

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

DEPT: Public Works

BOARD AGENDA # *C-3

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: 082-004-038 (Portion)

STAFF RECOMMENDATIONS:

1. Approve the purchase agreement for the acquisition of a portion of the parcel identified as: Assessor's Parcel Number (APN) 082-004-038.
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 \$32,358 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 \$31,558 for the purchase of a portion of real property on the parcel and \$800 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. 2013-453

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

and approved by the following vote.

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: 082-004-038 (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 on the southern side of Claribel Road, approximately 450 feet east of the southeast corner of the intersection of Coffee Road and Claribel Road. 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: \$31,558
- APN: 082-004-038 (portion), ROW area: 0.716 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.

AV:sn

L:\ROADS\9732 - Claribel Road Widening Project\Design\BOS\Big Sky - 082-004-038\9-10-13 BOS item_CRW project_Big Sky 038_for AVerburg

Project: Claribel Road Widening
Grantor: Big Sky Investments 3, LLC,
a California limited liability co.
APN: 082-004-038 (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 fee simple portion of real property 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 is:

Fee Simple: 0.7155+/- Acres (x \$36,000/ac)	<u>\$25,758.00</u>
Temporary Construction Easement	\$ <u>N/A</u>
Cost to Cure (removal Of 35 trees, agricultural lane)	\$ <u>5,800.00</u>
Severance Damage	\$ <u>N/A</u>
Total	<u>\$31,558.00</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.

Agreement for Purchase
Big Sky Investments 3, LLC
Page 2 of 3

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 \$25,758.00, 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. 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 substances, on, from, or under the Property which may have occurred prior to Grantor taking title to the Property.


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

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.

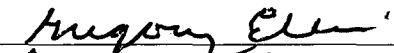
IN WITNESS WHEREOF, the parties have executed this Agreement on 9/10/2013 as follows:

COUNTY OF STANISLAUS

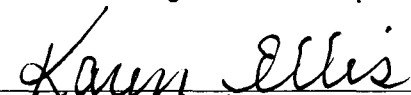
GRANTOR
BIG SKY INVESTMENTS 3, LLC,
a California limited liability company

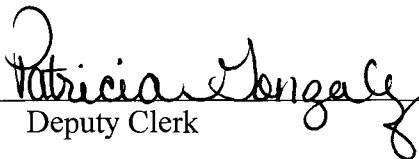


Vito Chiesa
Chairman of the Board of Supervisors

By: 
Name: Gregory Ellis
Its: managing member / Trustee

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

By: 
Name: Karen Ellis
Its: managing member / Trustee

By: 

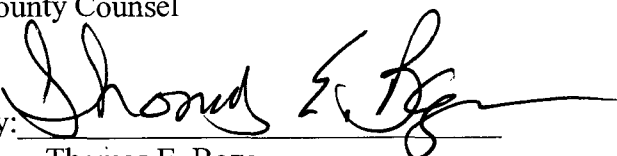
Patricia Gonzales
Deputy Clerk

APPROVED AS TO CONTENT:
Department of Public Works



Matt Machado, Director

APPROVED AS TO FORM:
Michael H. Krausnick
County Counsel

By: 

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. 2013-0087007

FIRST AMERICAN TITLE INSURANCE CO.

BY [Signature]

Road Name: CLARIBEL ROAD

APN: 082-004-038 (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]

(print) Gregory Ellis

Dated: 8/5/13

[Signature]

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]

Dated: 9/11/13

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

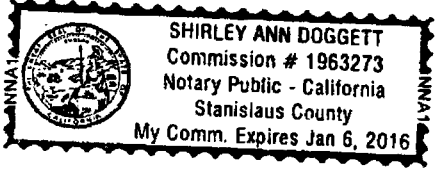
State of California

County of Stanislaus

On August 5, 2013 before me, Shirley Ann Doggett - Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Gregory + Karen Talles
Name(s) of Signer(s)

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
Signature of Notary Public

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

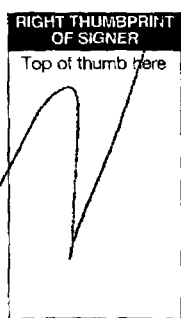
Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

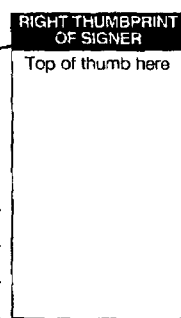
Capacity(ies) Claimed by Signer(s)

- 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 RIGHT OF WAY WIDENING
A.P.N. 082-004-038

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 B 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 457.11 feet to the point of intersection with the Northerly extension of the West line of said Big Sky Investments 3 parcel; thence South 01°08'27" East along last said extension line, a distance of 10.00 feet to a point on the South right of way line of a 40.00 foot wide County Road known as Claribel Road; thence South 89°27'47" East along last said South right of way line, a distance of 663.95 feet to an angle point in said right of way line; thence South 00°31'27" West along last said right of way line and the Southerly extension thereof, a distance of 42.05 feet to a point; thence North 89°57'30" West, a distance of 299.35 feet to an angle point; thence South 88°24'41" West, a distance of 198.51 feet to a point which lies 62.00 feet perpendicular to and South of said North line of the Northwest quarter of Section 3; thence North 89°27'47" West, 62.00 feet South of and parallel with last said quarter section line, a distance of 164.72 feet to a point on the west line of said Ellis parcel; thence North 01°08'27" West along last said line, a distance of 52.02 feet to the point of beginning.

CONTAINING 31,166 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

**ASSOCIATED
ENGINEERING
GROUP**



4206 TECHNOLOGY DRIVE, SUITE 4, MODESTO, CA 95356
PHONE: (209) 545-3390 FAX: (209) 545-3875 www.aesoceng.com

EXHIBIT "B"

APN: 082-004-038

DRAWN:	DLS
DATE:	7/24/13
SCALE:	1"=100'
JOB #:	784-10
DWG:	1d.plots

