

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

DEPT: Public Works *mbm*

BOARD AGENDA # *C-1

Urgent Routine

AGENDA DATE December 13, 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 State Route 99/State Route 219 (Kiernan Avenue) Interchange Project, Parcel Owners Michael and Renee Silva, APN: 136-020-011

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 \$225,000 payable to Fidelity National Title Company, for the purchase amount of \$220,000 and \$5,000 for estimated escrow fees and title insurance.

FISCAL IMPACT:

The total estimated cost for the SR 99/SR 219 (Kiernan Avenue) Interchange project is approximately \$46,000,000. The \$225,000 for the purchase of this right-of-way is funded 100% by the Regional Transportation Impact Fee Program (RTIF) and consists of \$220,000 for the purchase of the right-of-way, and \$5,000 for estimated escrow and title insurance fees. The SR 99/SR 219 (Kiernan Avenue) Interchange improvement project is an approved project in the County's Public Facilities Fee - Regional Transportation Impact Fee (RTIF) program.

BOARD ACTION AS FOLLOWS:

No. 2011-740

On motion of Supervisor Chiesa, Seconded by Supervisor Withdraw
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withdraw, De Martini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

Stanislaus County, in cooperation with Caltrans District 10, proposes to reconstruct the Highway 99 at Kiernan Avenue interchange in the community of Salida. This project will help facilitate future growth, help alleviate traffic congestion, and will improve the operation of this interchange. Increasing the efficiency of the interchange will also encourage the free flow of goods and services for the region and the State. Two build alternatives and the no-build alternative were proposed and studied for this interchange. Alternative #1 was the preferred alternative and has been estimated to cost approximately \$46 million (in today's dollars) for construction and right-of-way acquisitions. The project is proposed for funding by the Stanislaus County Public Facilities Fees, environmental mitigation fees, the State Route 99 Bond Savings funds, and TIGER Grant funds. Once realized, the Bond Savings funds will provide up to \$40 million toward the construction phase of the project.

The proposed interchange improvements include reconstruction of the existing interchange to provide improved operations for turning movements to and from State Route (SR) 99, as well as associated local road improvements at adjacent intersections.

The interchange is located in the north part of Stanislaus County and on the northern edge of the City of Modesto, providing access to commercial and residential properties in the community of Salida.

Stanislaus County Public Works has completed the planning and environmental phases of the project, which were funded with contributions from developers in conjunction with the Salida Community Plan and the voluntary regional transportation contribution received from Kaiser Permanente.

In November of 2008, the Public Works Department issued a Request for Proposal (RFP) to perform the PA&ED (environmental) and the PS&E (design) phases for this project. In an effort to save time, money, and maintain the project schedule, it was the desire of the Department to move directly into the design and right-of-way acquisition phase of the project near the completion of the environmental phase. An agreement with Rajappan & Meyer Consulting Engineers for the environmental phase was entered into in February 2009. Rajappan & Meyer (R&M) completed the environmental phase in May of 2011. In September of 2010, R&M began the design phase of the project. To maintain the project schedule outlined in the SR 99 Bond Savings funding application, it was necessary to begin completing the initial design tasks before environmental approval, which included the preliminary engineering design, right-of-way engineering, and to begin preparing right-of-way acquisition documents. Along with working toward a final design, department staff is also in the process of acquiring the necessary lands to construct the planned improvements.

If the SR 99 Bond Savings funds do not get programmed as planned, the Department feels it is still important to proceed with the right-of-way acquisition phase of the project so that it will be "shelf ready" when a funding source is identified. Having a shelf ready project may increase the availability of funding opportunities.

Approval of Purchase Agreement to Acquire Road Right-of-Way for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project, Parcel Owners Michael and Renee Silva, APN: 136-020-011

To accomplish the SR 99/SR 219 (Kiernan Avenue) Interchange project, the County will need to acquire the Michael and Renee Silva parcel on the northwest corner of the SR 219 (Kiernan Avenue) and Sisk Road intersection. The property owner has agreed to accept the following compensation:

Property Owner: Michael and Renee Silva
Amount of Compensation: \$220,000
Assessor's Parcel Number: 136-020-011
Right-of-Way Area: 0.17 acres+/-

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

At the completion of the construction phase of the project, the acquired right-of-way will be dedicated over to the State for the operation and maintenance of the improved facility.

