

RESOLUTION NO. 2014259

RE: ACCEPTANCE OF EMINENT DOMAIN PROCEDURE LAW  
DETERMINATION AND FINDINGS FOR THE FEDERALLY FUNDED  
PROJECT IDENTIFIED AS PIN 8755.38, BEEKMAN ROAD (CR 9)  
IMPROVEMENT PROJECT, IN THE TOWNS OF EAST FISHKILL AND  
BEEKMAN, DUTCHESS COUNTY, NEW YORK

Legislators HUTCHINGS, BOLNER, MICCIO, and SAGLIANO offer the following and  
move its adoption:

WHEREAS, Beekman Road (CR 9) is located in the Towns of East Fishkill and  
Beekman, Dutchess County, New York; and

WHEREAS, the County of Dutchess owns and maintains Beekman Road (CR 9);  
and

WHEREAS, Beekman Road (CR 9) is classified as an Urban Minor Collector  
(non-NHS); and

WHEREAS, the Initial Project Proposal (IPP) for the proposed public project was  
approved by the New York State Department of Transportation on September 27, 2005; and

WHEREAS, the County of Dutchess and its consultant undertook various studies  
to evaluate the existing transportation conditions, deficiencies, and engineering considerations  
within the proposed project area; and

WHEREAS, the County of Dutchess and its consultant updated the Draft Design  
Report for the proposed public project in June, 2014; and

WHEREAS, in the Draft Design Report, the County of Dutchess identifies the  
following existing conditions;

1. Evidence of adverse accident history and non-standard access control within the proposed project limits.
2. Beekman Road (CR 9) contains non-standard horizontal and vertical curves with poor sight distance.
3. The existing shoulders within the project limits have non-standard widths.
4. The travel lane and shoulder pavement are deteriorated and eroded in some locations.
5. The observed drainage conditions, such as roadside ponding, deteriorated and clogged pipes and/or ditches, within the project area appear to warrant improvement.

WHEREAS, the County of Dutchess defined the following project objectives in  
the Draft Design Report;

1. Increase the safety of the corridor by improving or eliminating some non-standard geometric features.
2. Improve roadside clear area, incorporate guide railing where appropriate, and increase access control.
3. Rehabilitate the existing pavement with cost-effective treatments to provide a 20-year service life.
4. Increase pavement life by improving roadside drainage.
5. Minimize adverse environmental effects.

WHEREAS, the County of Dutchess and its consultant evaluated the following design alternatives to accomplish the project objectives;

- Alternative #1 – The No Build “Null Alternative” – The Null Alternative only provides for the continued maintenance of the existing facilities.
- Alternative #2 - Reconstruction – This alternative would include the full depth reconstruction of the entire roadway within the project limits and would allow for highway realignment in specific areas to correct geometric deficiencies.
- Alternative #3 – Rehabilitation with Areas of Reconstruction – Rehabilitation of Beekman Road (CR 9) would consist of cold-milling with an asphalt overlay, full depth shoulder reconstruction and widening, specific areas of realignment with full depth pavement construction, and all necessary drainage improvements. The areas of proposed realignment in this alternative would eliminate or improve many non-standard geometric conditions, while still maintaining the existing character of the corridor and proposing the least possible impacts on adjacent properties. The 2.0 mile long portion of Beekman Road (CR 9) would be rehabilitated or reconstructed with 11 ft. wide travel lanes and 4 ft. wide shoulders. The roadside drainage will be a combination of closed and open systems to effectively discharge roadway drainage to existing outfall locations.

WHEREAS, the County of Dutchess has determined Alternative #3, Rehabilitation with Areas of Reconstruction, to be the preferred alternative for the Final Design Report; and

WHEREAS, the proposed public project is being progressed as a National Environmental Policy Act (NEPA) Class II, D-List Categorical Exclusion with Documentation in accordance with the FHWA’s regulations 23 CFR 771.117(d); and

WHEREAS, the proposed public project is a Type I Action in accordance with 6NYCRR Part 617, State Environmental Quality Review (SEQR) Act and the County of Dutchess will act as lead agency; and

WHEREAS, the County of Dutchess has considered the general effect of the proposed project on the residents of the locality in which the proposed project is to be undertaken; and

WHEREAS, the preferred alternatives would require the County of Dutchess to acquire real property interests from approximately fifty five (55) properties; and

