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E-FILED
7/12/2024 5:12 PM
Superior Court of California
County of Fresno
By: Alexandria Payne, Deputy

6 Attorneys for Plaintiff CITY OF FRESNO
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF FRESNO, CENTRAL DIVISION**

10
11 CITY OF FRESNO,
12 Plaintiff,
13 v.
14 ART A. TERZIAN, and DOES 1 through 100,
inclusive,
15 Defendants.
16
17

Case No.
[Assessor Parcel Number 451-071-35]
COMPLAINT IN EMINENT DOMAIN

18
19 1. Plaintiff CITY OF FRESNO (“City” or “Plaintiff”) is now, and at all times herein
20 mentioned was, a duly created municipal corporation located entirely within the County of Fresno,
21 State of California. The City of Fresno has the power and authority to exercise eminent domain and
22 acquire fee in real property for the public use set forth herein in accordance with the Constitution of
23 the State of California, California Eminent Domain Law, Code of Civil Procedure section 1230.010
24 et seq., and pursuant to Government Code sections 37350.5 and 40404, Streets and Highway Code
25 section 10102, and section 200 of the Charter of the City of Fresno.

26 2. The City plans to construct the Blackstone McKinley BNSF (Burlington Northern-
27 Santa Fe) Grade Separation Project (the “Project”), which will eliminate two existing at-grade
28 railroad crossings of the BNSF mainline tracks at North Blackstone Avenue and East McKinley

1 Avenue by separating train traffic from pedestrians, cyclists, and moving vehicle traffic to an
2 underpass below the BNSF mainline track.

3 3. The Blackstone Avenue and McKinley Avenue corridors serve as primary routes for
4 the community, the City’s Bus Rapid Transit System, emergency vehicles, and is also part of the
5 Blackstone Smart Mobility Plan providing Class IV protected bicycle facilities along Blackstone
6 Avenue through the Project area. The City Council has approved the Measure C Cooperative Project
7 Agreement for the Project and subsequent amendments (collectively the “Agreement”), which
8 provides approximately \$27,000,000 of Project funding.

9 4. On June 25, 2020, the City Council found the Project to be statutorily exempt from
10 the California Environmental Quality Act (“CEQA”) pursuant to California Public Resources Code
11 Section 21080.13(a) and 15282(g) of the CEQA Guidelines. The Notice of Exemption was thereafter
12 recorded with the Fresno County Clerk on July 30, 2020.

13 5. For the Project, it is necessary and desirable that Plaintiff acquire, by the exercise of
14 the power of eminent domain, the real property located at 1730 East McKinley Avenue, Fresno,
15 California, more particularly described as Assessor’s Parcel Number (“APN”) 451-071-35,
16 hereinafter called the “Subject Property,” for construction of the Project and related purpose. A
17 legal description of the Subject Property is attached hereto as **Exhibit A**. A vicinity map showing
18 the area of the Project in relation to the surrounding area is attached hereto as **Exhibit B**. A location
19 map showing the Subject Property in relation to the area of the Project is attached hereto as **Exhibit**
20 **C**.

21 6. Plaintiff is informed and believes, and thereupon alleges, that the Subject Property is
22 currently owned by Art A. Terzian (hereinafter “Defendant”). On April 5, 2022, Defendant
23 executed a Trust Transfer Deed, purportedly transferring title to the Subject Property to the Granett
24 Investment Trust Dated 8-8-85, c/o Avedis A. Terzian, Trustee. On April 6, 2022, the Deed was
25 recorded with the Fresno County Recorder as Document Number 2022- 0044152. However, the
26 transfer was not insured or verified by a title company, and the City has been unable to obtain a
27 copy of the Trust to verify the transfer. As such, the City alleges that the current purported
28 ownership of the Subject Property is with Defendant.

