

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS

ACTION AGENDA SUMMARY

DEPT: Public Works

BOARD AGENDA # *C-3

Urgent Routine

AGENDA DATE July 15, 2014

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approve Agreement to Acquire a Temporary Construction Easement for the Parklawn Neighborhood Sewer Improvements - Phase 2, Parcel Owner: HVP, L.P. a California Limited Partnership, located at 1001 Oates Court, Assessor's Parcel Number (APN): 086-014-021

STAFF RECOMMENDATIONS:

1. Approve the purchase agreement for the acquisition of a Temporary Construction Easement (TCE) in the parcel identified as APN: 086-014-024.
2. Authorize the Chairman of the Board to execute the agreement.

FISCAL IMPACT:

The total estimated cost for this project is \$2,923,337.75. The \$1,000 for the purchase of this TCE is funded by the State Water Resources Control Board and consists of \$500 for the purchase of the road easement and \$500 for estimated escrow and title insurance fees. Funding is available in the Fiscal Year 2014-2015 Public Works - Parklawn Sewer Construction Budget.

BOARD ACTION AS FOLLOWS:

No. 2014-376

On motion of Supervisor Monteith, Seconded by Supervisor Withrow and approved by the following vote,

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


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:



ATTEST:

CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approve Agreement to Acquire a Temporary Construction Easement for the Parklawn Neighborhood Sewer Improvements - Phase 2, Parcel Owner: HVP, L.P. a California Limited Partnership, located at 1001 Oates Court, Assessor's Parcel Number (APN): 086-014-021

DISCUSSION:

The Parklawn Neighborhood Sewer Improvements - Phase 2 project is located in an existing unincorporated community south of Hatch Road and west of Morgan Road on the south side of the City of Modesto.

The primary purpose of this project is to provide a sewer system to the neighborhood that allows property owners to abandon their existing failing septic tanks and connect to a public sewer system. The Parklawn Neighborhood is an unincorporated, disadvantaged community on the south side of the City of Modesto with 327 parcels that rely on septic tanks for treatment of sewage. Failing septic tanks within the neighborhood threaten local water supplies and pose a public health risk.

Upon completion of construction, the City of Modesto will operate and maintain the sewer system, including the pump station.

On October 2, 2012, a Notice of Determination for a Negative Declaration was filed with the County Clerk-Recorder under the California Environmental Quality Act (CEQA) Section 21108 or 21152 of the Public Resources Code.

On December 4, 2012, the Board of Supervisors awarded the construction contract for the first phase of the Parklawn Neighborhood Sewer Improvements in the amount of \$982,551 using federal Community Development Block Grant Funds (CDBG) and authorized the use of Stanislaus County Community Development Funds for Public Works staff's pursuance of financing options for future phases of the project.

On April 16, 2013 the Board of Supervisors adopted a resolution authorizing the Director of Public Works to apply for, enter into, and sign the Financial Assistance Application for the California Water State Revolving Fund (CWSRF) from the State Water Resources Control Board (SWRCB) for the planning, design, and construction of the second phase of the Parklawn Sewer Project. With this action the department was able to secure a grant in the amount of \$4,951,094. The grant includes 100% loan forgiveness.

To accomplish this project, the County will need to acquire a TCE at 1001 Oates Court, APN 086-014-021. The property owners have agreed to accept the following:

Property Owner(s):	HVP, L.P. A California Limited Partnership
Amount of Compensation:	\$500
Assessor's Parcel Number:	086-014-021
TCE Area:	800 square feet

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

Approve Agreement to Acquire a Temporary Construction Easement for the Parklawn Neighborhood Sewer Improvements - Phase 2, Parcel Owner: HVP, L.P. a California Limited Partnership, located at 1001 Oates Court, Assessor's Parcel Number (APN): 086-014-021

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 building a sewer system to replace failing septic systems which threaten ground water quality and pose a public health risk.

STAFFING IMPACT:

Public Works Construction Administration will be inspecting this project in conjunction with the City of Modesto Utility Planning and Projects inspectors.