Included in this right of way acquisition is a Relocation Assistance Process (RAP). As part of the RAP, the existing property owner has agreed to approximately \$1,600 compensation for moving expenses, \$3,500 for closing costs on a replacement home, and \$850 for home inspections and appraisal. These costs are not included in the sale price of the property, but will be handled separately under the RAP. These RAP costs are also included in the overall project budget for the project. As this is a project which is situated on a State Highway, and the parcel will be deeded to the State, the project comes under the policies and guidelines of the Federal Highway Administration (FHWA) and The California Department of Transportation (Caltrans). This means that the project sponsor (The County) must follow the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 as Amended (The Uniform Act).

POLICY ISSUES:

The SR 99/SR 219 (Kiernan Avenue) Interchange 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.

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

District	County	Route	P.M.	E. A.	Caltrans Parcel No.	Federal Reference No.	Name	APN
10	STA	219	0.0/0.3	10-OL3309 BRI 10118	16523	10-0000-0100	Michael and Renee Silva	136-020-011

Salida _____, California

November 22 _____, 2011

Michael Steven and Renee Silva

Grantors

**COUNTY OF STANISLAUS
RIGHT OF WAY CONTRACT**

Document number 10-16523, in the form of a Grant Deed to the County of Stanislaus (County) covering the property as delineated on the attached appraisal map and particularly described in the legal description, labeled "Exhibit A" attached hereto and made a part hereof, has been executed and delivered to, Tom Ganyon, Senior Right of Way Agent, acting as Agent for the County of Stanislaus by Michael S. and Renee Silva (Grantors).

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. (A) The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve County of all further obligations or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
 - (B) County requires said property described in Exhibit "A" for roadway purposes, a public use for which County has the authority to exercise the power of eminent domain. Grantors are compelled to sell, and County is compelled to acquire the property.
 - (C) Grantors acknowledge that this transaction is a negotiated settlement in lieu of condemnation and agree 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. Both Grantors and County recognize the expense, time, effort, and risk to both parties in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is in compromise and settlement, in lieu of such litigation.
2. The County of Stanislaus shall:
 - (A) Pay the undersigned Grantors the sum of \$220,000 for the property or interests therein which the parties agree includes compensation for all improvements conveyed by the above document, when title to said property vests in the County's name free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes, except:
 - a. Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.
 - b. Covenants, conditions, restrictions and reservations of record, or contained in the above-referenced document.
 - c. Easements or rights of way over said land for public or quasi-public utility or public street purposes, if any.
 - (B) Pay all escrow and recording fees for this transaction, and if title insurance in the amount of \$220,000 is desired by County, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer tax. This transaction will be handled through an escrow with Fidelity National Title Company of California, Escrow No. 10-5010449-A-PA located at 8950 Cal Center Drive, Bldg. 3, Suite 100 Sacramento CA 95928.

-----**No Obligation Other Than Those Set Forth Herein Will Be Recognized**-----

- (C) Have the authority to deduct and pay from the amount shown on Clause 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow.
- (D) Grantor agrees that if claims are submitted by lien-holders, 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. County will notify Grantors of any such claims prior to payment.
3. It is agreed and understood that County's valuation of the subject property located at 4500 Trowbridge Lane, situated within the limits of the Town of Salida, Stanislaus County, California further identified as APN 136-020-011 is based on a Market Approach to Value. The valuation including land and improvements is: \$168,000. It is further understood and agreed by and between the parties hereto that payment in Clause 2(A) above includes the Just Compensation offered by County based on an appraisal of Fair Market Value of the property of \$168,000 and that an additional \$52,000 in compensation offered as an Administrative Settlement amount in order to allow the parties to reach agreement for a total offer of Just Compensation in the amount of \$220,000. The amount of additional funds in the amount of \$52,000 represents an amount over and above the fair market value of the displacement residence desired by Grantors to locate and purchase a suitable replacement residence.
4. Any monies payable under this contract up to and including the total amount of unpaid principal and interest on notes secured by deeds of trust, if any, and all other amounts due and payable in accordance with terms and conditions of said trust deeds, shall upon demands be made payable to the beneficiaries) entitled thereunder; said beneficiaries to furnish grantors with good and sufficient receipt showing said monies credited against indebtedness secured by said deeds of trust.
5. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by County, including the right to remove and dispose of improvements, shall commence on the date of the close of the escrow controlling this transaction. It is further agreed and confirmed by the parties that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including all improvements on and to the property including those improvements described in the fair market value appraisal of the property.
6. Grantors warrant that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the grantors agree to hold County harmless and reimburse County for any and all of its losses and expenses occasioned by reason of any lease of said property held by any Tenant of Grantors for a period exceeding one month. Grantors acknowledge that a quitclaim deed will be required from any lessee that has a lease term exceeding one month. Said quitclaim deeds are to be provided to Title Company's Escrow Agent by Grantor, prior to the close of escrow.
7. County agrees to indemnify and hold harmless the undersigned Grantors from any liability arising out of County's operations under this agreement. County further agrees to assume responsibility for any damages proximately caused by reason of County's operations under this agreement and County, at its option, either repair or pay for such damage.
8. It is agreed that Grantors shall have up to 120-days commencing on the day following the date of recordation of the deed conveying title to Stanislaus County for the property situated at 4500 Trowbridge Lane, Salida, within which to purchase, and occupy a suitable decent safe and sanitary replacement dwelling. Grantors shall deliver the above-described premises vacant to Stanislaus County on or before the 120th day after the date of recordation of the deed conveying title to County in good order and condition, without further notice, and immediately thereafter deliver the keys thereto to Stanislaus County at 1716 Morgan Road, Modesto, CA 95358. Grantor shall also pay all closing utility bills up to and including the date of vacation.
9. Grantors hereby represent and warrant 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. Grantors further represent and warrant that Grantors have no knowledge of any disposal or release of hazardous substances, on, from, or under the Property which may have occurred prior to Grantor's taking title to the Property.

