

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

DEPT: Public Works *Handwritten signature*

BOARD AGENDA # C-4

Urgent Routine

AGENDA DATE May 21, 2013

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Consider and Adopt a Resolution of Necessity to Acquire Real Property or Interest in Real Property by Eminent Domain for the Claribel Road Widening Project, Parcel Owners John Gonzalez and Suki Gonzalez, APN 074-014-008

STAFF RECOMMENDATIONS:

1. Find that the public interest and necessity require the proposed project.
2. Find that the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. Find that the subject property described in the attached Resolution is necessary for the proposed project and the 0.32 acre remnant is an uneconomic remnant and remainder, which the County is authorized to acquire by eminent domain pursuant to Code of Civil Procedure sections 1240.150 and 1240.410.

(Continued on Page 2)

FISCAL IMPACT:

The cost associated with conducting the Resolution of Necessity hearings are funded by the Regional Transportation Impact Fee (RTIF) funds. Although the costs have not been identified, it is anticipated that they will be minimal and will be absorbed within the current year Public Works Road and Bridge Budget.

BOARD ACTION AS FOLLOWS:

No. 2013-259

On motion of Supervisor O'Brien, Seconded by Supervisor Monteith

and approved by the following vote,

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

Noes: Supervisors: None

Excused or Absent: Supervisors: De Martini

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST: Elizabeth A. King
ELIZABETH A. KING, Assistant Clerk

File No.

Approval to Consider and Adopt A Resolution of Necessity to Acquire Real Property or Interest in Real Property by Eminent Domain for the Claribel Road Widening Project, Parcel Owners John Gonzalez and Suki Gonzalez, APN 074-014-008

STAFF RECOMMENDATIONS (continued):

4. Find that the offer required by Section 7267.2 of the Government Code has been made to the owners of record of the property to be acquired.
5. Adopt a Resolution of Necessity in the form attached hereto as Attachment A.
6. Authorize County Counsel to initiate eminent domain proceedings to acquire the subject property.

DISCUSSION:

The Project proposes to widen Claribel Road from two lanes to four lanes, construct a Class-1 bike path, replace the Modesto Irrigation District Lateral 6 Bridge with concrete pipe culverts, and signalize the intersection of Coffee Road at Claribel Road.

On the May 22, 2012, the Board of Supervisors adopted the Initial Study and Mitigated Negative Declaration for the Project. County Public Works staff is currently in the process of acquiring the Right of Way (ROW) necessary to complete the Project.

To accomplish the proposed improvements, the County will need to acquire an entire 0.69-acre triangular parcel and all improvements located on the northern side of Claribel Road, midway between Coffee Road and Oakdale Road at 1743 Claribel Road, Modesto, CA, 95357, (hereby referred to as the "subject property"). The owners of the subject property are John R. Gonzalez and Suki H. Gonzalez (hereby referred to as the "owner").

The parcel includes an 1,100 square-foot single-family residence, detached garage, carport, and storage shed. The residence is not owner occupied and the tenant has an excessive amount of personal property on the parcel and in the living area. The dwelling was built in 1949, and the condition is considered to be in fair, but original condition.

The County has offered the owners of the subject property the sum of \$85,000, which an appraiser hired by the County determined to be the fair market value for the subject property, as it is required to do pursuant to section 7267.2 of the Government Code. A copy of the offer letters is attached hereto as Attachment B.

The owner has been non-responsive throughout the planning and acquisition stages of the Project. Initial contact was attempted in June 2011 to request signature of the right of entry form in order to allow environmental consultant staff access to the property to conduct field reviews. No response was received from the owner, and the environmental studies were completed without access to the property. Contact resumed in March 2012 to discuss the right of way acquisition process with the property owner. The following is a summary of attempted correspondence by the County ROW consultant, Overland, Pacific, and Cutler (OPC), with the owner:

Approval to Consider and Adopt A Resolution of Necessity to Acquire Real Property or Interest in Real Property by Eminent Domain for the Claribel Road Widening Project, Parcel Owners John Gonzalez and Suki Gonzalez, APN 074-014-008

- June 14, 2011 - Called John Gonzalez at his office (209-745-0799) and left word to call. Mailed previous correspondence and Right of Entry (ROE) to the owners' post office box.
- June 21, 2011 - Left word to call.
- July 1, 2011 - Left word to call.
- March 15, 2012 - Left word to call.
- March 20, 2012 - Left word to call.
- April 13, 2012 - Both County and OPC staff went to the owner's office, left our business cards with the receptionist, asked him to call, and encouraged him to meet on-site with the appraiser.
- September 20, 2012 - Owner met with the appraiser on-site.
- December 14, 2012 - Left word to call for appointment to make the official offer. Offer package sent via certified mail to owner. Received verified receipt with signature from Maricella Sicairos. No response
- December 20, 2012 - Spoke with owner's assistant and verified the offer package was received. Left word to call. No response
- January 4, 2013 - Left word to call. No response
- February 7, 2013 - Left word to call. No response.
- April 30, 2013 - Left word to call. No response.