CONTACT PERSON:

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

RIGHT OF WAY CONTRACT

PROJECT: Parklawn

APN: 086-014-021

ADDRESS: 1001 Oates Court

OWNER: HVP

Stanislaus County
Department of Public Works
1716 Morgan Road
Modesto, CA 95358

This Agreement is made between the COUNTY OF STANISLAUS, a municipal corporation, its assigns or agents, hereinafter collectively referred to as "COUNTY," and HVP, L.P., A CALIFORNIA LIMITED PARTNERSHIP hereinafter referred to as "OWNER."

The property subject to this agreement is described as: Temporary Construction Easement.

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 the COUNTY of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement

(B) COUNTY requires said property rights described in the above documents for transportation purposes, a public use for which COUNTY has the authority to exercise the power of eminent domain. Owner(s) is compelled to sell, and COUNTY is compelled to acquire the property.

Both Owner(s) 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 SHALL:

(A) Pay the undersigned Grantor the sum of \$500.00 for the property or interest conveyed by above document when title to said property vests in the COUNTY subject to all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes.

(B) Pay all escrow and recording fees incurred in this transaction and, if title insurance is desired by the COUNTY, the premium charged therefor. Said escrow and recording charges shall not, however, include documentary transfer tax.

3. DEED OF TRUST(S):

Any monies payable under this contract up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said trust deed(s) or mortgage(s), shall upon demand(s) be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder; said mortgagee(s) or beneficiary(ies) to furnish Owner with good and sufficient receipt showing said monies credited against the indebtedness secured by said mortgage(s) or deed(s) of trust.

4. SPECIAL ASSESSMENTS:

It is agreed between the parties hereto that the COUNTY in acquiring an easement subject to unpaid assessments, as set forth herein, is not assuming responsibility for payment or subsequent cancellation of such assessments. The assessments remain the obligation of the Owner and, as between the COUNTY and the Owner; no contractual obligation has been made requiring payment. Payment for the property acquired

RIGHT OF WAY CONTRACT

PROJECT: Parklawn

APN: 086-014-021

ADDRESS: 1001 Oates Court

OWNER: HVP

under this transaction is made upon the basis that the Owner retains their obligation to the levying body respecting said assessments.

5. LEASES:

Owner warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the Owner agrees 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 Owner for a period exceeding one month.

6. HAZARDOUS WASTE:

The acquisition price of the property being acquired in this transaction reflects the fair market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of hazardous waste, which required mitigation under Federal or State law, the COUNTY may elect to recover its cleanup costs from those who caused or contributed to the contamination.

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

7. INDEMNIFICATION:

COUNTY agrees to indemnify and hold harmless the Owners 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 operation under this agreement and COUNTY will, at its option, either repair or pay for such damage.

8. OWNER'S COST TO CURE:

It is understood and agreed by and between the parties hereto that the COUNTY will replace/relocate or protect fencing which includes but not limited to the brick wall.

9. Construction Contract Work:

In the event the COUNTY removes fencing as part of the project, the COUNTY will construct secure site fencing. The site fencing will remain until permanent fencing can be constructed.

10. DAMAGES:

It is understood and agreed by and between the parties hereto that payment as provided in 2A above, includes, but is not limited to, any and all damages which may accrue to the Owner's remaining property by reason of its severance from the property conveyed herein and the construction of the proposed project, including, but not limited to, any expense which may be entailed by the Owner's in restoring the utility of their remaining property.

11. DATE OF POSSESSION:

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 the COUNTY, including the right to remove and dispose of improvements, shall commence on July 1, 2014 or the close of the escrow controlling this transaction, whichever occurs first, and that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

In Witness Whereof, the Parties have executed this agreement the day and year first below written.

**HVP, L.P., A CALIFORNIA
LIMITED PARTNERSHIP**

COUNTY OF STANISLAUS

Date: 5-8-2014

Date: 7/15/2014

By: Frank Nisonser

By: Jim De Martini
Jim De Martini
Chairman of the Board of Supervisors
Of the County of Stanislaus, State of
California
Shirley E. Boyer
Deputy County Counsel

By: FRANK NISONSER

No Obligations Other Than Those Set Forth Herein Will Be Recognized



Stanislaus, County Recorder
Lee Lundrigan Co Recorder Office
DOC- 2014-0047640-00

Acct 109-Public Works
Wednesday, JUL 23, 2014 14:56:29
Ttl Pd \$0.00 Rcpt # 0003548172
KLR/R2/1-7