WHEREAS, representatives of Dutchess County provided the property owners who may be affected by the proposed public project an opportunity to meet and discuss the proposed public project and have made every effort to minimize the impact the project will have on adjacent properties; and

WHEREAS, in accordance with Article 2 of the Eminent Domain Procedure Law the oral presentation and comment phase of a public hearing was held on July 15, 2014, at 7:30 p.m. at the Church of Saint Denis Parish Center, 602 Beekman Road, Hopewell Junction, New York, for the purpose of informing the public and to review the public use to be served and public benefit to be obtained by the aforementioned proposed public project, and to consider all other matters appropriate to that project; and

WHEREAS, during the course of the aforementioned oral presentation phase of the public hearing, all matters required by the Eminent Domain Procedure Law and appropriate to such public hearing were identified and explained to persons then in attendance, and such persons in attendance were given an opportunity to speak and comment on the proposed public project and to examine documents presented; and

WHEREAS, at the conclusion of the oral presentation phase of the aforementioned public hearing, the hearing was adjourned and continued to the close of business on July 29, 2014, for the purpose of receiving written comments on the proposed public project; and

WHEREAS, at the close of business on July 29, 2014, the aforementioned public hearing concluded, and the record thereof was closed; and

WHEREAS, the minutes of such public hearing were transcribed and made available, together with the exhibits and other documents, if any, which were identified or made available during the oral presentation phase thereof, for inspection and examination by the public at the Dutchess County Clerk's Office located at 22 Market Street, Poughkeepsie, NY and the Dutchess County Department of Public Works, Engineering Division, 626 Dutchess Turnpike, Poughkeepsie, NY.

NOW, THEREFORE, it is hereby

RESOLVED, that the following constitutes the Determination and Findings of this Body with respect to the proposed Beekman Road (CR 9) Improvements Project, Towns of East Fishkill and Beekman, Dutchess County, New York:

1. The public use to be served by the proposed public project is the rehabilitation and site specific full depth reconstruction of Beekman Road (CR 9) from the intersection of the

Taconic State Parkway Northbound Ramps to the west and Sylvan Lake Road (CR 10) to the east.

2. The public use and benefits to be obtained and purposes to be served by the proposed public project are as follows:
  - a. Geometry: Improve the non-standard horizontal and vertical elements of the existing roadway alignment to the extent practical which will improve sight distances.
  - b. Pavement: Overall pavement condition and skid resistance will be improved.
  - c. Sight Distance: Improve the clear zone width throughout the corridor, especially at intersections, to reduce accident rates. Provide minor realignment of Benton Moore Road to eliminate a deficient sight distance and skew angle with Beekman Road (CR 9).
  - d. Pedestrian and bicyclist accommodation: Improve access and safety by the addition of continuous four feet wide paved shoulders.
  - e. Signing and Striping: Provide new signing and striping to better delineate the roadway, traffic patterns, and intersecting streets and driveways.
  - f. Drainage: Complete rehabilitation of the existing drainage system consisting of a combination of ditches, gutters, and closed systems. Existing ditches will be cleaned re-shaped, and protected from erosion.
3. The proposed public project is located in the Towns of East Fishkill and Beekman, Dutchess County, New York. The project limits extend from the intersection of the Taconic State Parkway to the west and Sylvan Lake Road (CR 10) to the east. The project location was selected due to increased traffic volumes, increased maintenance needs, and a need to improve traffic operation and safety through this highway segment.
4. Three alternatives were considered for the proposed public project. The reasons for selecting Alternative #3, and for rejecting the other alternatives include:
  - Alternative #1 – The No Build “Null Alternative” – The Null Alternative only provides for the continued maintenance of the existing facilities. This alternative does not meet the project objectives or needs and therefore will not be considered further as a feasible alternative.
  - Alternative #2 - Reconstruction –The full depth reconstruction of the entire roadway will provide for a solution to the project objectives, but the work is considered excessive and would not be a proper use of funding. The reconstruction alternative is feasible and meets the overall project objectives, but will not be progressed as the preferred alternative.
  - Alternative #3 – Rehabilitation with Areas of Reconstruction - Rehabilitation by means of cold-milling with an asphalt overlay and areas of full-depth reconstruction was considered in the proposed project pavement evaluation. The combination of pavement treatments would address the existing pavement deficiencies in a cost-effective manner. This alternative will consider the benefits of realigning and reconstructing sections of roadway where geometric and safety deficiencies need to be corrected.

