

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

DEPT: Public Works *MB*

BOARD AGENDA # *C-1

Urgent Routine

AGENDA DATE August 16, 2011

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of Purchase Agreement to Acquire Road Right-of-Way for the McHenry Avenue Widening Project, Parcel Owner The David Louis Witt Trust, APN: 074-002-014

STAFF RECOMMENDATIONS:

1. Approve the purchase agreement for the subject acquisition.
2. Authorize the Chairman of the Board to execute the agreement.
3. Authorize the Director of Public Works to sign and cause to record the Grant Deed on behalf of Stanislaus County as authorized by Board Resolution dated March 8, 2011 and Government Code 27281.
4. Direct the Auditor-Controller to issue a warrant in the total amount of \$165,700, payable to First American Title Company, for the purchase amount of \$164,200 and \$1,500 for estimated escrow fees and title insurance.

FISCAL IMPACT:

The total estimated cost for the McHenry Widening Project is approximately \$3,200,000. The \$165,700 for the purchase of this right-of-way is funded 100% by the Regional Transportation Impact Fee Program (RTIF) and consists of \$164,200 for the purchase of the right-of-way, and \$1,500 for estimated escrow and title insurance fees.

BOARD ACTION AS FOLLOWS:

No. 2011-477

On motion of Supervisor Chiesa, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of Purchase Agreement to Acquire Road Right-of-Way for the McHenry Avenue Widening Project, Parcel Owner The David Louis Witt Trust, APN: 074-002-014

DISCUSSION:

The scope of the McHenry Avenue Widening Project is to widen McHenry Avenue between Ladd Road to the south and Hogue Road to the north. This widening will provide two through lanes in each direction and a dual left turn lane in the center of the road. To accomplish this project, pavement will be widened on both sides of the road, widened shoulders will be provided, additional right-of-way will be acquired from the adjacent properties, and additional storm drainage facilities will be constructed.

In December 2007, the Board of Supervisors awarded a contract to Associated Engineering for the design of the McHenry Avenue Widening Project (Ladd Road to Hogue Road). The Board also awarded a contract to Sycamore Environmental for the preparation of the environmental clearance documents in accordance with the California Environmental Quality Act.

Pursuant to the California Environmental Quality Act (CEQA), Sycamore Environmental has prepared and circulated a Negative Declaration to various agencies and to the public. The public comment period closed on November 3, 2009. Public Works' staff received comments from four agencies and incorporated the comments into the Final Initial Study/Negative Declaration.

On March 2, 2010, the Board of Supervisors approved the Initial Study/Negative Declaration for the McHenry Avenue Widening Project.

To accomplish the future McHenry Avenue Widening Project, the County will need to acquire additional roadway right-of-way from The David Louis Witt Trust parcel on the east side of McHenry Avenue. The property owner has agreed to accept the following compensation:

Property Owner: The David Louis Witt Trust
Amount of Compensation: \$164,200
Assessor's Parcel Number: 074-002-014
Right-of-Way Area: 1.39 acres

\$ 55,600.00 Fee Simple (1.39+/- acres)
\$ 2,300.00 Temporary Construction Easement 57,240+/- sq. ft. (or 1.31+/- acres)
\$ 33,184.00 Improvements (tree removal, fencing, oak tree, landscaping and irrigation)
\$ 73,116.00 Crop loss (195 almond trees)
\$164,200.00 Total

The amount of compensation has been determined to be within the range of just compensation by an independent appraiser hired by the County.

POLICY ISSUES:

The McHenry Avenue Widening Project supports the Board's priorities of providing A Safe Community, A Healthy Community and A Well-Planned Infrastructure System by reducing traffic congestion on the County road system.

Approval of Purchase Agreement to Acquire Road Right-of-Way for the McHenry Avenue Widening Project, Parcel Owner The David Louis Witt Trust, APN: 074-002-014

STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT PERSON:

Matt Machado, Public Works Director. Telephone: (209) 525-4130.
Chris Brady, Public Works



Project: McHenry Avenue Widening
Grantor: David Louis Witt 1997 Trust
APN.: 074-002-014 (portion)

AGREEMENT FOR ACQUISITION OF PROPERTY

This Agreement for Acquisition of Property is between the County of Stanislaus (County) and David Louis Witt, as Trustee of the David Louis Witt Trust dated 1997, (Grantor). This Agreement is expressly subject to approval by the County Board of Supervisors.

