

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Public Works *alby*

BOARD AGENDA # \*C-5

Urgent  Routine

AGENDA DATE June 3, 2008

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Adopt a Resolution Authorizing a Memorandum of Understanding with the California Department of Transportation to Conduct Resolution of Necessity Hearings to Assist in Acquiring Property for State Route 219 Phase II Improvements and to Provide Appraisal Packages for the Acquisition of Property on Local Segments of Carver Road and Tully Road

STAFF RECOMMENDATIONS:

1. Adopt a Resolution authorizing a Memorandum of Understanding with the California Department of Transportation to conduct Resolution of Necessity hearings to assist in acquiring property for State Route 219 Phase II Improvements and to provide appraisal packages for the acquisition of property on local segments of Carver Road and Tully Road
2. Authorize the Chairman of the Board of Supervisors to sign the Memorandum of Understanding.

FISCAL IMPACT:

Under the proposed Memorandum of Understanding, Stanislaus County will bear the costs associated with noticing and conducting the Resolution of Necessity hearings. It is anticipated that these costs will be minimal and can be absorbed within the Public Works Road and Bridge budget.

The cost to provide the appraisal packages for the local segments of Carver Road and Tully Road is estimated to be \$50,000. This cost will be paid from Public Facilities Fees Regional Transportation Impact Fee element for the Kiernan Avenue at Tully Road Project and Kiernan Avenue at Carver Road Project.

BOARD ACTION AS FOLLOWS:

No. 2008-404

On motion of Supervisor Monteith, Seconded by Supervisor O'Brien  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Monteith, DeMartini and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: Grover

Abstaining: Supervisor: None

- 1) X Approved as recommended
- 2) \_\_\_\_\_ Denied
- 3) \_\_\_\_\_ Approved as amended
- 4) \_\_\_\_\_ Other:

MOTION:

ATTEST: *Christine Ferraro*  
CHRISTINE FERRARO TALLMAN, Clerk

File No.

## Approval to Adopt a Resolution Authorizing a Memorandum of Understanding with the California Department of Transportation to Conduct Resolution of Necessity Hearings to Assist in Acquiring Property for State Route 219 Phase II Improvements and to Provide Appraisal Packages for the Acquisition of Property on Local Segments of Carver Road and Tully Road

### DISCUSSION:

Due to the successful partnership between the Stanislaus County and the California Department of Transportation (Caltrans) on the State Route 219 Phase I Improvements, in which the County provided Resolution of Necessity hearings for the project, Caltrans has requested that the County enter into a similar agreement for Phase II.

In addition, the County will provide appraisal packages to Caltrans for seven parcels along the local segments of Carver Road and Tully Road. This assistance will ensure that the local improvements to the two intersections can be built with the mainline project and produce a 10-year service life for the project.

Resolution of Necessity hearings are part of an eminent domain process and need to be completed before the property can be acquired. The hearings would require the Board of Supervisors to determine several things:

1. Whether the acquisition of the property is in the public interest and necessary to the project;
2. Whether the property to be acquired and the project are planned and located in a manner compatible with the greatest public good and least private injury;
3. Whether an initial offer to purchase the property has been made to the owners of record; and,
4. If the property is enrolled in a Williamson Act contract, whether the project location is based on the lower cost of acquiring land in an agricultural preserve, and whether it is reasonably feasible to locate the project on land not within an agricultural preserve.

The California Transportation Commission (CTC) typically conducts these hearings on State projects. Since the CTC only meets 9-10 times per year in various locations throughout the State, it would be beneficial to the project if the County Board of Supervisors, which meets weekly, conducted the hearings. This approach allows the acquisition of property critical to the project to occur much sooner than would otherwise be possible.

The proposed Memorandum of Understanding is based upon the model used for the Phase 1 Improvements and outlines the various expectations and understandings of the parties relative to conducting these hearings.