Alternative 3 was selected as the preferred alternative because it is feasible and meets the overall project objectives in a cost-effective manner.

5. The proposed project is subject to a thorough and proper review in accordance with the National Environmental Policy Act (NEPA) and the State Environmental Quality Review Act (SEQRA). The project is being progressed as a NEPA Class II Action, D-List Categorical Exclusion with Documentation. As Lead Agency under SEQRA, the County of Dutchess has determined the proposed project is classified as a Type I Action under the SEQRA, Part 617, Title 6 of the Official Compilation of New York Codes, Rules, and Regulations (6 NYCRR Part 617). A long Environmental Assessment Form has been prepared for the proposed public project and is undergoing a coordinated review.
6. It is hereby concluded that the proposed public project will have, among other things, the following effects upon the residents of the locality:
  - a. Traffic safety and operation will be improved due to improved roadway geometry, pavement condition, sight distance, provision of paved shoulders, updated signing and pavement markings.
  - b. The proposed public project will improve access pedestrian and bicycle traffic by providing 1.2 M (four feet) wide paved shoulders.
  - c. Temporary increases in noise levels may also be noted by nearby residents; however, construction noise will be minimized to the extent possible and will only be noticeable during the hours of active construction (day time).
  - d. Two-way roadway traffic and continuous driveway access will be maintained throughout the length and duration of construction.
7. The Dutchess County Department of Public Works is hereby authorized and directed to prepare a brief synopsis of the foregoing determination and findings, such synopsis to include those factors set forth in Eminent Domain Procedure Law §204(B), and, further, such synopsis to state that copies of the determination and findings will be forwarded upon written request without cost.
8. The Dutchess County Department of Public Works is further hereby authorized and directed to publish the aforementioned synopsis of the foregoing resolution in at least two (2) successive issues of an official newspaper designated by the County of Dutchess and in at least two successive issues of a newspaper of general circulation in the Towns of Beekman and East Fishkill.
9. The Dutchess County Department of Public Works is further hereby authorized and directed to serve, by personal service or certified mail, return receipt requested, a notice of the aforementioned brief synopsis upon each assessment record billing owner (as that term is defined in Eminent Domain Procedure Law §103(B-1) or his or her attorney of record whose property may be acquired, such notice to:

- a. include the information required by Eminent Domain Procedure Law §204(B)(2); and
- b. state that copies of the determination and findings will be forwarded upon written request without cost; and
- c. state that pursuant to Eminent Domain Procedure Law §207, such individual shall have thirty (30) days from the completion of the publication of the aforementioned brief synopsis in the newspapers as aforesaid, to seek judicial review of the County of Dutchess' determination and findings relating to the proposed public project; and
- d. inform such individual that, under Eminent Domain Procedure Law §207 and 208, the exclusive venue for judicial review of the County of Dutchess' determination and findings relating to the proposed public project is the appellate division of the supreme court in the judicial department where any part of the property to be condemned is located.

CA-156-14

CAB/ca/R-0934

10/01/14

Fiscal Impact: See attached statement

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 14<sup>th</sup> day of October 2014, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 14<sup>th</sup> day of October 2014.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

## FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

### APPROPRIATION RESOLUTIONS *(To be completed by requesting department)*

Total Current Year Cost \$ 400

Total Current Year Revenue \$ 380  
and Source

Source of County Funds *(check one)*:  Existing Appropriations,  Contingency,  
 Transfer of Existing Appropriations,  Additional Appropriations,  Other *(explain)*.

Identify Line Items(s):  
H0290 5110 3250.213

Related Expenses: Amount \$ 400

Nature/Reason:

Publication costs for synopsis of findings.

Anticipated Savings to County: \$ 380

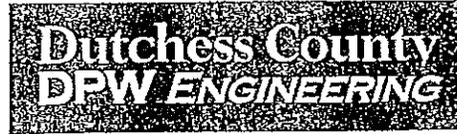
Net County Cost (this year): \$ 20  
Over Five Years: \_\_\_\_\_

#### Additional Comments/Explanation:

This Fiscal Impact Statement is related to the Resolution Request for the Acceptance of the Eminent Domain Procedure Law Determination and Findings for the Federally Funded project Identified as PIN 8755.38 Beekman Road (CR 9) Improvements, Towns of East Fishkill and Beekman, Dutchess County.