1 7. Plaintiff is informed and believes, and thereon alleges that Defendants named herein
2 as DOES 1 through 100, inclusive, are persons unknown claiming any right, title, estate, lien, or
3 interest in or to the Subject Property, and are sued and designated herein by such fictitious names
4 and capacities, whether individual, corporate or otherwise. Plaintiff, upon ascertaining their true
5 names and capacities, will ask leave of this Court to substitute the same by proper amendment to
6 this Complaint.

7 8. The City retained Universal Field Services (“UFS”) to acquire parcels on its behalf
8 for the Project. UFS retained CBRE Valuation and Advisory Services (“CBRE”) to prepare an
9 appraisal report of fair market value of the properties for the Project. On July 14, 2023, CBRE
10 prepared an appraisal report, determining the fair market value of the Subject Property to be
11 \$2,200,000 as defined by Section 1263.320 of the Code of Civil Procedure. The appraisal was
12 reviewed by David S. Mason, Inc., who concurred with the value given by CBRE. Pursuant to
13 Government Code section 7267.2, an offer of just compensation in the full amount of the appraisal
14 was presented to Defendant on October 11, 2023.

15 9. UFS retained Desmond, Marcello & Amster (“DM&A”) to provide an appraisal
16 report of the improvements pertaining to the realty (IPRs) of A&T Ceramics, the business located
17 on the Subject Property. DM&A determined the total fair market value of the IPRs is \$59,500. On
18 December 14, 2023, a subsequent supplemental offer to purchase the IPRs on the Subject Property
19 was made in the amount of \$59,500. The total combined purchase price for the Property and IPRs
20 offered to Defendant is \$2,259,500.

21 10. Since the date of the initial offer, UFS acquisition consultants have contacted
22 Defendant and his representatives on approximately sixteen occasions by personal visits, email,
23 mail, and telephone to discuss the offer to purchase and to move forward with the acquisition
24 process. However, Defendant has not engaged the City in negotiations and has not provided a
25 counteroffer.

26 11. Prior to commencement of this action, after notice and hearing in compliance with
27 Code of Civil Procedure section 1245.235, the City Council, on April 18, 2024, duly and regularly
28 adopted by vote of at least two-thirds of its members Resolution No. 2024-071 entitled: A

1 RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA,
2 DETERMINING THAT PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF
3 FEE INTEREST FOR RIGHTS OF WAY FOR PUBLIC STREET PURPOSES OF APN: 451-071-
4 35, OWNED BY ART A. TERZIAN FOR THE CONSTRUCTION OF THE BLACKSTONE
5 MCKINLEY BNSF GRADE SEPARATION PROJECT AND AUTHORIZING EMINENT
6 DOMAIN PROCEEDINGS FOR PUBLIC USE AND PURPOSE“(“Resolution”). A certified copy
7 of the Resolution is attached hereto as **Exhibit D**.

- 8 12. The City found and determined, and in the Resolution declared, that:
- 9 a. The public interest and necessity require the proposed Project;
- 10 b. The Project is planned and located in the manner that will be most compatible
11 with the greatest public good and the least private injury;
- 12 c. The permanent easement and right of way sought are necessary for the
13 proposed Project;
- 14 d. The offer to purchase required by Section 7267.2 of the Government Code
15 has been made to the owner of record.

16 13. The Resolution directed the bringing of an action in the name of City, in the proper
17 court having jurisdiction thereof, for the acquisition of the Subject Project for the public purposes
18 set forth therein.

19 14. The Subject Property is necessary to construct the Project.

20 15. The public interest, convenience and necessity require both the Project and the
21 acquisition of the Subject Property. The public interest, convenience, and necessity further require
22 that the Subject Property be used for the public uses and purposes as described in the Resolution
23 and herein. Said public uses and purposes are planned and located in a manner that will be most
24 compatible with the greatest public good and the least private injury.

25 16. As to any portion of the Subject Property that is currently appropriated for a public
26 use, the use for which the Subject Property is sought to be taken is a more necessary public use, and
27 the City is empowered to take the Subject Property for a more necessary public use pursuant to Code
28 of Civil Procedure Section 1240.610.

