

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

DEPT: Public Works *D. Hays*

BOARD AGENDA # *C-2

Urgent Routine

AGENDA DATE September 10, 2013

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of a Purchase Agreement to Acquire Road Right-of-Way for the Claribel Road Widening Project, Parcel Owner: Big Sky Investments 3, LLC, a California Limited Liability Company, Assessor's Parcel Number: 082-004-030 (Portion)

STAFF RECOMMENDATIONS:

1. Approve the purchase agreement for the acquisition of a portion of the parcel identified as: Assessor's Parcel Number (APN) 082-004-030.
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 No. 2011-141 executed on March 8, 2011.

FISCAL IMPACT:

The total estimated cost for the Claribel Road Widening project is \$15,400,000. The \$149,732 for the purchase of this Right of Way (ROW) is funded 100% from the Public Facilities Fee-Regional Transportation Impact Fee program and consists of \$148,432 for the purchase of a portion of real property on the parcel and \$1,300 for estimated title insurance and escrow fees. Funding is available in the Fiscal Year 2013-2014 Public Works Road Projects Budget.

BOARD ACTION AS FOLLOWS:

No. 2013-452

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

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

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.

Approval of a Purchase Agreement to Acquire Road Right-of-Way for the Claribel Road Widening Project, Parcel Owner: Big Sky Investments 3, LLC, a California Limited Liability Company, Assessor's Parcel Number: 082-004-030 (Portion)

DISCUSSION:

The Claribel Road Widening project proposes to widen Claribel Road from two lanes to four lanes from McHenry Avenue to Oakdale Road, construct a Class I bikeway, replace the Modesto Irrigation District Lateral No. 6 bridge with concrete pipe culverts, and signalize the intersection of Coffee Road at Claribel Road.

On May 22, 2012, the Board of Supervisors adopted the Mitigated Negative Declaration for the project. County Public Works staff is currently in the process of acquiring the ROW necessary to complete the project.

The County needs to acquire ROW from Big Sky Investments 3, LLC, a California Limited Liability Company, to accomplish this project. The property is located at 4912 Coffee Road, Modesto, CA 95357. The property owner has agreed to accept the following as outlined in the Agreement for Acquisition of Property in Attachment 1:

- Property Owner: Big Sky Investments 3, LLC, a California Limited Liability Company
- Amount of Compensation: \$148,432
- APN: 082-004-030 (portion), ROW area: 0.947 Acres

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

ROW acquisition is required from 17 parcels in order to construct the project. ROW is still being negotiated with the owners of six parcels.

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 flow in this area of Stanislaus County.

STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT PERSON:

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

Project: Claribel Road Widening
Grantor: Big Sky Investments 3, LLC,
A California limited liability co.
APN: 082-004-030 (portion)

AGREEMENT FOR ACQUISITION OF PROPERTY

This Agreement for Acquisition of Property is between the County of Stanislaus (County) and Big Sky Investments 3, LLC, a California limited liability company (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 real property interest described in Exhibit A, attached hereto which is 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:

Land (Fee Simple: 0.9469+/- Acre X \$37,000/Acre)	\$ <u>35,035.00</u>
Cost to Cure	\$ <u>24,500.00</u>
Tree Removal (40 trees X \$50/tree):	= \$ <u>2,000</u>
Development of Agricultural Lane:	\$ <u>2,500</u>
Landscaping:	\$ <u>20,000</u>
Severance Damage (damages to single family residences)	\$ <u>88,897.00</u>
Total	\$ <u>148,432.00</u>

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, but no later than December 31, 2013. 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 \$35,035.00, showing title to the Property interest 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. POSSESSION.

Grantor agrees that immediately upon approval of this Agreement by County, the County may enter upon and take possession of the Property.

6. HAZARDOUS WASTE MATERIAL.

The Grantor hereby represents and warrants that to its knowledge 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

**Agreement for Purchase
Big Sky Investments 3, LLC
Page 3 of 3**

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.

IN WITNESS WHEREOF, the parties have executed this Agreement on 09/10/2013 as follows:

COUNTY OF STANISLAUS



Vito Chiesa
Chairman of the Board of Supervisors

GRANTOR
BIG SKY INVESTMENTS 3, LLC,
a California limited liability company

By: Gregory Ellis

Name: Gregory Ellis

Its: managing member / Trustee

By: Karen Ellis

Name: Karen Ellis

Its: managing member / Trustee

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

By: Patricia Mangalz
Deputy Clerk

APPROVED AS TO CONTENT:
Department of Public Works

Matt Machado
Matt Machado, Director

APPROVED AS TO FORM:
Michael H. Krausnick
County Counsel

By: Thomas E. Boze
Thomas E. Boze
Deputy County Counsel

NO FEE
RECORDING REQUESTED BY:
BOARD OF SUPERVISORS

RETURN TO:
STANISLAUS COUNTY
DEPARTMENT OF PUBLIC WORKS
1716 MORGAN ROAD
MODESTO, CA 95358

WE HEREBY CERTIFY THIS TO BE A TRUE
AND CORRECT COPY OF THE ORIGINAL.