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# Memo

**TO:** Noel H.S. Knille, AIA, ASLA, Commissioner of Public Works

**FROM:** Robert H. Balkind, P.E., Deputy Commissioner of Public Works (V2)

**DATE:** August 12, 2014

**RE:** RESOLUTION REQUEST  
PIN 8755.38 – BEEKMAN ROAD (CR 9) IMPROVEMENTS  
TOWNS OF EAST FISHKILL AND BEEKMAN, DUTCHESS  
COUNTY

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The attached Resolution Request and Fiscal Impact Statement are submitted for the referenced project. A public hearing was held on Tuesday, July 15, 2014 at 7:30 P.M. at the Church of Saint Denis, 602 Beekman Road, Hopewell Junction, New York. Following the public hearing, a two week written comment period ended on Tuesday July 29, 2014. The public hearing was completed on July 29, 2014. The purpose of this request is to authorize the Dutchess County Legislature to adopt the attached resolution which accepts the Eminent Domain Procedure Law (EDPL) Determination and Findings. The Determination and Findings are currently being finalized and will be forwarded for attachment to this resolution request by August 22, 2014. This resolution must be adopted within 90 days of the completion of the public hearing.

This project will improve roadway geometry, reconstruct or rehabilitate pavement, and upgrade drainage facilities along Beekman Road (CR 9) from the Taconic State Parkway to Sylvan Lake Road (CR 10).

The project requires property acquisitions from approximately fifty-nine (59) property owners along the road. This resolution and the acceptance of the Determination of Findings are necessary steps for the acquisition of property under Eminent Domain Procedure Law for this federally funded project.

Adoption of this resolution is a necessary step for continued federal funding of the project. Property acquisition is currently underway and will always be accomplished by willing sale when possible. Acquisition by Eminent Domain will be employed only if absolutely necessary and would require additional legislative action.

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McKinney's Consolidated Laws of New York Annotated  
Eminent Domain Procedure Law (Refs & Annos)  
Chapter 73. Of the Consolidated Laws  
Article 2. Determination of the Need and Location of a Public Project Prior to Acquisition

McKinney's EDPL § 204

§ 204. Determination and findings

Effective: January 12, 2005  
Currentness

(A) The condemnor, within ninety days after the conclusion of the public hearings held pursuant to this article, shall make its determination and findings concerning the proposed public project and shall publish a brief synopsis of such determination and findings in at least two successive issues of an official newspaper if there is one designated in the locality where the project will be situated and in at least two successive issues of a newspaper of general circulation in such locality. If the official newspaper is one of general circulation in such locality, publication therein as specified shall be deemed sufficient compliance. The synopsis shall include those factors set forth in subdivision (B) herein, and shall also state that copies of the determination and findings will be forwarded upon written request without cost.

✓ (B) The condemnor, in its determination and findings, shall specify, but shall not be limited to the following:

(1) the public use, benefit or purpose to be served by the proposed public project;

✓ (2) the approximate location for the proposed public project and the reasons for the selection of that location;

(3) the general effect of the proposed project on the environment and residents of the locality;

(4) such other factors as it considers relevant.

(C) Upon making the determination and findings, the condemnor shall serve, by personal service or certified mail, return receipt requested, a notice of the brief synopsis thereof upon each assessment record billing owner or his or her attorney of record whose property may be acquired. Such notice shall: (1) include the information required by paragraph two of subdivision (B) of this section; (2) state that copies of the determination and findings will be forwarded to such individuals upon written request and without cost; (3) inform such individual that, under section two hundred seven of this article, there are thirty days from the completion of the condemnor's newspaper publication requirement to seek judicial review of the condemnor's determination and findings; and (4) inform such individual that, under sections two hundred seven and two hundred eight of this article, the exclusive venue for judicial review of the condemnor's determination and findings is the appellate division of the supreme court in the judicial department where any part of the property to be condemned is located.

**Credits**

(L.1977, c. 839, § 1. Amended L.1982, c. 356, § 5; L.2004, c. 450, § 3, eff. Jan. 12, 2005.)

McKinney's Consolidated Laws of New York Annotated  
Eminent Domain Procedure Law (Refs & Annos)  
Chapter 73. Of the Consolidated Laws  
Article 1. Purpose; Short Title; Definitions; Applicability

McKinney's EDPL § 103

§ 103. Definitions

Effective: January 12, 2005

Currentness

As used in this law:

(A) "Acquisition" means the act of vesting of title, right or interest to, real property for a public use, benefit or purpose, by virtue of the condemnor's exercise of the power of eminent domain.