EXHIBIT A

EXHIBIT "A"
Legal Description

APN 451-071-35
Grant Deed

PARCEL 1:

THAT PORTION OF THE NORTHWEST QUARTER OF LOT 8, SALINGER TRACT, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 2 PAGE 13 OF PLATS, FRESNO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 8, DISTANT 321 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 8; THENCE SOUTHERLY PARALLEL WITH THE WEST LINE OF SAID LOT 8, A DISTANCE OF 167 FEET; THENCE WESTERLY PARALLEL WITH THE NORTH LINE OF SAID LOT 8, A DISTANCE OF 141 FEET; THENCE NORTHWESTERLY 25.4 FEET TO A POINT WHICH IS 145.16 FEET SOUTH OF THE NORTH LINE OF SAID LOT, AND 154 FEET WEST OF THE EAST LINE OF THE PARCEL HEREIN DESCRIBED; THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID LOT 8, A DISTANCE OF 145.16 FEET TO THE NORTH LINE OF SAID LOT; THENCE EASTERLY 154 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

THAT PORTION OF LOT 8 OF SALINGER TRACT, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 2 PAGE 13 OF PLATS, FRESNO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

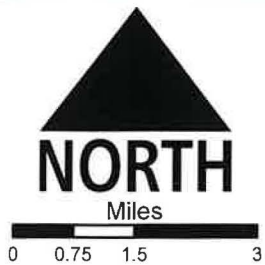
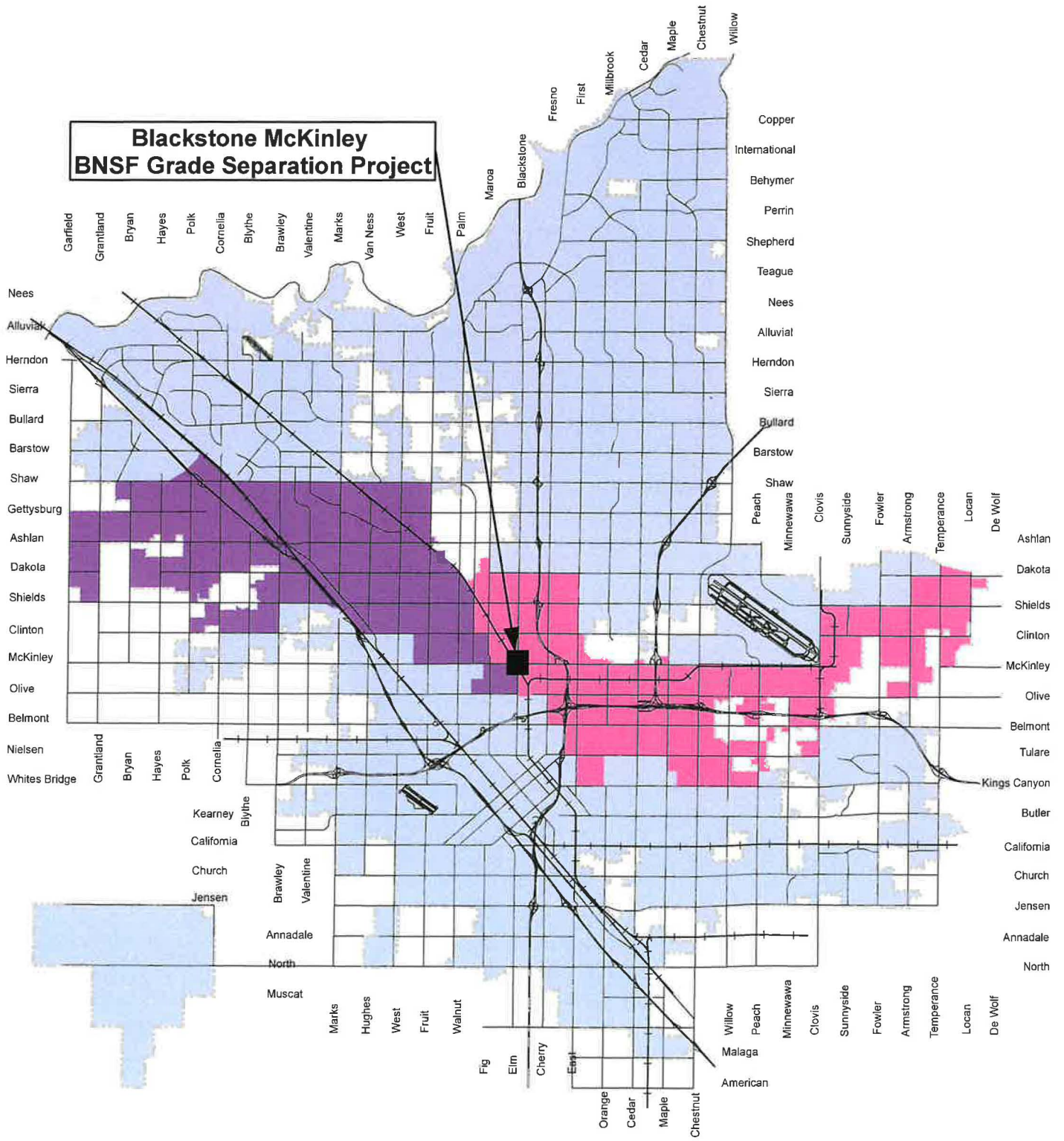