RECORDED ON 10-16-13

INSTRUMENT NO. 2013-0087008

FIRST AMERICAN TITLE INSURANCE CO.

BY [Signature]

Road Name: CLARIBEL ROAD

APN: 082-004-030 (portion)

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Big Sky Investments 3, LLC, a California limited liability company

does hereby grant to the COUNTY OF STANISLAUS, a political subdivision of the State of California all that real property in the County of Stanislaus, State of California described as:

SEE EXHIBIT "A" and "B"

(sign) [Signature: Gregory Ellis]

(print) Gregory Ellis

Dated: 8/5/13

[Signature: Karen Ellis]

Karen Ellis

8/5/13

APPROVED as to description: _____ Dated: _____

CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDATION

This is to certify that the interest in real property conveyed by the deed or grant dated _____ From Big Sky Investments 3, LLC, A California limited liability company, to County of Stanislaus a political subdivision of the State of California, is hereby accepted by the undersigned officer or agent on behalf of the Board of Supervisors of the County of Stanislaus, pursuant to authority conferred by resolution of the Board of Supervisors of the County of Stanislaus adopted on March 8, 2011 in accordance with the provisions of Government Code Section 27281, and the grantee consents to recordation thereof by its duly authorized officer.

Matt Machado, Director of Public Works
of Stanislaus County, State of California

By [Signature: Matt Machado]

Dated: 9/11/13

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Stanislaus

On August 5, 2013 before me Shirley Ann Doggett - Notary Public

personally appeared Gregory and Karen Ellis

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Shirley Ann Doggett

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

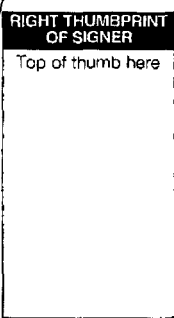
Document Date: Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

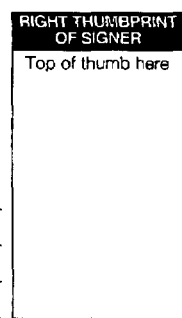
- Corporate Officer -- Title(s):
Individual
Partner -- Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:



Signer Is Representing:

Signer's Name:

- Corporate Officer -- Title(s):
Individual
Partner -- Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:



Signer Is Representing:

EXHIBIT "A"
LEGAL DESCRIPTION
CLARIBEL ROAD & COFFEE ROAD RIGHT OF WAY WIDENING
A.P.N. 082-004-030

All that certain piece or parcel of land situate in the County of Stanislaus, State of California, lying within the Northwest quarter of Section 3, Township 3 South, Range 9 East, Mount Diablo Meridian, described as follows:

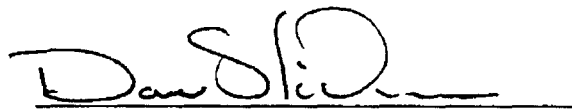
ALL that portion of Parcel C as conveyed to Big Sky Investments 3, LLC, a California limited liability company by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on July 16, 2008 as Document No. 2008-0077134, being more particularly described as follows:

COMMENCING at the Northwest corner of said Section 3; thence South 89°27'47" East along the North line of said Northwest quarter, a distance of 20.01 feet to the point of intersection with the Northerly extension of the East right of way line of a 40.00 foot wide County Road known as Coffee Road; thence South 01°08'21" East along last said extension line, a distance of 10.00 feet to the Northwest corner of said Parcel C and the point of intersection of the South right of way line of a 40.00 foot wide County Road known as Claribel Road with the East right of way line of said Coffee Road and being the TRUE POINT OF BEGINNING this description; thence South 89°27'47" East along the South right of way line of Claribel Road and the North line of said Parcel C, a distance of 437.10 feet to the Northeast corner of said Parcel C; thence South 01°08'27" East along the East line of said Parcel C, a distance of 52.02 feet to a point which lies 62.00 feet perpendicular to and South of the North line of the Northwest quarter of said Section 3; thence North 89°27'47" West, 62.00 feet South of and parallel with last said North line of the Northwest quarter, a distance of 261.60 feet to an angle point; thence South 83°51'34" West, a distance of 89.91 feet to an angle point; thence South 63°16'23" West, a distance of 56.39 feet to a point which lies 55.00 feet perpendicular to and East of the West line of said Northwest quarter of Section 3; thence South 01°08'21" East, 55.00 feet East of and parallel with last said West line of the Northwest quarter, a distance of 120.13 feet to an angle point; thence South 03°50'51" West, a distance of 214.13 feet to an angle point; thence South 00°18'24" East, a distance of 446.57 feet to a point on the Northwesterly right of way line of the 130.00 foot wide Modesto Irrigation District Lateral No. 6; thence South 71°52'21" West along last said right of way line, a distance of 10.35 feet to a point on the East right of way line of said Coffee Road; thence North 01°08'21" West along last said right of way line, a distance of 872.35 feet to the point of beginning of this description.

CONTAINING 41,245 Square feet more or less.

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




Dave Skidmore, P.L.S. 7126
7/24/13

