewalk widths to acceptable minimums. The nine properties, and the acquisition program, are shown on the following project maps and are summarized in the table below:



Terra Bella Avenue to Highway 101 – Parcel 1



Between Terra Bella Avenue and West Middlefield Road – Parcels 2 through 8



Shoreline Boulevard/West Middlefield Road Intersection— Parcels 6 through 9

Parcel No.	Address/APN	Property Owner	Business Occupant	Acquisition Size (s.f.)	Remaining Parcel Size (s.f.)
1	1274 Terra Bella Avenue APN 153-14-028	Teledyne Wireless, Inc.	Same	359	285,401
2	975 Shoreline Boulevard APN 153-16-009 and 153-16-010	Terraline Properties, LLC	Taco Bell	741	17,704
3	967 Shoreline Boulevard APN 153-16-008	967 Shoreline Associates, L.P.	Multi-tenant office building	737	58,693
4	850/900 Shoreline Boulevard APN 153-14-001	ZCTB 850 N Shoreline LLC	Δ Base and VITA	1,756	77,775
5	917/943 Shoreline Boulevard	Wong <i>et ux</i>	Wong Publishing	578	32,436
6	883 Shoreline Boulevard APN 153-16-021 through 153-16-044 (condo common area)	C-M Shoreline Station LLC	Office condo common area	887	65,579
7	808 Shoreline Boulevard APN 153-14-002	Chevron USA Inc.	Chevron station	1,215	34,869
8	807 Shoreline Boulevard APN 153-16-001	Au Energy, LLC	Shell station	970	26,364
9	790 West Middlefield Road APN 150-31-002	Hadad Petroleum, Inc.	Arco station	100	24,119

The City has already purchased, or has a contract in place to purchase, Parcel Nos. 1, 2, 3, and 4. Those parcels are only listed in the above chart to show the scope of the real estate acquisition program, but are not included in this request for Resolutions of Necessity.

The acquisitions are mostly in the range of 4' to 6' deep along the property frontages. Plat maps for each acquisition parcel are included with each attached Resolution. All frontage improvements will be restored in a manner that currently exists for each property, with the exception of the Chevron and Shell station driveways on Shoreline Boulevard closest to West Middlefield Road being closed for reasons of pedestrian safety.

In addition to the properties described in the table above, the City needs to acquire temporary construction easements 10' in width directly adjacent and parallel to the property to be acquired for a period of five months, to stage construction of the improvements on the property to be taken. The temporary construction easement period shall commence no fewer than 30 days after written notice is provided by the

City to the property owner reflecting the City's intent to make use of the easement. Each temporary construction easement shall terminate five months after the City takes possession of the temporary construction easement or immediately upon written notice by the City to the property owner that the City no longer requires use of the temporary construction easement, whichever is sooner. The temporary construction easement would also give the City the right to extend the term as long as normal use and access to the property is provided by the City upon the City giving written notice to the property owner(s) 30 days before the expiration of the easement in the event the construction project is not yet complete.

If any of the affected properties were being considered for redevelopment, the City could require a dedication of additional right-of-way as a condition of approval, but to date none of the properties have applied for planning approval of a new development.

ANALYSIS

California law (California Government Code Section 7267, *et seq.*) requires public agencies to appraise the fair market value of property it intends to acquire and to offer no less than the approved appraised fair market value as "fair and just compensation." Section 1263.320 of the Code of Civil Procedures defines "fair market value" as:

(a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

(b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

The City retained the services of Valbridge Property Advisors (formerly Hulberg & Associates), a well-established and respected appraisal firm with an office in San Jose, to appraise the properties to be acquired. On February 19, 2019, the City sent certified, return receipt letters containing formal offers to each of the property owners. On May 6, 2019, the City sent certified, return receipt letters containing updated formal offers to the owners of Parcel Nos. 5, 6, 7, 8, and 9. Negotiations have commenced, and are ongoing, with all of the property owners.

It is uncertain that all of the property rights necessary for the Project can be acquired through negotiations in time to meet the scheduled start of Project construction. Having the ability to use the City's powers of eminent domain is recommended as a contingency measure to ensure the properties and temporary construction easements are acquired in time to meet the construction schedule. Eminent domain is a power the City of Mountain View has used judiciously and very sparingly.

Eminent Domain

In order for a public agency in California to initiate eminent domain proceedings, its governing body must adopt a resolution of necessity in a public hearing. A two-thirds vote is required to adopt a Resolution of Necessity. Code of Civil Procedure Section 1245.230 provides that in order to adopt a resolution of necessity, the City Council must make the following four findings for each parcel to be taken:

(1) The Public Interest and Necessity Require the Project

First, the City Council must find that the public interest and necessity required the Project. Here, the City will use the properties and temporary construction easements to complete the Shoreline Boulevard Reversible Transit Lane Project. The Project is part of a phased program of transportation improvements to accommodate anticipated increases in employment and development in the North Bayshore Area. The Project is for a public use and would not be possible if the City could not acquire the properties and temporary construction easements.