BEGINNING AT THE NORTHWEST CORNER OF SAID LOT AND RUNNING THENCE EAST ALONG THE NORTH LINE THEREOF, 167 FEET; THENCE SOUTH PUBLIC ROAD TO THE WEST LINE OF SAID LOT, 145.16 FEET; THENCE SOUTHEASTERLY 25.4 FEET TO A POINT ON THE LINE PARALLEL TO AND 167 FEET SOUTH OF THE NORTH LINE OF SAID LOT, WHICH POINT IS 141 FEET WEST OF THE EAST LINE OF THE WEST 321 FEET OF SAID LOT; TH EAST PARALLEL TO THE NORTH LINE OF SAID LOT, 141 FEET TO THE EAST LINE OF THE WEST 321 FEET OF SAID LOT, BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH ALONG THE EAST LINE OF THE WEST 321 FEET OF SAID LOT, A DISTANCE OF 102 FEET; THENCE WEST AND PARALLEL TO THE NORTH LINE OF SAID LOT 8, A DISTANCE OF 121 FEET; THENCE NORTH AND PARALLEL WITH THE EAST LINE OF THE WEST 321 FEET OF SAID LOT, A DISTANCE OF 102 FEET TO A POINT ON A LINE PARALLEL TO AND 167 FEET SOUTH OF THE NORTH LINE OF SAID LOT 8 AND A DISTANCE OF 121 FEET WEST OF THE TRUE POINT OF BEGINNING; THENCE EAST ALONG SAID LINE BEING PARALLEL TO AND 167 FEET SOUTH OF THE NORTH LINE OF SAID LOT, A DISTANCE OF 121 FEET TO THE TRUE POINT OF BEGINNING.