### POLICY ISSUES:

The Board of Supervisors is asked to determine whether they are willing to assume responsibility for conducting Resolution of Necessity hearings and providing appraisal packages for the local segments of Carver Road and Tully Road for the Phase II of the State Route 219 Improvement Project.

### STAFFING IMPACT:

There is no staffing impact associated with this item. Existing Public Works staff will be responsible for preparing notices, agenda items and presentations associated with conducting the Resolution of Necessity hearings.

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
STATE OF CALIFORNIA

Date: June 3, 2008

No. 2008-404

On motion of Supervisor Monteith Seconded by Supervisor O'Brien  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Monteith, DeMartini, and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: Grover

Abstaining: Supervisor: None

Item # \*C-5

THE FOLLOWING RESOLUTION WAS ADOPTED:

BE IT RESOLVED, that the Board of Supervisors of the County of Stanislaus, State of California, hereby finds and determines as follows:

WHEREAS, Streets and Highway Code section 760 authorizes the Board of Supervisors, by four-fifths vote, to cooperate with California Department of Transportation ("Caltrans") in the acquisition of land for state highway purposes if doing so will promote the interests of the County of Stanislaus ("County"); and

WHEREAS, the County and Caltrans identified a need to expedite construction of transportation improvements on State Route 219 Phase II to minimize impacts to traffic congestion anticipated due to completion of the new Kaiser hospital facility; and

WHEREAS, County cooperation with Caltrans to acquire necessary right of way needed for the State Route 219 Phase II Transportation Improvements will promote the interests of the County; and

WHEREAS, Streets and Highway Code section 130 authorizes the County to enter into a contract with Caltrans in respect to acquisition of rights of way necessary for a state highway;

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Board of Supervisors of the County of Stanislaus authorizes the Chairman of the Board of Supervisors to sign a Memorandum of Understanding with the California Department of Transportation ("Caltrans") for the County to conduct resolution of necessity hearings and to provide appraisal packages for the local segments of Carver Road and Tully Road to assist Caltrans in acquiring property for State Route 219 Phase II Transportation Improvements.

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk  
Stanislaus County Board of Supervisors,  
State of California



MEMORANDUM OF UNDERSTANDING  
Between  
California Department of Transportation  
And  
County of Stanislaus

This Memorandum of Understanding, dated effective 6/3/07, is between the California Department of Transportation (DEPARTMENT) and Stanislaus County (COUNTY) pertaining to proposed widening of State Route 219 (SR 219) from Morrow Road to SR 108 (McHenry Avenue), identified as Phase II (from Post Mile 2.1 to Post Mile 5.2) in Stanislaus County, referred to as "PROJECT."

1. COUNTY has offered, as a local PROJECT stakeholder, to assist DEPARTMENT's Division of Right of Way in the hearings for Resolutions of Necessity (RONs) during PROJECT eminent domain proceedings. There will be no exchange of funds for COUNTY'S assistance. In addition, COUNTY shall perform appraisals on a portion of the parcels referred to herein as "APPRAISALS".
2. The 2006 State Transportation Improvement Program (STIP) Augmentation, as adopted by the California Transportation Commission (CTC), programmed Regional Improvement Program funds for project development, including right of way acquisition, and Congestion Mitigation Improvement Account funds for the construction of improvements to State Route 219. COUNTY supports PROJECT and desires to assist DEPARTMENT in delivery of PROJECT, including the acquisition of land necessary for PROJECT.
3. This MOU is supplementary to and does not replace or supersede in any manner the MOU for transportation planning in existence between Department and the Regional Transportation Planning Agency, -Stanislaus Council of Governments.
4. This MOU is a guide to the cooperative efforts of the parties to perform their respective tasks in support of the PROJECT utilizing their respective resources. The PROJECT is not encumbered with any funding as each party will pay their own respective costs for this cooperative effort, including, but not limited to, APPRAISALS.
5. The DEPARTMENT will conduct and direct all right of way activities for PROJECT, including, but not limited to, right of way engineering; right of way utility relocation coordination; right of way acquisition; right of way relocations assistance; right of way demolition activities, under EA 0A8721, Resolutions of Necessity, conducting condemnation level review meetings; and preparing and filing legal documents with the court.

