



Memorandum Date: March 7, 2023
Agenda Date: April 4, 2023

TO: Board of County Commissioners

DEPARTMENT: Public Works/Engineering and Construction Services

PRESENTED BY: Peggy Keppler, County Engineer

AGENDA ITEM TITLE: RESOLUTION/ORDER IN THE MATTER OF A RESOLUTION ESTABLISHING NECESSITY PURSUANT TO ORS 35.610 AND ORDERING THE ACQUISITION OF INTERESTS NECESSARY FOR THE GILHAM ROAD SIDEWALK AND SAFETY IMPROVEMENTS PROJECT, KEY # 21385 (360289966).

I. MOTION:

MOVE TO APPROVE THE RESOLUTION/ORDER IN THE MATTER OF A RESOLUTION ESTABLISHING NECESSITY PURSUANT TO ORS 35.610 AND ORDERING THE ACQUISITION OF INTERESTS NECESSARY FOR THE GILHAM ROAD SIDEWALK AND SAFETY IMPROVEMENTS PROJECT, KEY # 21385 (360289966).

II. AGENDA ITEM SUMMARY:

The project known as the “Gilham Road Sidewalk and Safety Improvements Project,” Key # 21385 (360289966) is located in North Eugene near Ayers Road. The project was approved through the Lane County Capital Improvement Program for Fiscal Years 2021 through 2025, Order No. 20-07-21-08.

The project has been designed in a manner which is most compatible with the greatest public good and the least private injury, and will be of a general benefit to the property owners and the public. Permanent Right of Way, Temporary Construction Easements, and a Drainage Easement will need to be acquired from 12 landowners for the project. These acquisitions are needed to construct new curbs, gutters, sidewalks, stormwater and planter strips, and pavement upgrades.

III. BACKGROUND/IMPLICATIONS OF ACTION:

A. Board Action and Other History

The “Gilham Road Sidewalk and Safety Improvements Project,” Key # 21385 (360289966), was approved through the Lane County Capital Improvement Program for Fiscal Years 2020-21 through 2024-25, Order No. 20-07-21-08, and is ODOT STIP funded. The project was designed and will

require temporary interests from property owners along Gilham Road and Gilham Cul-de-sac No. 2. Lane County entered into a Right of Way Service Agreement (IGA) with ODOT on 1/29/2020, where Lane County is authorized to determine value and to negotiate the needed interests through the acquisition process. The right of way needs have been determined based on the engineered design plans for this project. As of the writing of this Cover Memo, Lane County is awaiting ODOT to grant a “notice to proceed” and this Resolution/Order before beginning the acquisition process.

B. Policy Issues

The County has already affirmed its desire to implement the project when it adopted the Lane County Capital Improvement Program for Fiscal Years 2021 through 2025, Order No. 20-07-21-08. Subsequently, the County also entered into Intergovernmental Agreement on 1/29/2021, Agreement No. 34300, with ODOT obligating itself to pass a resolution of necessity. Additionally, ORS 35.235 requires that the County provide a resolution demonstrating necessity prior to negotiating and acquiring property.

C. Board Goals

This action is consistent with the Lane County Strategic Plan, 2022-2024, focusing on robust infrastructure and vibrant communities. The acquisition of property interests will facilitate the construction of new curb, gutter, pavement, and sidewalk facilities on the section of Gilham Road located north of Ayers Road and south of Don Juan Avenue.

D. Financial and/or Resource Considerations

This action is consistent with the Lane County Strategic Plan, 2022-2024, focusing on safe infrastructure maintenance and improvements. Lane County received federal funding allocated to the Central Lane MPO to deliver the Gilham Road Project. The funding includes right of way acquisition. The federal funding requires the local agency to contribute 10.27% match. The project has been budgeted as part of the Lane County Capital Improvement Program.

E. Health Implications

The project will enhance safe transportation facilities and operations. The project is necessary for improving safety for those walking and biking between school and home. This aligns well with the safe, healthy county and robust infrastructure goals of the Lane County Strategic Plan.

F. Analysis

The acquisition of permanent right of way easements and drainage easement are necessary for the road improvements. The temporary construction easements are necessary to avoid grade-breaks at the existing right of way line and will allow construction crews to match the new grade to the adjoining properties.

It should be noted that, although these acquisitions are necessary and that the proposed Resolution/Order meets the obligation necessary to establish Lane County’s power of eminent domain, condemnation proceeding are only necessary after negotiations fail and all alternatives have been exhausted. Should negotiations fail, there may be other alternatives such as redesigning or avoiding the affected area. Nevertheless, the condemnation process can be used

to acquire the desired interest or to clear title, or both; thus ensuring the public has an unencumbered right of way and the individual landowners affected by the project have a smooth transition to the road.