7-25-2023

EXHIBIT B

Blackstone McKinley BNSF Grade Separation Project

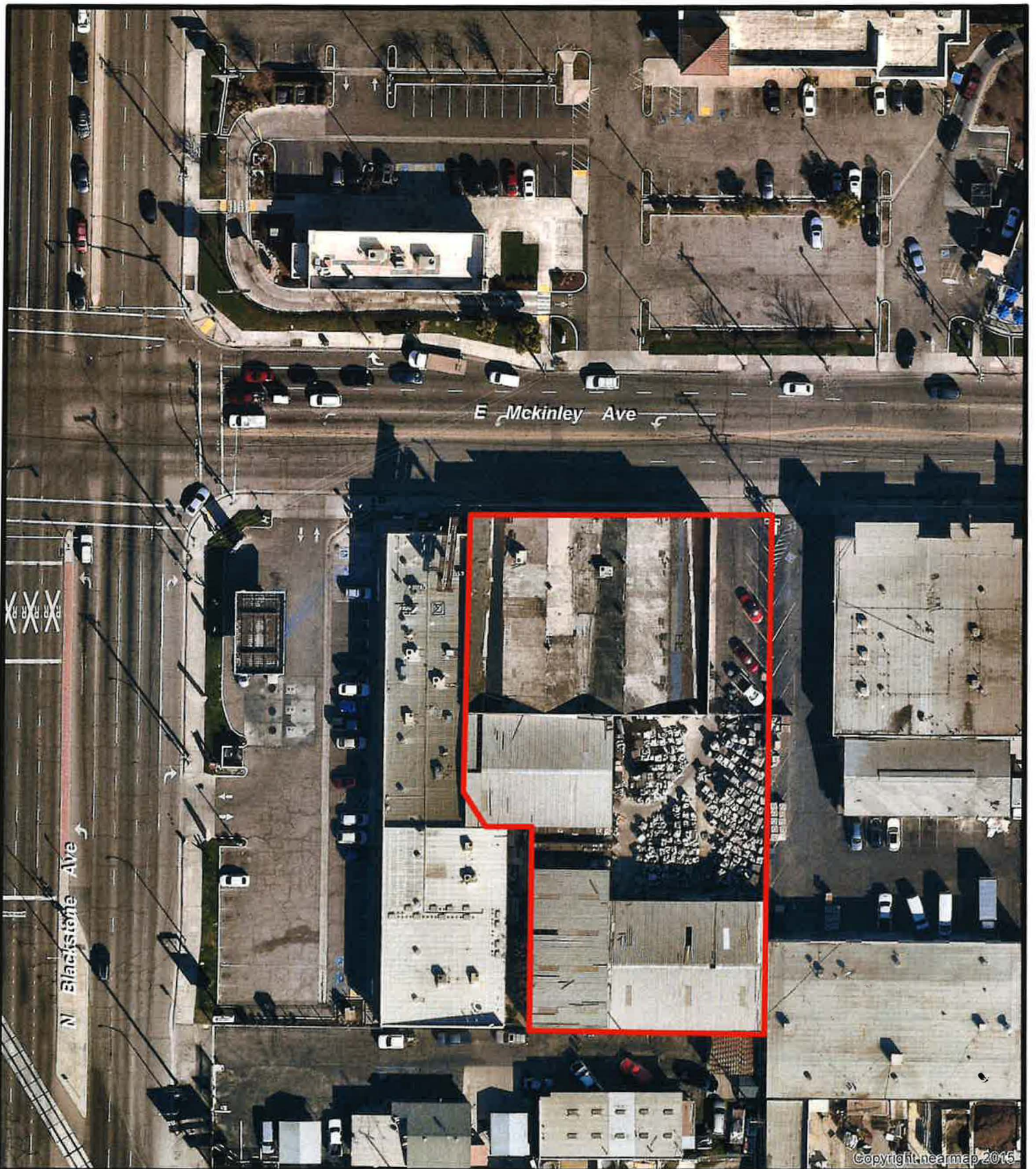


VICINITY MAP Blackstone McKinley BNSF Grade Separation Project

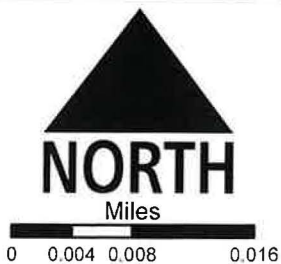
Project ID: PW00937
Council District: 1 and 7