6. This Agreement allocates responsibilities for the acquisition of PROPERTY necessary or convenient for the PROJECT, including, but not limited to, the exercise of power of eminent domain.
7. The PROPERTY interests therein to be acquired pursuant to this MOU are listed in Exhibit A, attached to and made a part of this MOU.
8. The DEPARTMENT approved an Initial Study/Environmental Assessment on March 14, 2003, adopted a Negative Declaration on April 22, 2004, and adopted Findings of No Significant Impact on May 13, 2004, for the PROJECT. COUNTY, as part of its approval of this MOU, has approved the proposed PROJECT and adopted the Negative Declaration/Finding of No Significant Impact by the STATE pertaining to the PROJECT. The certified environmental documentation and Project approval authorizes the acquisition of the PROPERTIES necessary for the PROJECT.
9. Construction of PROJECT facilities may be the subject of a separate future Agreement.
10. If, during the performance of Right of Way activities or PROJECT construction, new information is obtained which requires additional environmental documentation to comply with CEQA and if applicable, NEPA, this Memorandum may be amended to include completion of those additional tasks.
11. DEPARTMENT RESPONSIBILITIES:
  - A. If unable to acquire some or all of the PROPERTY by negotiation, DEPARTMENT may request in writing that COUNTY hold one or more hearing(s) pursuant to Streets and Highways Code section 760 and Code of Civil Procedure section 1245.235. Each hearing request shall be submitted to COUNTY's Chief Executive Officer at least thirty (30) days before the date requested for hearing on the applicable resolution of necessity and shall contain, in a complete and organized package, the documents and information described below, as well as any other information deemed necessary or helpful by COUNTY's Public Works Department.
    - B. The request shall also contain an affidavit or statement that the information provided is, to the best of DEPARTMENT's knowledge and information, true and correct, and which shall be signed under penalty of perjury under the laws of the State of California.
    - C. DEPARTMENT shall provide oversight for those APPRAISALS as shown in Exhibit B at no cost to COUNTY.
11. DEPARTMENT will provide COUNTY with the following:
  - A. Names, addresses and telephone numbers of the DEPARTMENT's representatives making the request; the names, addresses and telephone numbers of the DEPARTMENT representatives who will be appearing at the hearing on the resolution of necessity and the name, addresses and telephone numbers of the attorney representing DEPARTMENT in any proposed eminent domain action.

- B. The name, address and telephone number of each person whose property interest is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll.
  - C. Legal description (metes and bounds) and plat map (drawn to scale) of the property proposed to be condemned, or appraised as shown on Exhibit B.
  - D. Copies of Government Code section 7267.2 offers made to property owner, evidence that the offers were received and copies of any counter-offers.
  - E. A statement of Compliance with the Relocation Assistance Act. A copy of any environmental impact report addends, supplement reports, or other applicable environmental documents that have not previously been provided to COUNTY.
  - F. A draft resolution of necessity that complies with Code of Civil Procedure section 1245.230 and Streets and Highways Code section 760 in hard copy and electronic format.
  - G. A draft Stanislaus County Board Order which details all of the facts and evidence that supports the findings required by Code of Civil Procedure section 1245.30(c) and Streets and Highways Code section 1245.235.
  - H. A copy of the notice provided to the California Department of Conservation pursuant to Government Code section 51291, including findings required under Government Code section 51292.
12. DEPARTMENT will conduct the Condemnation Evaluation Meetings with property owners. In cases where issues cannot be resolved by the Condemnation Evaluation Meetings and a property owner requests an appearance to be heard; DEPARTMENT's District Director, or designee, will appear at the Resolution of Necessity hearings representing the DEPARTMENT before the County Board of Supervisors and the DEPARTMENT's Right of Way Chief responsible for all the right of way activities shall participate.
13. DEPARTMENT will assist COUNTY staff to present the proposed resolution(s) to the COUNTY's governing body; will be prepared to answer questions of the COUNTY's governing body, and will introduce evidence and testimony sufficient to support adoption of the proposed resolution of necessity and the findings contained therein.
14. If COUNTY adopts a Resolution of Necessity, upon receipt of a certified copy of the resolution of necessity, DEPARTMENT shall file any legal action in the name of DEPARTMENT and shall handle all legal actions necessary to acquire the PROPERTY no later than six (6) months following the date of adoption of the resolution of necessity. Pursuant to subdivision (a)(1) of section 760 of the Streets and Highways Code, all property acquired by negotiation, settlement, condemnation award or otherwise shall be acquired in the name of State of California except for those portions of the PROJECT that are deemed local roads within the COUNTY's jurisdiction or for the CITY OF MODESTO for local roads within the CITY'S jurisdiction.