1. PROPERTY.

Grantor agrees to sell to County, and County agrees to purchase from Grantor, on the terms and conditions set forth in this Agreement, the fee simple portion of real property described in Exhibit A and shown in Exhibit B, along with a temporary construction easement described in Exhibit A-1 and shown on Exhibit B-1, each attached hereto which are incorporated herein by this reference (the "Property"), and improvements.

2. DELIVERY OF DOCUMENTS/ESCROW.

All documents necessary for the transfer of the Property shall be executed and delivered by Grantor to the County's designated Acquisition Agent.

This transaction shall be handled through an escrow with First American Title Company, 1506 H Street, Modesto, CA 95354, at (209) 529-5000.

3. PURCHASE PRICE AND TITLE.

The consideration to be paid by the County for the Property and improvements (the "Purchase Price") is ONE HUNDRED SIXTY-FOUR THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$164,200.00), and is segregated as follows:

\$ <u>55,600.00</u>	Fee Simple (1.39+/- acres)
\$ <u>2,300.00</u>	Temporary Construction Easement 57,240+/- sq. ft. (or 1.31+/- acres)
\$ <u>33,184.00</u>	Improvements (tree removal, fencing, oak tree, landscaping and irrigation)
\$ <u>73,116.00</u>	Crop loss (195 almond trees)
\$ <u>164,200.00</u>	Total

County shall deliver the Purchase Price no later than 45 days after Board of Supervisors approval and after delivery and execution of all necessary transfer documents. Grantor shall convey good, marketable and insurable title to the Property free and clear of all liens, encumbrances, taxes, assessments and leases recorded and/or unrecorded.

Good, marketable and insurable fee simple title to the Property shall be evidenced by a CLTA owner's policy of title insurance ("Title Policy"). The Title Policy shall be in the amount of \$55,600.00, showing title to the Property vested in County. It shall be a

condition precedent to County's obligations under this Agreement that escrow holder is able to issue the Title Policy to County.

County shall pay all costs of any escrow, title insurance, and recording fees incurred in this transaction.

The Grantor agrees that if claims are submitted by lien-holders, the County is hereby authorized to honor such claims and deduct the amount of said claims from the amount to be paid to the property owner. The County will notify the Grantor of any such claims prior to payment.

The Grantor acknowledges that this transaction is a negotiated settlement in lieu of condemnation and agrees that the Purchase Price to be paid herein is in full settlement of any claims for compensation or damages that may have arisen, including, but not limited to, attorney fees, pre-condemnation damages, severance damages, business goodwill, or any other claim regarding the acquisition of the Property or construction of improvements thereon.

4. PRORATION OF TAXES.

- (a) Taxes shall be prorated in accordance with California Revenue and Taxation Code section 5081 et seq., as of the recordation of the Grant Deed conveying title to County, except that where County has taken possession of the Property, taxes shall be prorated as of the date of possession.
- (b) Grantor authorizes County to deduct from the purchase price any amount necessary to satisfy any delinquent taxes, together with penalties and interest thereon, and any delinquent or non-delinquent assessments or bonds, which are to be cleared from the title to the Property.

5. LEASE WARRANTY

Seller represents and warrants to Buyer that there are no oral or written leases on all or any portion of property exceeding a period of one month, and Seller further agrees to hold Buyer harmless and reimburse Buyer for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of Seller for a period exceeding one month, except: None.

6. POSSESSION.

Possession of real property shall be given to Buyer upon the recording of Seller's deed.

7. **HAZARDOUS WASTE MATERIAL**

The Grantor hereby represents and warrants that during the period of Grantor's ownership of the Property, there have been no disposals or releases of hazardous substances on, from, or under the Property. Grantor further represents and warrants that Grantor has no knowledge of any disposal or release of hazardous substances, on, from, or under the Property which may have occurred prior to Grantor taking title to the Property.