- District 1
- District 7
- City Limits

EXHIBIT C



City of
FRESNO
DEPARTMENT OF
PUBLIC WORKS



LOCATION MAP

Blackstone McKinley
BNSF Grade Separation Project
APN 451-071-35

Project ID: PW00937
Council District: 1 and 7



EXHIBIT D



RESOLUTION NO. 2024-071

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, DETERMINING THAT PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF FEE INTEREST FOR RIGHTS OF WAY FOR PUBLIC STREET PURPOSES OF APN: 451-071-35, OWNED BY ART A. TERZIAN FOR THE CONSTRUCTION OF THE BLACKSTONE MCKINLEY BNSF GRADE SEPARATION PROJECT AND AUTHORIZING EMINENT DOMAIN PROCEEDINGS FOR PUBLIC USE AND PURPOSE

WHEREAS, the City of Fresno plans to construct the Blackstone McKinley BNSF Grade Separation Project which will eliminate two existing at-grade railroad crossings of the BNSF mainline tracks at North Blackstone Avenue and East McKinley Avenue by separating train traffic from pedestrians, cyclists, and moving vehicle traffic to an underpass below the BNSF mainline track (Project); and

WHEREAS, the Blackstone Avenue and McKinley Avenue corridors serve as primary routes for the community, the City's Bus Rapid Transit System, emergency vehicles, and is also part of the Blackstone Smart Mobility Plan providing Class IV protected bicycle facilities along Blackstone Avenue through the Project area; and

WHEREAS, the Fresno City Council approved the Measure C Cooperative Project Agreement for the Project and subsequent amendments (collectively the Agreement) which has provided approximately \$27,000,000 of Project funding to date; and

WHEREAS, the Project is statutorily exempt pursuant to California Public Resources Code Section 21080.13(a) and 15282(g) of the California Environmental Quality Act (CEQA) Guidelines; and

1 of 5

Date Adopted: 04/18/2024
Date Approved: 04/23/2024
Effective Date: 04/23/2024

Resolution No. 2024-071



WHEREAS, the Project requires the fee acquisition of the real property located at 1730 East McKinley Avenue, Fresno, California, and more particularly described as Assessor's Parcel Number (APN) 451-071-35, hereinafter called the "Subject Property," for construction of the Project and related purposes; and

WHEREAS, the design of the Project has been reviewed and it has been determined that the path of the Project, including all projected detours, cannot be constructed without acquiring the Subject Property; and

WHEREAS, On April 5, 2022, Mr. Terzian executed a Trust Transfer Deed, purportedly transferring title to the Granett Investment Trust Dated 8-8-85, c/o Avedis A. Terzian, Trustee. On April 6, 2022, the Deed was recorded with the Fresno County Recorder as Document Number 2022-0044152. The transfer was not insured or verified by a title company. The City has been unable to obtain a copy of the Trust to verify the transfer; and

WHEREAS, the current purported ownership of the Subject Property is as follows:

Assessor's Parcel Number 451-071-35, address of 1730 East McKinley Avenue, Fresno, California and currently owned by Art A. Terzian.

WHEREAS, the Subject Property, and its general location and extent are described in attached Exhibit "A," and

WHEREAS, the fee interest acquisition of the Subject Property is necessary for the construction of the Project; and

WHEREAS, the City of Fresno has the power and authority to exercise eminent domain and acquire in fee real property for the public use set forth herein in accordance



with the Constitution of the State of California, California Eminent Domain Law, Code of Civil Procedure Section 1230.010 et seq., and pursuant to Government Code Sections 37350.5 and 40404, Streets and Highway Code Section 10102, and Section 200 of the Charter of the City of Fresno; and,

WHEREAS, in accordance with Section 7267.2 of the Government Code, an offer to purchase has been made to the owner of record of the Subject Property; and

WHEREAS, the owner of the Subject Property has not engaged in negotiations nor provided a counter offer to purchase the Subject Property; and