15. The DEPARTMENT will use the COUNTY's BOARD Calendar to prepare a schedule for the Board to conduct the RON hearings.
16. If DEPARTMENT requests COUNTY to hold a hearing(s) pursuant to Streets and Highway Code section 760 and Code of civil Procedure section 1245.235 for the purpose of considering the adoption of one or more resolution(s) of necessity to acquire some or all PROPERTY necessary for PROJECT, COUNTY's Public Works Department will advise DEPARTMENT whether further information is needed within five (5) days after receipt of DEPARTMENT's timely hearing request. A list of the required PROPERTY is shown as Exhibit A, attached to and made apart of this Agreement.
17. Prior to the hearing, and using the forms and information provided to COUNTY by DEPARTMENT as part of its request, COUNTY Public Works Department staff will send a timely notice to each person whose PROPERTY is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll.
18. COUNTY shall determine if DEPARTMENT followed due process and made reasonable attempts to acquire through negotiation (s) prior to entering legal phase of right of way acquisition, as indicated in the STATEMENT.
19. If a Resolution of Necessity (RON) is adopted, COUNTY will forward a certified copy of the RON in hard and electronic format to DEPARTMENT at the address shown below within five (5) working days, and which RON shall comply with Code of Civil Procedure section 1245.230 and Streets and Highways Code section 760.
20. COUNTY will provide DEPARTMENT with the Stanislaus Board Order which details all the facts and evidence that support the findings required by code of Civil Procedure section 1245.230 and Streets and Highway Code section 760, in hard-copy and electronic format.
21. COUNTY shall be responsible for the cost associated with mailing the Notices of Intent and conducting the Resolution of Necessity Hearings with the County Board of Supervisor.
22. COUNTY shall provide DEPARTMENT with the County Board of Supervisors Calendar for 2008 and 2009.
23. COUNTY will draft a Board Agenda Item for placement of the RONs on the Board of Supervisor's Agenda.
24. COUNTY shall send an approved Resolution to DEPARTMENT stating that the County Board of Supervisor's agrees by 4/5<sup>th</sup> vote to conduct the RON hearings.
25. COUNTY will have no responsibility to pay any of the costs or expenses related to acquisition of the PROPERTY, except those APPRAISALS listed on Exhibit B. These costs and expenses include, but are not limited to the following:
  - A. The deposit necessary to obtain immediate possession of the PROPERTY.