(2) The Interests Sought to be Acquired are Necessary for the Project

Second, the City Council must find that the interests sought to be acquired are necessary for the Project. As described previously, the properties and temporary construction easements sought to be acquired by eminent domain are necessary for the Project. The improvements described above cannot be completed without acquisition of the identified properties and temporary construction easements.

(3) The Project is Located in such a Manner as to Offer the Greatest Public Benefit with the Least Private Detriment

Third, the City Council must find that the Project is located in such a manner as to offer the greatest public benefit with the least private detriment. Acquiring the described properties and temporary construction easements through eminent

domain will enable the street, bicycle, and pedestrian improvements to be constructed as part of the Project. The properties to be acquired are narrow strips of land along the frontages of the properties affected. The acquisitions would slightly reduce the allowable Floor Area Ratios of the remainder properties if they were to be redeveloped, but would not affect the current use of the remainder properties. The practical effect would be to move the existing sidewalks a few feet into the current property boundaries. The Project has been designed to afford the greatest public benefit with the least possible burden on the affected private property owners.

(4) A Government Code Offer Has Been Extended To Each Property Owner

Fourth, the City Council must find that the City has extended an offer pursuant to Government Code Section 7267.2 to each property owner. As discussed above, the City made efforts to reach a negotiated settlement with each of the property owners. On February 19, 2019, the City extended offers to purchase pursuant to Government Code Section 7267.2 to each property owner of record. And on May 6, 2019, the City sent updated offers to purchase pursuant to Government Code Section 7267.2 to the owners of Parcel Nos. 5, 6, 7, 8, and 9.

As explained above, it is uncertain that all of the property rights necessary for the project can be acquired through negotiations in time to meet the scheduled September start of project construction. Accordingly, on May 7, 2019, the owners of Parcel Nos. 5, 6, 7, 8, and 9 were provided a notice via certified mail of the intention of the City to consider adoption of a Resolution of Necessity to acquire the properties and temporary construction easements by eminent domain at its meeting on Thursday, May 23, 2019.

A hearing on each Resolution of Necessity must be held and each resolution approved by a two-thirds vote of the City Council prior to the City moving forward with eminent domain. The City Council's adoption of a Resolution of Necessity authorizes the City to file complaints in eminent domain, to deposit the probable amount(s) of just compensation with the State Treasury, and to obtain an order for prejudgment possession of each property and temporary construction easement. The purpose of the hearing on the Resolution of Necessity is to provide each property owner with an opportunity to address the City Council on this matter. However, the amount of compensation owed for the acquisition will be decided through negotiations or by a court of law, and is not a proper matter to be discussed at the public hearing.

ENVIRONMENTAL REVIEW

The proposed acquisitions were addressed in the Addendum to the North Bayshore Precise Plan Final Environmental Report for the Shoreline Boulevard Bus Lane and Utility Improvements Project 16-58, which was certified on or about March 21, 2017.

FISCAL IMPACT

Funding for the acquisition of the properties and temporary construction easements was approved with the adoption of Shoreline Bus Lane Property Acquisition, Project 18-47. There is sufficient funding in the project to deposit and pay fair and just compensation for the acquisition of the necessary properties through negotiations or eminent domain.

ALTERNATIVES

1. Do not adopt Resolutions of Necessity to initiate condemnation proceedings.
2. Provide other direction.

PUBLIC NOTICING

Posting of the meeting agenda serves as notice to the general public. A public notice was also published in the *San Jose Post Record* and notices were mailed to each of the property owners and all residents within 500' of the project. Notice of the public hearing was mailed to the property owners at least 15 days in advance of the hearing, as required by law. A copy of the staff report was also provided to the property owners.

Prepared by:

Dennis P. Drennan
Real Property Program Administrator

Dawn S. Cameron
Assistant Public Works Director

Michael A. Fuller
Public Works Director

Approved by:

Daniel H. Rich
City Manager

DPD-DSC-MAF/3/CAM
930-05-23-19CR
18172

- Attachments:
1. Resolution of Necessity for 790 Shoreline Boulevard (APN 150-31-002)
 2. Resolution of Necessity for 807 Shoreline Boulevard (APN 153-16-001)
 3. Resolution of Necessity for 808 Shoreline Boulevard (APN 153-14-002)
 4. Resolution of Necessity for 883 Shoreline Boulevard common area (APN 153-16-021 through 153-16-044)
 5. Resolution of Necessity for 917/943 Shoreline Boulevard (APN 153-16-045)