NO FEE
RECORDING REQUESTED BY:
BOARD OF SUPERVISORS

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

Road Name: Midway Avenue

APN: 086-014-021

TEMPORARY CONSTRUCTION EASEMENT

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

HVP, L.P., a California Limited Partnership

Does hereby grant to the COUNTY OF STANISLAUS, a political subdivision of the State of California a **temporary construction easement** for access and construction purposes in the real property in the County of Stanislaus, State of California described as:

SEE EXHIBIT "A" AND "B"

(sign) Frank Nisonser
(print) FRANK NISONSER
Dated: 5-8-2014

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 HVP, L.P., a California Limited Partnership to the 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.

The Temporary Construction Easement shall commence on the date of this agreement and shall automatically terminate and expire upon the date of the improvements are completed and a notice of completion is filed for record with the Stanislaus County Recorder. All rights and benefits of the Grantee in, to and under the Temporary Construction Easement shall automatically terminate and shall cease to be enforceable or in effect.

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

By Matthew Machado Dated: 7/8/14

TWC

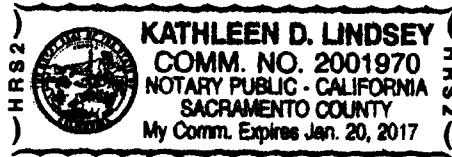
ACKNOWLEDGMENT

State of California
County of Sacramento

On May 12, 2014, before me, Kathleen D. Lindsey, Notary Public, personally appeared Frank Nisonger, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 Kathleen D. Lindsey

(Seal)

Exhibit "A"
A.P.N. 086-014-021

TEMPORARY CONSTRUCTION EASEMENT
LEGAL DESCRIPTION

That portion of the property granted to HVP, L.P., a California Limited Partnership, by Grant Deed recorded May 29, 2002 as Document No. 2002-0068312, being Parcel 2 of that certain Parcel Map filed May 2, 2002 in Book 51, at Page 59 Stanislaus County Records, situate in the Northeast quarter of Section 9, Township 4 South, Range 9 East, Mount Diablo Meridian, Stanislaus County California, more particularly described as follows:

Beginning at the Northeast corner of said Parcel 2; thence South $00^{\circ} 01' 27''$ West along the east line of said Parcel 2 a distance of 35.00 feet; thence leaving said east line of said Parcel 2, North $89^{\circ} 57' 52''$ West, 10.00 feet; thence North $00^{\circ} 01' 27''$ East, 20.00 feet; thence North $89^{\circ} 57' 52''$ West, 30.00 feet; thence North $00^{\circ} 01' 27''$ East, 15.00 feet to the north line of said Parcel 2; thence South $89^{\circ} 57' 52''$ East along said north line 40.00 feet to the point of beginning.

Having an area of 800.00 square feet.

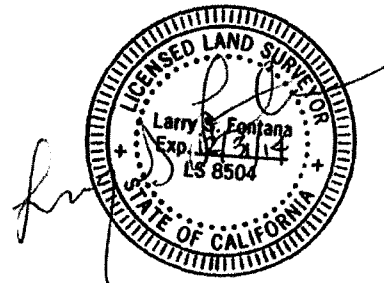
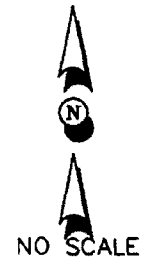


EXHIBIT "B"



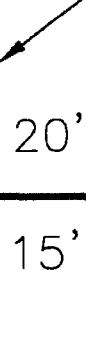
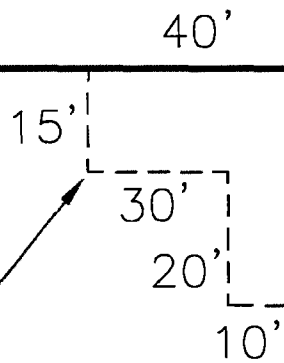
MIDWAY
AVE

20' ALLEY BLK.10040

P.O.B.

NELSON WAY

TEMPORARY
CONSTRUCTION
EASEMENT



A.P.N. 086-014-021



TEMPORARY CONSTRUCTION EASEMENT
A.P.N.: 086-014-021