(B) "Acquisition map" means the representation of the real property acquired by either a delineation of the perimeter of the particular project covering the acquisition; together with a description of the project's perimeter boundaries and of the estate, right or interest in and to such property so acquired or an individual property map representing the estate, right or interest in and to such property so acquired.

✓ (B-1) "Assessment record billing owner" means the owner, last known owner, or reputed owner, at such person's tax billing address, of each parcel or portion thereof, of real property which may be acquired by the condemnor for such public project, as shown on the assessment records of the political subdivision in which such parcel or portion thereof is located, as this information, in its most current form, may be obtained from and ascertained by the assessor of each such political subdivision.

(C) "Condemnee" means the holder of any right, title, interest, lien, charge or encumbrance in real property subject to an acquisition or proposed acquisition.

(D) "Condemnor" means any entity vested with the power of eminent domain.

(E) "Person" means any individual, partnership, corporation, association, trust, or legal entity.

(F) "Real property" includes all land and improvements, lands under water, waterfront property, the water of any lake, pond or stream, all easements and hereditaments, corporeal or incorporeal, and every estate, interest and right, legal or equitable, in lands or water, and right, interest, privilege, easement and franchise relating to the same, including terms for years and liens by way of mortgage or otherwise.

(G) "Public project" means any program or project for which acquisition of property may be required for a public use, benefit or purpose.

McKinney's Consolidated Laws of New York Annotated  
Eminent Domain Procedure Law (Refs & Annos)  
Chapter 73. Of the Consolidated Laws  
Article 2. Determination of the Need and Location of a Public Project Prior to Acquisition

McKinney's EDPL § 207

§ 207. Judicial review

Currentness

(A) Any person or persons jointly or severally, aggrieved by the condemnor's determination and findings made pursuant to section two hundred four of this article, may seek judicial review thereof by the appellate division of the supreme court, in the judicial department embracing the county wherein the proposed facility is located by the filing of a petition in such court within thirty days after the condemnor's completion of its publication of its determination and findings pursuant to section two hundred four herein. Such petition shall be accompanied by proof of service of a demand on the condemnor to file with said court a copy of a written transcript of the record of the proceeding before it, and a copy of its determination and findings. Upon receipt of such petition and demand, the condemnor shall forthwith deliver to the court a copy of the record and a copy of its determination and findings. The proceeding shall be heard on the record without requirement of reproduction. If such proposed public improvement is located in more than one judicial department such proceeding may be brought in any one, but only one of such departments and all such proceedings with relation to any single public project shall be consolidated with that first filed.

(B) The jurisdiction of the appellate division of the supreme court shall be exclusive and its judgment and order shall be final subject to review by the court of appeals in the same manner and form and with the same effect as provided for appeals in a special proceeding. All such proceedings shall be heard and determined by the appellate division of the supreme court, and by the court of appeals, as expeditiously as possible and with lawful preference over other matters.

(C) The court shall either confirm or reject the condemnor's determination and findings. The scope of review shall be limited to whether:

- (1) the proceeding was in conformity with the federal and state constitutions,
- (2) the proposed acquisition is within the condemnor's statutory jurisdiction or authority,
- (3) the condemnor's determination and findings were made in accordance with procedures set forth in this article and with article eight of the environmental conservation law, and
- (4) a public use, benefit or purpose will be served by the proposed acquisition.

**Credits**

(L.1977, c. 839, § 1. Amended L.1982, c. 356, § 6; L.1991, c. 356, § 1.)

McKinney's Consolidated Laws of New York Annotated Eminent Domain Procedure Law (Refs & Annos) Chapter 73. Of the Consolidated Laws Article 2. Determination of the Need and Location of a Public Project Prior to Acquisition
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McKinney's EDPL § 208

§ 208. Jurisdiction of courts

Currentness

Except as expressly set forth in section two hundred seven, and except for review by the court of appeals of an order or judgment of the appellate division of the supreme court as provided for therein, no court of this state shall have jurisdiction to hear and determine any matter, case or controversy concerning any matter which was or could have been determined in a proceeding under this article.

**Credits**

(L.1977, c. 839, § 1.)

Notes of Decisions (7)

McKinney's E. D. P. L. § 208, NY EM DOM PROC § 208

Current through L.2014, chapters 1 to 351, 359, 369, 382 to 383, 386 to 387, 390, 395, 397 to 398.

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