The Purchase Price of the Property reflects the fair market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous substances which requires mitigation under Federal or County law, the County reserves the right to recover its clean-up costs from those who caused or contributed to the contamination.

8. **ACCESS TO REMAINDER PROPERTY**

County agrees that Grantor will have access to the remainder property (orchard and shop) during construction with said access maintained in such a way so that it does not impact or interfere with normal farming and harvest operations.

9. **NOTIFICATION OF START OF CONSTRUCTION**

County shall notify Grantor at least 30 days prior to start of construction.

10. **TRAFFIC SIGNAL LIGHT**

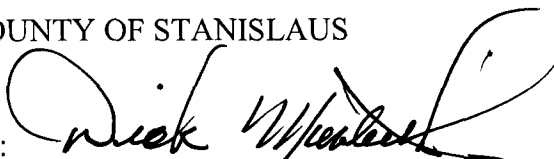
County agrees to replace the signal light sensor at the east entrance to the intersection of McHenry Avenue and Stewart Road.

11. **AGRICULTURAL LANE**


County agrees to reestablish agricultural lane on Grantor's remainder property.

IN WITNESS WHEREOF, the parties have executed this Agreement on AUG 16 2011 as follows:

COUNTY OF STANISLAUS

By: 
Dick Monteith
Chairman of the Board of Supervisors

GRANTOR
DAVID LOUIS WITT TRUST DATED 1997

By: 
David Louis Witt, as Trustee


**Agreement for Purchase
David Louis Witt 1997 Trust
Page 4 of 4**

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
Public Works Director

APPROVED AS TO FORM:
John P. Doering, County Counsel

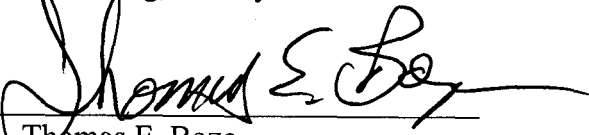
By: 
Thomas E. Boze
Deputy County Counsel

EXHIBIT "A"
LEGAL DESCRIPTION
STANISLAUS COUNTY-MCHENRY AVENUE RIGHT OF WAY WIDENING
A.P.N. 074-002-014

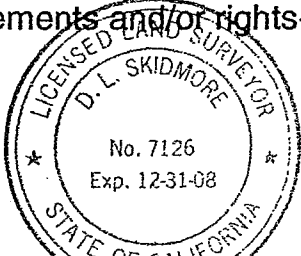
All that certain piece or parcel of land situate in the County of Stanislaus, State of California, lying within the Northwest quarter of Section 21, Township 2 South, Range 9 East, Mount Diablo Meridian, being described as follows:


All that certain piece or parcel of land conveyed to David Louis Witt, as trustee of the David Louis Witt Trust dated 1997 by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on October 1, 1999 as instrument number 1999-0094416, being more particularly described as follows:

Commencing at the Southwest corner of said section 21, said point lying on the centerline of a County Road known as McHenry Avenue; thence North 00°35'01" West along the West line of said Section 21, a distance of 940.56 feet to a point on the Westerly extension of the North line of that Road deed filed in the Office of the Recorder of the County of Stanislaus on July 18, 1990 as instrument number 062101; thence North 89°35'01" East along said Westerly extension, a distance of 30.00 feet to the East right of way line of said McHenry Avenue, said point also being the Northwest corner of said Road deed, said point also being a point on the East line of that Road deed filed in the Office of the Recorder of the County of Stanislaus on November 18, 1987 as instrument number 131383, and being the TRUE POINT OF BEGINNING; thence North 00°35'01" West along the East line of last said Road deed, a distance of 248.00 feet to the Northeast corner of said Road deed; thence North 89°35'01" West along the North line of last said Road deed, a distance of 5.00 feet to the Northwest corner of last said Road deed, said point lying on the East right of way line of McHenry Avenue, thence North 00°35'01" West along last said East right of way line, a distance of 1452.48 feet to angle point in last said East right of way line, said point lying 25.00 feet East of the West quarter corner of Section 21; thence North 00°35'47" West continuing along last said East right of way line, a distance of 287.85 feet to a point on the South right of way line of Hogue Road; thence South 89°29'17" East along the South line of said right of way line, a distance of 199.03 feet; thence South 00°30'43" West, a distance of 10.00 feet; thence North 89°29'17" West along a line that is parallel and 10.00 feet south of the south right of way line of Hogue Road, a distance of 143.83 feet; thence South 44°57'28" West, a distance of 35.02 feet; thence South 00°35'47" East, a distance of 252.27 feet; thence South 00°35'01" West a distance of 1701.00 feet; thence North 89°35'01" West, a distance of 25.00 feet to the TRUE POINT OF BEGINNING.