Public Works staff will continue to pursue negotiations, but staff recommends beginning the process of acquiring the ROW from the owner through the eminent domain process.

To authorize the use of the power of eminent domain, the Board must first adopt a Resolution of Necessity required by section 1245.220 of the Code of Civil Procedure. The purpose of the Resolution of Necessity hearing is to provide the owners of the property the opportunity to be heard on the matters referred to in section 1240.030 of the Civil Code as follows:

1. Whether the public interest and necessity require the project;
2. Whether the project is planned or located in the manner that will be most compatible with the greatest public good and least private harm;
3. Whether the property sought to be acquired is necessary for the project; and
4. Find that the offer required by Section 7267.2 of the Government Code has been made to the owners of record of the property to be acquired.

The owner was given a written Notice of Hearing on Friday, May 3, 2013, as required by Section 245.235 of the Code of Civil Procedure, attached hereto as Attachment C.

The Department of Public Works offers the following in support of each of the above-mentioned matters:

Approval to Consider and Adopt A Resolution of Necessity to Acquire Real Property or Interest in Real Property by Eminent Domain for the Claribel Road Widening Project, Parcel Owners John Gonzalez and Suki Gonzalez, APN 074-014-008

1. The Public Interest and Necessity Require the Project.

Purpose

The purpose of the Project is to improve the corridor to accommodate east/west interregional traffic between the cities of Riverbank, Modesto, Oakdale, and Stanislaus County and to State Highway 108 (McHenry Avenue), which would improve regional network circulation, relieve existing traffic congestion, reduce traffic delay, accommodate future traffic, improve safety, and promote non-motorized modes of transportation consistent with the County General Plan.

Need

The segment of Claribel Road between McHenry Road and Coffee Road is one of the County's most congested roadways and carries significant volumes of traffic. The consideration of "Level of Service" (LOS), is very important in traffic planning. The most common scale for measuring service describes traffic conditions in a range from A to F. The minimum standard LOS the County seeks to maintain is "C". The existing LOS for the Project segment of Claribel Road Widening is currently operating at E, which is described in the 2010 Highway Capacity Manual (HCM) as a road where the demand is approaching capacity, speeds are significantly reduced, and passing is not possible. Claribel Road will continue to operate at an LOS of E at the peak hour until the year 2025, when the two-way flow rate exceeds 3,200 passenger cars per hour, which is the limit between E and F. The current and future operation of the corridor does not meet the County's required LOS of C; however, with the project, the LOS will improve from E to B, where there is not vehicle impedance and traffic moves freely, resulting in reduced traffic incidences.

The existing intersection of Claribel Road and Coffee Road is controlled by an all-way stop. The intersection operates at an LOS of F with average AM and PM delays of 84.1 and 205.7 seconds, respectively. Signalization of the intersection will significantly reduce traffic delays, reduce congestion, and improve air quality and safety, by improving average AM and PM delays to 12.2 and 11.8 seconds, respectively.

There were 66 collisions along this segment of Claribel Road from 2007-2011. The project will improve safety by reducing traffic collisions because of increased driver comfort.

2. The project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.

Widening of Claribel Road requires an average of approximately 90 feet of ROW take on the northern side of the corridor. County staff considered widening to the south, as opposed to the north. Widening to the north is more feasible because there are fewer conflicts with existing structures on the northern side of Claribel Road. Major structures on the southern side of the roadway include Bambacigno Steel, Morningside Mobile Home Park, and the MID Substation.

Approval to Consider and Adopt A Resolution of Necessity to Acquire Real Property or Interest in Real Property by Eminent Domain for the Claribel Road Widening Project, Parcel Owners John Gonzalez and Suki Gonzalez, APN 074-014-008

3. The property sought to be acquired is necessary for the project.

To relieve current congestion, improve safety, and maintain a minimum standard LOS for the Claribel Road corridor, and Claribel Road and Coffee Road intersection, the proposed ROW acquisition of the subject property is necessary for the project to be built.