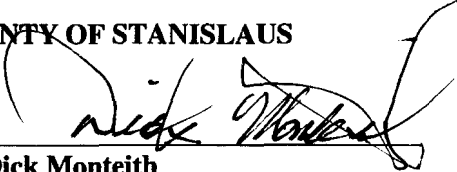
-----**No Obligation Other Than Those Set Forth Herein Will Be Recognized**-----

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, County reserves the right to recover its clean-up costs from those who caused or contributed to the contamination.

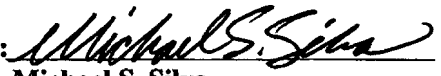
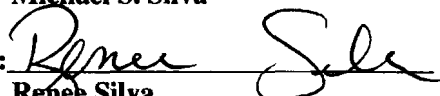
10. Grantor understands and agrees that the compensation in the amount of \$220,000 offered in this Agreement is subject to and contingent upon approval of the Stanislaus County Board of Supervisors by adopting a Resolution authorizing the execution of the Agreement at their December 13, 2011 meeting. Should Grantor agree to sell to County, and County is unable to approve funding of the purchase of this property by December 31, 2011, this Agreement becomes null and void, and County shall have no further obligation to Grantor. If Grantor agrees to sell, and County approves funding by said date, all terms and condition of this Agreement apply. 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.
11. Escrow Agent shall deliver payment under this contract to Grantors when title to the property vests in County's name, free and clear of all liens, encumbrances, assessments, easements, leases (recorded and/or unrecorded), and taxes unless otherwise indicated in Escrow Instructions as executed by the parties and submitted to Escrow Agent.
12. It is understood and agreed by and between the parties hereto that this Agreement inures to the benefit of, and is binding on, the parties, their respective heirs, personal representatives, successors, and or assignees.

IN WITNESS WHEREOF, the parties have executed this Agreement on 12/13/2011 as follows:

COUNTY OF STANISLAUS

By: 
Dick Monteith
Chairman of the Board of Supervisors

GRANTORS


By: 
Michael S. Silva
By: 
Renee Silva

ATTEST:

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

By: 
Deputy Clerk

RECOMMEND FOR APPROVAL

By: 
Tom Ganyon
Senior Right of Way Agent
Bender Rosenthal Inc.

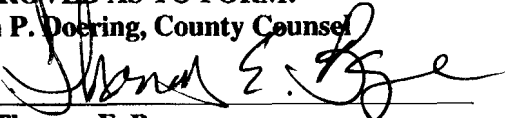
APPROVED AS TO CONTENT:

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

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Salida , California

December 13 , 2011

Michael Steven and Renee Silva
Revocable Living Trust
Grantors

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Chairman of the Board of Supervisors

GRANTORS

By: 

Michael S. Silva

By: 

Renee Silva

ATTEST:

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

By: 

Deputy Clerk

RECOMMEND FOR APPROVAL

By: 

Tom Ganyon
Senior Right of Way Agent
Bender Rosenthal Inc.

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

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