- B. The purchase price or compensation for the PROPERTY, whether determined through settlement, judgment or otherwise.
- C. The cost of relocation assistance and related services, including relocation benefits, if any.
- D. Compensation for loss of business goodwill, if any.
- E. The cost of preparing environmental documents and performing environmental review necessary to comply with the provisions of the California Environmental Quality Act.
- F. Legal, engineering, appraisal, attorneys' and witness fees, costs of suit, and other litigation expenses, whether incurred prior to trial, at trial or on appeal.
- G. Costs payable upon abandonment of the condemnation proceedings.
- H. Costs awarded upon a finding of no or insufficient public use or necessity.
- I. All other costs for right-of-way activities, including without limitation, any cost to remove and abate hazardous or toxic materials from the PROJECT area.
- J. COUNTY will follow DEPARTMENT's condemnation process pursuant to the DEPARTMENT's Right of Way Manual, with emphasis on the latest version of Chapter 9; provided, however, the COUNTY shall not be subject to the provisions of Section 9.01.040.00 related to the period for providing the Notice of Intent and Notice of Hearing to the landowner.

## 26. APPRAISALS

- A. COUNTY to fund 100% of APPRAISALS assigned to COUNTY by DEPARTMENT as shown on Exhibit B.
- B. DEPARTMENT may participate in the selection of personnel who will perform independent right of way APPRAISAL activities. COUNTY agrees to discontinue services of any personnel considered by DEPARTMENT to be unqualified on the basis of credentials, professional expertise, failure to perform and/or other pertinent criteria.
- C. COUNTY will perform all right of way APPRAISAL and independent review activities for parcels shown on Exhibit B, at no cost to DEPARTMENT, in accordance with the procedures acceptable to DEPARTMENT, and in compliance with all applicable State and Federal laws and regulations, subject to DEPARTMENT oversight to insure that the completed work is acceptable for incorporation into State or County roadway systems.
- D. County shall utilize the services of a public agency qualified by the DEPARTMENT or a consultant with all the appropriate licenses required by the State of California, Office of Real Estate Appraisers in all right of way appraisal related matters in accordance with DEPARTMENT procedures as contained in the Right of Way Manual.



- E. County shall provide an approved Appraisal Package to DEPARTMENT complete with a:
1. Signed memorandum stating that a qualified Right of Way person, employed or retained by COUNTY, has reviewed and approved the appraisals.
  2. Signed Notice of Decision to Appraise letter from the appraiser to the property owner.
  3. Signed Appraisal Valuation Summary Statement.

- F. DEPARTMENT shall provide to COUNTY the following items:
1. Final Appraisal Maps
  2. Legal descriptions and plat maps
  3. Construction plans and design information on all parcels
  4. Current title report for each ownership
  5. Legal opinions as necessary
  6. Environmental documents

- G. DEPARTMENT shall provide COUNTY with a schedule, attached to and made part of this Memorandum as Exhibit C.

27. All obligations of DEPARTMENT under the terms of this MOU are subject to the passage of the annual State Budget Act, the appropriation of resources by the Legislature, and the allocation of funds by the California Transportation Commission.
28. There are no other agreements between COUNTY and DEPARTMENT, which pertain to this PROJECT. Except as specifically provided herein, this MOU is not intended to alter or supersede those agreements. The terms of this MOU shall take precedence only over any conflicting terms in any other agreements and MOUs as they relate to the PROPERTY acquisition issues specifically addressed in this MOU. If there is a dispute as to whether another MOU has been superseded by or conflicts with this MOU, the parties will meet and confer in good faith to resolve the issue.
29. All prior understandings or agreements (except as provided in Section III, Article 2), oral or written, of whatsoever nature regarding this matter are superseded and terminated by this MOU and are hereby abrogated and nullified. This MOU shall not be modified in any manner except by written notice and executed by DEPARTMENT and COUNTY or their respective successors in interest.
30. Any notices required under this MOU will be in writing and personally delivered, or sent by first-class mail, overnight, of facsimile, to the following:

County:

Stan Risen, Assistant Executive Officer  
County of Stanislaus  
Chief Executive Office  
1010 Tenth Street, Suite 6800  
Modesto, CA 953354  
Facsimile No.: (209) 525-4033