The property is 0.69 acres. The parcel is a triangular shape narrowing to a point at the north end of the property. The County requires more than half of the parcel south portion of the property leaving a remnant of 0.32 acres, refer to Attachment D. The property is zoned General Agriculture District A-2-40. The remnant parcel does not meet the County zoning requirements. Additionally, the County requires a minimum 1-acre parcel in order to accommodate water and septic facilities. Because of the odd shape and size, the remnant is an uneconomic remnant as defined by sections 1240.150 and 1240.410 of the Government Code. Therefore, the County has offered to purchase the entire parcel.

4. Find that the offer required by Section 7267.2 of the Government Code has been made to the owners of record of the property to be acquired.

The offer was sent to John R. Gonzalez and Suki H. Gonzalez on December 14, 2012, certified mail with a signature receipt by Maricella Sicairos. The County received notification of receipt on December 19, 2012.

The County is also working with the tenant of the residence at the property for relocation, in accordance with Uniform Relocation Assistance and Real Property Acquisitions Act.

In order to construct the project, ROW acquisition is required from 17 parcels. ROW is still needed from 12 parcels, which includes this parcel.

POLICY ISSUES:

The recommended actions are consistent with the Board's priorities of providing A Safe Community, A Healthy Community, and A Well Planned Infrastructure System by improving traffic safety and 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.

ATTACHMENTS AVAILABLE
FROM CLERK

AV/sn

L:\ROADS\9732 - Claribel Road Widening Project\Design\BOS\Gonzalez\9732_5-21-13 BOS Item_Eminent Domain_Gonzales_for AVerburg

SCALE 1" = 50'

M.I.D. LATERAL NO. 6

R/W LINE LAT. NO 6

A.P.N.: 074-014-008
GONZALES, ET UX
DOC. NO. 2004-0014176
0.69 AC.± (30,092 S.F.±)

REMNANT PARCEL
0.32 AC.±
(13,825 S.F.±)

AREA REQUIRED FOR PROJECT
0.37 AC.±
16,267 S.F.±

PROPOSED R/W

EXISTING R/W

CENTERLINE

SECTION LINE

EXISTING R/W

CLARIBEL ROAD

EXISTING R/W

PROPOSED R/W



STANISLAUS COUNTY
DEPARTMENT OF PUBLIC WORKS
ENGINEERING AND OPERATIONS DIVISION
1716 MORGAN ROAD - MODESTO, CA 95368

A.P.N. 074-014-008
CLARIBEL WIDENING PROJECT
STANISLAUS COUNTY, CALIFORNIA

DR. BY: DH
PROJECT: 9732
DATE: 4-25-13
SHEET NO: 1 OF 1

PROJECT: 9732 - CLARIBEL WIDENING PROJECT DESIGN WORK EXHIBIT 074-014-008.DWG

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

Date: May 21, 2013

No. 2013-259

On motion of Supervisor O'Brien Seconded by Supervisor Monteith
and approved by the following vote,
Ayes: Supervisors: O'Brien, Withrow, Monteith and Chairman Chiesa
Noes: Supervisors: None
Excused or Absent: Supervisors: De Martini
Abstaining: Supervisor: None

Item # C-4

THE FOLLOWING RESOLUTION WAS ADOPTED:

**RESOLUTION OF NECESSITY
TO ACQUIRE CERTAIN REAL PROPERTY OR INTEREST IN REAL PROPERTY
BY EMINENT DOMAIN PARCEL APN: 074-014-008
OWNER: JOHN AND SUKI GONZALEZ**

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

WHEREAS, Article I, section 19 of the Constitution of the State of California and section 25350.5 of the Government Code authorizes the Board of Supervisors of any County to acquire by eminent domain any property necessary to carry out any of the powers or functions of the County; and

WHEREAS, the real properties to be taken are described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the take of the real property required for the project will leave a .32-acre remnant parcel that would not be capable of development under the County's A-2-40 zone and under County Code section 21.08.050 (requiring minimum parcel size of one acre for development when served by well and septic); and

WHEREAS, the County proposes to widen Claribel Road from two lanes to four lanes, the construction of a Class-1 bike path, replacement of the Modesto Irrigation District Lateral 6 Bridge with concrete pipe culverts, and signalization of the intersection of Coffee Road at Claribel Road; and

WHEREAS, notice has been properly given as required by and according to the provisions of section 1245.235 of the California Code of Civil Procedure, and a meeting has been held at which all persons whose property may be acquired by eminent domain and whose name and address appear on the last equalized County Assessment Roll have been given a reasonable opportunity to appear and be heard by the Board of Supervisors on the matters set forth in Code of Civil Procedures sections 1240.030 and 1240.510; and

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of Supervisors of Stanislaus County by no less than two-thirds vote of its members:

1. The public interest and necessity require the acquisition of the real property interests described in Exhibit "A" attached hereto and incorporated by this reference for the proposed public project.
2. The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The properties sought to be acquired and described by this resolution is necessary for the public project and the .32-acre remnant is an uneconomic remnant and remainder, which the County is authorized to acquire by eminent domain pursuant to Code of Civil Procedure sections 1240.150 and 1240.410.
4. The offer required by Section 7267.2 of the Government Code has been made to the owners of record.
5. The findings and determinations contained in this Resolution are based on and incorporate the record before the Board on April 19, 2011, and May 22, 2012, which record includes the environmental analysis of the proposed project contained in the Environmental Impact Report, the staff Board reports regarding CEQA compliance, Project Approval and all other documents referenced above and in the staff Board report to this Resolution. The findings and determinations contained herein are also based on any testimony, records, and documents produced at the hearing, all of which are incorporated herein by this reference.
6. The County Counsel is hereby authorized to institute eminent domain proceedings in the Superior Court of the State of California for the County of Stanislaus, for the purpose of acquiring the properties described herein above, and is further authorized to institute proceedings for taking pre-judgment possession of said properties and to deposit the probable amount of compensation therefore, in accordance with California Code of Civil Procedure Section 1255.010, as directed by the Superior Court as security for said possessions. Counsel is further authorized to associate with, at its election, a private law firm for the prosecution of said proceedings.
7. In order to timely complete the project and provide the benefits of the project in a timely and orderly manner, the County has an overriding need for possession of the property described and depicted in Exhibit "A" attached hereto and prior to entry of denied, the County and the residents of California to be served by the proposed project, will suffer a substantial hardship. County Counsel is hereby authorized to request an Order from the Court authorizing the County to take pre-judgment possession of the property.
8. That the Auditor/Controller of Stanislaus County is directed to draw all necessary warrants payable to the State Treasurer or County Clerk in the amount specified in the Written Summary of Just Compensation prepared in accordance with the Code of Civil Procedure sections 1255.010, et seq. All warrants shall be drawn from the County Treasury. No warrant shall be drawn on that account for purposes of furthering the eminent domain action unless sufficient funds have been deposited to fund any such warrant.

ATTEST: **ELIZABETH A. KING, Assistant Clerk**
Stanislaus County Board of Supervisors,
State of California



File No.

EXHIBIT "A"
LEGAL DESCRIPTION
CLARIBEL ROAD RIGHT OF WAY WIDENING
A.P.N. 074-014-008

All that certain piece or parcel of land situate in the County of Stanislaus, State of California, lying within the Southwest quarter of Section 34, Township 2 South, Range 9 east, Mount Diablo Meridian, described as follows:


ALL that land conveyed to John R. Gonzalez and Suki H. Gonzalez, Husband and Wife as Joint Tenants by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on February 2, 2004 as Document No. 2004-0014176, being more particularly described as follows:

ALL that portion of the Southeast quarter of the Southwest quarter of said Section 34 lying South of Lateral No. 6 of the Modesto Irrigation District.

SUBJECT to all easements and/or rights of way of record.

CONTAINING 30,092 Square Feet more or less.




Dave Skidmore, P.L.S. 7126
1/24/12



APN: 074-014-009

M.I.D. LATERAL

No. 6

RIGHT OF WAY LINE LAT. No. 6

1/4 SECTION LINE

SECTION 34

APN: 074-014-007

PROPOSED R/W

APN: 074-014-008

GONZALEZ, ET UX

DOC. NO 2004-0014176

CLARIBEL ROAD WIDENING

30,092 S.F. ±

PROPOSED R/W

ROAD DEED TO STAN. CO.
BK. 400, O.R., PG. 397

CENTER LINE

162.60'

589°28'14"E
1.46'

N84°49'13"E
100.39'

589°27'47"E

20'

589°27'47"E

100.39'

N84°49'13"E

20'

589°28'14"E

20'

589°28'14"E

589°27'47"E 2643.28'

S. 1/4 COR. OF
SEC. 34, 2/9

TOWNSHIP LINE

PROPOSED R/W

CLARIBEL ROAD

REMAINDER
49 - PM - 72
APN: 082-004-036

SECTION 3

DRAWN	DLS
DATE	1/19/12
SCALE	1"=50'
JOB #	704-10
DWG.	Id_plats

**PLAT TO ACCOMPANY
LEGAL DESCRIPTION**

CLARIBEL ROAD WIDENING
STANISLAUS COUNTY, CALIFORNIA



**ASSOCIATED
ENGINEERING, INC.**
Surveying • Design • Planning
4206 TECHNOLOGY DRIVE, SUITE 4
MODESTO, CALIFORNIA 95356
PH: (209) 545-3390 FAX: (209) 545-3875