G. Alternatives/Options

1. Approve the Resolution/Order of necessity and property acquisition,
2. Deny the Resolution/Order of necessity and property acquisition, and redesign the project to avoid the necessity to acquire, or
3. Continue the matter for further discussion.

IV. RECOMMENDATION

It is recommended that Option 1 above be pursued.

V. TIMING/IMPLEMENTATION

Timing is critical, as the project timelines require right of way certification completed by a date certain. Once approved, the acquisition process can take as long as 6 months, depending on many factors and variables. Construction bidding is planned for November 14, 2023, and all right of way must be acquired prior to that date.

VI. FOLLOW-UP

Upon approval by the Board, Engineering and Construction Services Right of Way Staff will proceed with all tasks associated with the acquisition of the needed interests, including valuation, determination of just compensation, negotiation, settlement, closing and clearing title if necessary. Should Condemnation be pursued, staff will assist Legal Counsel in preparing the necessary Board Order and the filing of an action to condemn.

VII. ATTACHMENTS

- Order
- Exhibit A – Property Acquisition List
- Attachment 1 of Exhibit A – Map

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

RESOLUTION/ORDER NO: 23-04-04-05

IN THE MATTER OF A RESOLUTION
ESTABLISHING NECESSITY PURSUANT
TO ORS 35.610 AND ORDERING THE
ACQUISITION OF INTERESTS NECESSARY
FOR THE GILHAM ROAD SIDEWALK AND
SAFETY IMPROVEMENTS PROJECT,
KEY # 21385 (360289966).

WHEREAS Lane County may exercise the power of eminent domain pursuant to its Home Rule Charter, Chapter II, Section 5, Oregon Revised Statutes Volume 01, Chapter 35, and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the Board of County Commissioners' governing body to accomplish public purposes for which Lane County has responsibility;

WHEREAS Lane County has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project known as the Gilham Road Sidewalk and Safety Improvement Project, Key # 21368 (360289966), adopted through the Lane County Capital Improvement Program for Fiscal Years 2020-21 through 2024-25, Order No 20-07-21-08, has been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project set forth above it is necessary to acquire permanent road right of way, drainage easements, and temporary right of entry/permit of entry for construction interests in the properties described in Exhibit A, attached to this resolution and, by this reference incorporated herein;

NOW, THEREFORE, the Board of County Commissioners of Lane County **RESOLVES and ORDERS** as follows:

1. The foregoing statements of authority and need are, in fact, the case. The project for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each property is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The Lane County Public Works' Staff and the Lane County Counsel are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any

other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the Lane County Counsel.

4. Lane County expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

ADOPTED this 4th day of April, 2023.

Pat Farr, Chair
Lane County Board of Commissioners

EXHIBIT A

LANE COUNTY DEPARTMENT OF PUBLIC WORKS RIGHT OF WAY PROPERTY IDENTIFICATION LIST

GILHAM ROAD SIDEWALK AND SAFETY IMPROVEMENT PROJECT, KEY # 21385 (360289966)

Permanent Right of Way Easement (PRE), Temporary Construction Easement (TCE), Drainage Easement (DE)

ROW Parcel #	Property Map/Tax Lot	Interest to Acquire	Owners' Name	Mailing Address
1547-01	1703083413800	PRE TCE	Dane A. & Kathryn R. Butler	3343 Wyndham Ct. Eugene, OR 97408
1547-02	1703083300100	PRE DE TCE	Daniel V. & Edward J. Edgar	55 Ayres Rd. Eugene, OR 97408
1547-03	1703083103401	TCE	Tim G. & Christine A. Campbell	PO Box 10066 Eugene, OR 97440
1547-04	1703083103300	TCE	Kasey Stephens	3499 Gilham Rd. Eugene, OR 97408
1547-05	1703083103200	TCE	Robert M. & Mary H. O'Brien	270 E Pope Ln. Castle Valley, UT 84532
1547-06	1703083211300	PRE TCE	Kenneth N. & Lona F. Feldman	3266 Lakemont Dr. Eugene, OR 97408
1547-07	1703083102600	TCE	Anthony & Julia Bloom	2250 Turnberry Ct. Eugene, OR 97401
1547-08	1703083210700	PRE TCE	Candy Walker	831 Snell St. Eugene OR, 97405
1547-09	1703083108200	PRE TCE	Westfall Trust	2120 Ashbury Dr. Eugene, OR 97408
1547-10	1703083210600	TCE	John R. & Kulig Megan J. Rhode	3604 Gilham Rd. Eugene, OR 97408
1547-11	1703083209900	TCE	Sydney Brooks Wright	3632 Gilham Rd. Eugene, OR 97408
1547-12	1703083209800	PRE TCE	Rodney Turner	2090 Don Juan Ave. Eugene, OR 97408

ATTACHMENT 1 OF EXHIBIT A
VICINITY MAP



SEC. 8 T.17S. R.3W. W.M.
Eugene, Lane County, Oregon

