



M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

February 11, 2016

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Resolution Declaring the Public Necessity and Purpose
for Acquisition of Rights of Way and Easements
for the Salmon River (Elk Park Road) Bridge Project and
Authorizing Negotiations and Eminent Domain Actions**

Purpose/Outcomes	Under ORS 35.235 and the federal Uniform Act, a local governmental agency is required to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Condemnation Resolution prior to initiating acquisition of the easements or other property rights from abutters to the project.
Dollar Amount and Fiscal Impact	The right of way budget for the project is \$177,000 and is included within the \$3,223,809 total approved project budget.
Funding Source	Local Bridge (LBP) [formerly Highway Bridge Program (HBP)] and Road Funds
Duration	The Resolution remains active throughout the project's duration and terminates upon completion of the project or when all litigation associated with the project is concluded.
Previous Board Action	07/16/09: BCC Approval of Supplemental Project Agreement No. 25,214 with ODOT for Salmon River (Elk Park Road) Bridge Project. 08/14/14: BCC Approval of Amendment No. 1 to Supplement Project Agreement No. 25,214 with ODOT for Salmon River (Elk Park Road) Bridge Project.
Strategic Plan Alignment	1. The project will improve safety and provide safe travel to schools, commercial centers, and parks. 2. The project is building a strong infrastructure and ensuring safe, healthy and secure communities.
Contact Person	Vince Hall, DTD Project Mgr @ 503-742-4650 Kath Rose, DTD Sr. Right of Way Agent @ 503-742-4713
Contact No.	4650

BACKGROUND:

The Board of County Commissioners has approved funding for the Salmon River (Elk Park Road) Bridge Project No. 22144. The project will improve safety by replacing an existing one-lane bridge with a new wider two-lane bridge, which will help build a strong infrastructure. The Board has authority under ORS Chapter 35 to acquire rights of way and easements by purchase or condemnation proceedings.

The project has been planned and located in a manner which is most compatible with the greatest public good and which causes the least private injury. The Department of Transportation and Development (Department) shall negotiate in good faith in an attempt to reach agreement as to the amount of just compensation owed each affected property owner. To fairly determine the amount of just compensation, staff will utilize the expertise of authorized real estate appraisers and other such experts.

The Department has developed the final legal descriptions required for acquisition of the rights of way and easements for the twenty-one properties affected by the Project. If during the course of the project design/construction modifications should effect acquisitions, staff will bring subsequent revisions to the Board for authorization.

The resolution directs the Department to resolve issues of just compensation through good faith negotiations. It requires the Director of the Department to notify the Board if exercise of the power of eminent domain becomes necessary. Only after this process is completed does it authorize the Office of County Counsel to file a condemnation action.

Staff respectfully requests that the Board approve a Resolution of Necessity and Purpose for the Salmon River (Elk Park Rd) Bridge Project for the acquisition of necessary rights of way and easements to provide for construction of the project.

The Resolution has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approves the Resolution authorizing the acquisition of rights of way and easements by negotiation if possible, or condemnation, if necessary.

Sincerely,

Mike Bezner, PE
Asst. Director of the Dept. of Transportation and Development

Attachment

In the Matter of the Salmon River
(Elk Park Road) Bridge Project,
Declaring the Necessity and Purpose
for Acquisition of Rights of Way and
Easements, and Authorizing Negotiations
and Eminent Domain Actions

Order No. _____
(Page 1 of 2)

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on February 11, 2016; and,

It appearing that the Board previously approved funding for the Salmon River (Elk Park Road) Bridge Project No. 22144 ("Project"), which will provide for the replacement of the existing Elk Park Road Bridge over the Salmon River, that the Project is consistent with the powers and purposes of County government, and that the Project is necessary for the continued growth, safety and welfare of the community; and,

It further appearing to the Board that the Project has been planned and located in a manner which is most compatible with the greatest public good and causes the least private injury; and,

It further appearing to the Board that the acquisition of the rights of way and easements, described in Exhibit "A" is a necessary part of the Project and therefore is also consistent with the powers and purposes of County government, and necessary for the continued growth, safety and welfare of the community; and,

It further appearing to the Board that immediate possession of the rights of way and easements described in Exhibit "A" may be necessary and will be in the public interest in order to commence and complete the Project in a timely manner; and,

It further appearing that the Board has authority under ORS Chapter 35 to acquire rights of way and easements by purchase or eminent domain proceedings.

NOW, THEREFORE, IT IS HEREBY RESOLVED that this Board declares it necessary and in the public interest that the County immediately start acquisition of rights of way and easements described in Exhibit "A", either through negotiation and agreement, purchase, or, if necessary, by commencement of eminent domain proceedings.

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(Page 2 of 2)

IT IS FURTHER ORDERED THAT:

1). The Department of Transportation and Development immediately, and in good faith, attempt to negotiate agreements as to amount of just compensation owed each owner of each property identified in Exhibit "A". In so doing, the department is authorized to retain real estate appraisers, negotiators, and other such experts deemed necessary to fairly determine the amount of just compensation owed; and,

2). If the Director of the Department of Transportation and Development (the "Director") determines that changes to the design of the Project, unanticipated field conditions, or the need to accommodate uneconomic remnants makes it necessary or desirable to modify the rights of way and easements required for the Project, the Director shall promptly bring before the Board, and the Board shall promptly consider a resolution amending Exhibit "A"; and,

3). It is the intention of the Board that the required rights of way and easements identified in Exhibit "A" be obtained through good faith negotiation. The Board acknowledges that the exercise of the power of eminent domain may be necessary. The Director shall inform the Board when the Director deems eminent domain necessary. Thereafter, the Office of County Counsel is authorized to file complaints in condemnation and take such other steps as it determines necessary for the immediate possession of required rights of way and easements and the successful litigation of the condemnation action, including the retention of real estate appraisers, experts and other consultants deemed necessary to the successful conclusion of that litigation.

Dated this _____ day of _____, 2016.

John Ludlow, Chair

Mary Raethke, Recording Secretary