CONTAINING 1.39 acres more or less.

SUBJECT TO all easements and/or rights-of-way of record.





Dave L. Skidmore, L.S. 7126
License Expires 12/31/08

NW CORNER OF SEC. 21

APN: 074-001-008

APN: 074-001-009

HOGUE ROAD

W. 1/4 CORNER OF SEC. 21

APN: 074-002-014

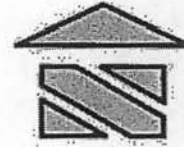
DAVID LOUIS WITT TRUST
DOC. NO. 1999-0094416-00
RECORDED OCTOBER 1, 1999

AREA=1.39 ACRES

APN: 004-001-057
RS 3-06

SECTION LINE & C/L MCHENRY AVENUE

MCHENRY AVENUE



LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°35'01"W	248.00'
L2	N89°35'01"W	5.00'
L3	N00°35'47"W	287.85'
L4	S89°29'17"E	199.03'
L5	S00°30'43"W	10.00'
L6	N89°29'17"W	143.83'
L7	S44°57'28"W	35.02'
L8	S00°35'47"E	252.27'
L9	N89°35'01"W	25.00'

ROAD DEED
DOC. NO. 131383
RECORDED NOV. 18, 1987

POINT OF BEGINNING

STEWART ROAD

N00°35'01"W 940.56'

ROAD DEED
DOC. NO. 062101
RECORDED JULY 18, 1990

POINT OF COMMENCEMENT
SW CORNER OF SEC. 21

EXHIBIT "B"

DRAWN AG

DATE 5/8/08

SCALE 1"=200'

JOB # 640-01

DWG. D.L.W. TRUST

PLAT TO ACCOMPANY
LEGAL DESCRIPTION

DAVID LOUIS WITT TRUST
APN: 074-002-014

BEING A PORTION OF LAND IN THE WEST HALF
OF SECTION 21, T. 2 S., R. 9 E., M.D.H.
STANISLAUS COUNTY CALIFORNIA



ASSOCIATED
ENGINEERING, INC.

Surveying • Design • Planning

4206 TECHNOLOGY DRIVE
MODESTO, CALIFORNIA 95356

PH: (209) 545-3390 FAX: (209) 545-3875

EXHIBIT "A"-1
LEGAL DESCRIPTION
MCHENRY AVENUE TEMPORARY
CONSTRUCTION EASEMENT
A.P.N. 074-002-014

All that certain piece or parcel of land situate in the County of Stanislaus, State of California, lying within the West half of Section 21, Township 2 South, Range 9 East, Mount Diablo Meridian, being described as follows:

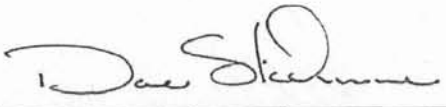
All that certain piece or parcel of land conveyed to David Louis Witt, as trustee of the David Louis Witt Trust dated 1997 by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on October 1, 1999 as instrument number 1999-0094416, being more particularly described as follows:

Commencing at the Southwest corner of said Section 21, said point lying on the centerline of a County Road known as McHenry Avenue; thence North 00°35'01" West along the West line of said Section 21 and said center line, a distance of 720.56 feet to the Southwest corner of said Witt parcel and a point on the Westerly extension of the South line of that Road Deed filed in the Office of the Recorder of the County of Stanislaus on July 18, 1990 as instrument number 062101; thence South 89°35'01" East along said Westerly extension and the South line of said Road Deed and Witt parcel, a distance of 55.01 feet to the Southeast corner of said Road Deed and being the TRUE POINT OF BEGINNING of this easement description; thence North 00°35'01" West, 55.00 feet East of and parallel with the West line of said Section 21, a distance of 1921.00 feet to an angle point; thence North 00°34'54" West along a line which lies 55.00 feet East of and parallel with the West line of said Section 21, a distance of 252.34 feet; thence North 44°57'28" East, a distance of 34.93 feet to a point which lies 30.00 feet South of, measured perpendicular to, the center line of a County Road known as Hogue Road; thence South 89°29'17" East along a line which lies 30.00 feet South of and parallel with last said center line, a distance of 143.83 feet; thence South 00°30'43" West, a distance of 10.00 feet; thence North 89°29'17" West, 40.00 feet South of and parallel with last said center line, a distance of 139.63 feet; thence South 44°57'28" West, a distance of 5.51 feet to a point which lies 80.00 feet East of, measured perpendicular to, the West line of said Section 21; thence South 00°34'54" East along a line which lies 80.00 feet East of and parallel with the West line of said Section 21, a distance of 262.87 feet to an angle point; thence South 00°35'01" East along a line which lies 80.00 feet East of and parallel with the West line of said Section 21, a distance of 1683.22 feet; thence North 89°24'59" East, a distance of 10.00 feet; thence South 00°35'01" East, a distance of 115.00 feet; thence South 89°24'59" West, a distance of 10.00 feet to a point which lies 80.00 feet East of, measured perpendicular to, the West line of said Section 21; thence South 00°35'01" East along last said line, a distance of 123.21 feet to a point on the South line of said Witt parcel; thence North 89°35'01" West along last said line, a distance of 25.00 feet to the point of beginning of this description.

CONTAINING 1.31 acres more or less.

SUBJECT TO all easements and/or rights-of-way of record.




Dave L. Skidmore, L.S. 7126

NW CORNER OF SEC. 21

HOGUE ROAD

W. 1/4 CORNER OF SEC. 21

APN: 074-002-014

DAVID LOUIS WITT TRUST
DOC. NO. 1999-0094416-00
RECORDED OCTOBER 1, 1999



APN: 004-001-057
RS 3-06

SECTION LINE & C/L MCHENRY AVENUE

MCHENRY AVENUE

TEMPORARY CONSTRUCTION
EASEMENT
57,240 SQ.FT. (1.31 ACRES)

PENDING RIGHT OF WAY
LINE

LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°34'54"W	252.34'
L2	N44°57'28"E	34.93'
L3	S89°29'17"E	143.83'
L4	S00°30'43"W	10.00'
L5	N89°29'17"W	139.63'
L6	S44°57'28"W	5.51'
L7	N89°24'59"E	10.00'
L8	N00°35'01"W	115.00'
L9	N89°24'59"E	10.00'
L10	N00°35'01"W	123.21'

ROAD DEED
DOC. NO. 131383
RECORDED NOV. 18, 1987

STEWART ROAD

ROAD DEED
DOC. NO. 062101
RECORDED JULY 18, 1990

N00°35'01"W 720.56'

POINT OF COMMENCEMENT
SW CORNER OF SEC. 21

POINT OF BEGINNING
N89°35'01"W 25.00'

APN: 074-002-014
S89°35'01"E 55.01'

TEMPORARY
CONSTRUCTION EASEMENT
EXHIBIT "B"

DRAWN	A6/DLS
DATE	11/16/10
SCALE	1"=200'
JOB #	640-07
DWG.	D.L.W. TRUST_TCE

**PLAT TO ACCOMPANY
LEGAL DESCRIPTION**

DAVID LOUIS WITT TRUST
APN: 074-002-014
BEING A PORTION OF LAND IN THE WEST HALF
OF SECTION 21, T. 2 S, R. 9 E., M.D.M.
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