WHEREAS, in accordance with Section 1245.235 of the Code of Civil Procedure, notice and reasonable opportunity to respond and be heard on this matter has been given to the persons whose property are to be acquired by eminent domain and whose names and addresses appear on the last equalized county assessment roll; and

WHEREAS, at such time and place, or as soon thereafter as the matter could be heard, the Council received, heard, and considered information pertinent to the matters required by Section 1245.230 of the Code of Civil Procedure to be determined herein; and

NOW, THEREFORE, BE IT RESOLVED the Council of the City of Fresno finds, declares, determines, and orders as follows:

1. The public interest and necessity require the proposed Project.
2. 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.
3. The Subject Property is necessary for the proposed Project.



4. The offer to purchase required by Section 7267.2 of the Government Code has been made to the owner of record.

5. The Subject Property is situated in the City of Fresno, County of Fresno, State of California, and is more particularly described in Exhibit "A."

6. The City Attorney of the City of Fresno is authorized and directed to institute and conduct to conclusion, in the name of the City of Fresno, a proceeding in eminent domain, including arbitration of compensation, in accordance with the provisions of the Constitution of the State of California and the California Eminent Domain Law, to acquire the Subject Property in the name of the City for public purposes.

7. Project ID PW00937, Fund 22517, Org 189901, has been established to disburse the necessary funds for the acquisition of the Subject Property and to pay for litigation expenses, including staff time. There will be no General Fund dollars required to construct the Project.

8. The Controller of the City of Fresno is authorized to disburse out of the above account, as approved by the City Attorney, such amounts as may be required including costs, witness fees and attorneys' fees, to acquire possession of and title to the Subject Property.

9. This resolution shall be effective upon final approval.



STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 18th day of April 2024.

AYES : Perea, Karbassi, Arias, Maxwell, Bredfeld, Esparza
NOES : Chavez
ABSENT : None
ABSTAIN : None

Mayor Approval: April 23, 2024
Mayor Approval/No Return: N/A, 2024
Mayor Veto: N/A, 2024
Council Override Vote: N/A, 2024

TODD STERMER, CMC
City Clerk

By: Todd Stermer 4-24-2024
Date

Deputy

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: [Signature] 4/24/24
Kelsey Seib Date
Deputy City Attorney

Attachments:
Exhibit A



EXHIBIT "A"
Legal Description

APN 451-071-35
Grant Deed

PARCEL 1:

THAT PORTION OF THE NORTHWEST QUARTER OF LOT 8, SALINGER TRACT, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 2 PAGE 13 OF PLATS, FRESNO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

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7-25-2023



April 19, 2024


Council Adoption: 04/18/2024

TO: MAYOR JERRY DYER

Mayor Approval:

Mayor Veto:

Override Request:

FROM:  TODD STERMER, CMC
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the City Council meeting of April 18, 2024, Council adopted the attached Resolution No. 2024-071*****RESOLUTION - Determining that public interest and necessity require fee title interest acquisition of APN 451-071-35, owned by Art A. Terzian, for the construction of the Blackstone McKinley BNSF Grade Separation Project and authorizing eminent domain proceedings for public use and purpose (Requires 5 affirmative votes) (Subject to Mayor's Veto).** Item 9:20AM -2 File ID 24-469, by the following vote:

Ayes : Perea, Karbassi, Arias, Maxwell, Bredefeld, Esparza
Noes : Chavez
Absent : None
Abstain : None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before April 29, 2024. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

APPROVED /NO RETURN: _____

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

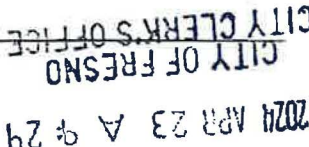


Date: 4/22/24

Jerry Dyer, Mayor

COUNCIL OVERRIDE ACTION:

Ayes :
Noes :
Absent :
Abstain :

Date: _____


RECEIVED