Department Spiros Karimbakas, Principal

District

Central Region Chief or Right of Way  
Department of Transportation

855 M Street, Suite 200

Fresno, CA 93721

Phone: (559) 445-6896

Facsimile (559) 445-6215

AND

Michael J. Rodrigues

Assistant Central Region Chief, Right of Way

1976 East Charter Way/Dr. Martin Luther King Jr. Blvd.,

Stockton, CA 95205

P. O. Box 2048, Stockton, CA 95201

Phone: (209) 948-7844

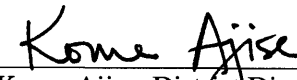
Facsimile (209) 948-7641

31. The term of this MOU shall be from the effective date until the PROPERTY described in this MOU is acquired by DEPARTMENT and all related right-of-way activities for the PROJECT are completed by DEPARTMENT or June 31, 2012, whichever is earlier in time.

STANISLAUS COUNTY  
BOARD OF SUPERVISORS

By:   
Thomas W. Mayfield  
Chairman of the Board

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
WILL KEMPTON, DIRECTOR

By:   
Kome Ajise, District Director  
District 10

ATTEST:

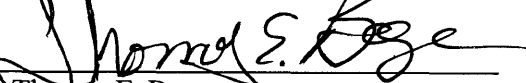
Christine Ferraro Tallman  
Clerk of the Board of Supervisors  
of the County of Stanislaus, State of California

By:   
Deputy Clerk

APPROVED AS TO CONTENT  
DEPARTMENT OF PUBLIC WORKS

By:   
Matt Machado, Director

APPROVED AS TO FORM  
JOHN R. DOERING

By:   
Thomas E. Boze,  
Deputy County Counsel

**Exhibit A**

**SR 219 Widening Phase II Property APN Listing**

**003-009-35 & 004-068-007**  
**003-009-018**  
**078-016-027 & 046-006-001**  
**046-006-002**  
**046-006-031**  
**004-069-046**  
**004-069-057**  
**046-006-032**  
**046-006-033**  
**004-069-042**  
**046-006-005 & 006**  
**004-069-061**  
**004-069-064\***  
**046-006-007**  
**046-001-001**  
**004-069-017**  
**004-069-016**  
**004-069-032**  
**004-069-031**  
**004-071-029**  
**004-071-008**  
**004-057-011**  
**004-057-005**  
**004-057-006**  
**004-097-019**  
**004-094-029**  
**004-094-003**  
**004-094-014**  
**004-094-005**  
**004-094-039**  
**004-094-004**  
**RXR Parcel 15653**  
**004-094-031 & 32**  
**004-094-043 & 44**  
**004-094-009**  
**004-094-010**  
**004-094-011**  
**074-015-003**  
**046-010-001**  
**004-068-008**  
**004-069-014\***  
**004-069-013\***  
**004-069-034\***  
**004-069-033\***  
**046-006-008**  
**046-006-009**  
**046-006-010**

046-006-011  
046-001-011  
004-071-028\*  
004-071-030\*  
046-001-002  
004-065-006  
004-094-012  
046-010-026  
074-016-007  
074-015-018  
082-006-033  
074-015-014  
074-015-015

**NOTE: \* APN listings also on Exhibit B "APPRAISALS"**

**Exhibit B**

**SR 219 Widening Phase II Property APN Listing for APPRAISALS**

**004-069-064  
004-069-033  
004-069-034  
004-069-014  
004-069-013  
004-071-028  
004-071-030**

## **Exhibit C**

### **SCHEDULE FOR APPAISALS**

DEPARTMENT will provide to COUNTY by or before July 30, 2008:

Final Appraisal Maps

Legal descriptions and plat maps

Construction plans and design information on all parcels

Current title report for each ownership

Legal opinions as necessary

Environmental documents

COUNTY will provide to DEPARTMENT by or before December 1, 2008:

Appraisal Package to DEPARTMENT complete with a:

- Signed memorandum stating that a qualified Right of Way person, employed or retained by COUNTY, has reviewed and approved the appraisals.
- Signed Notice of Decision to Appraise letter from the appraiser to the property owner.
- Signed Appraisal Valuation Summary Statement.