

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

DEPT: Public Works *AMM*

BOARD AGENDA # *C-6

Urgent Routine

AGENDA DATE January 12, 2010

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 State Route 219 Widening Project, Parcel Owner Oscar Rudolph Wedegaertner Trustee, et ux, APN: 046-006-005 and APN: 046-006-006, 10-Sta-219-KP 6.0, Parcel 15328

STAFF RECOMMENDATIONS:

Consider and adopt a Resolution of Necessity to acquire Real Property or Interest in Real Property by Eminent Domain for the State Route 219 widening project, parcel owner Oscar Rudolph Wedegaertner Trustee, et ux., for APN: 046-006-005 and APN: 046-006-006, and make the findings contained therein.

FISCAL IMPACT:

Under the County's Memorandum of Understanding with the California Department of Transportation (Caltrans), Stanislaus County will bear the costs associated with noticing and conducting the Resolution of Necessity hearings. It is anticipated that these costs will be minimal and can be absorbed within the Public Works Road and Bridge budget.

BOARD ACTION AS FOLLOWS:

No. 2010-022

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

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Grover

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, 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 State Route 219 Widening Project, Parcel Owner Oscar Rudolph Wedegaertner, Trustee, et ux., APN: 046-006-005 and APN: 046-006-006, 10-Sta-219-KP 6.0, Parcel 15328

DISCUSSION:

The Caltrans widening of State Route 219 (Kiernan Avenue) from State Route 99 on the west to State Route 108 (Mc Henry Avenue) on the east is divided into two phases. The first phase, which is currently under construction, is from State Route 99 to just east of Dale Road. The second phase is from just east of Dale Road on the west to State Route 108. Caltrans completed right-of-way acquisition for Phase I and is now in the process of purchasing right-of-way for Phase II.

The County of Stanislaus, City of Modesto, Stanislaus Council of Governments (StanCOG), and Caltrans have been working together to accelerate this widening project and since the right-of-way acquisition procedures presented the largest delay, the County agreed to conduct the Resolution of Necessity hearings on behalf of the State. Typically, the Resolution of Necessity hearings are conducted at the California Transportation Commission (CTC), however, by conducting the hearings locally a long scheduling delay is avoided. In 2007, with the approval of a Memorandum of Understanding with Caltrans, the Board of Supervisors conducted the Resolution of Necessity hearings for Phase I. On June 3, 2008, the Board of Supervisors approved a similar Memorandum of Understanding with Caltrans, which outlined the various roles and responsibilities necessary to conduct the hearings for the Phase II improvements. These hearings are only for properties needed for the widening project that could not be obtained by negotiation. Conducting these hearings should result in approval or disapproval of a Resolution of Necessity containing the following four findings:

- A. The public interest and necessity require the project.
- B. The project is planned or located in the manner that will be most compatible with the greatest public good with the least private injury.
- C. This property is required for the proposed project.
- D. An offer to purchase the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

This hearing is for a partial acquisition of property described by Caltrans as Parcel 15328, has an Assessor's Parcel Number of 046-006-005 and 046-006-006 and is located at 1420 Kiernan Avenue. This property is not in a Williamson Act contract. The property owner is Oscar Rudolph Wedegaertner, Trustee, et ux. The property owner is not contesting the items in the Resolution of Necessity, the only issue with the property owner is related to compensation.

Staff believes that Caltrans has complied with all requirements of the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970 as amended. The Caltrans staff appraisal of the property has been reviewed by the District/Region Appraisal Branch and Caltrans has confirmed that the value conclusions are valid and the appraisal represents current market value. The owner has been offered the full amount of the approved appraisal.

Approval to Consider and Adopt a Resolution of Necessity to Acquire Real Property or Interest in Real Property by Eminent Domain for the State Route 219 Widening Project, Parcel Owner Oscar Rudolph Wedegaertner, Trustee, et ux., APN: 046-006-005 and APN: 046-006-006, 10-Sta-219-KP 6.0, Parcel 15328

The amount of compensation is specifically excluded from consideration in the adoption of a Resolution of Necessity. Once a Resolution is passed, court proceedings can begin to consider the remaining issue of compensation. If the property owner wishes to contest any of the four issues (listed A - D above) considered in a Resolution of Necessity, a request to appear should be sent in advance of the hearing. Caltrans representatives will attend the hearing as needed to provide evidence and testimony sufficient to support adoption of the proposed Resolution of Necessity and the findings contained within.

This parcel is not in a Williamson Act contract and was evaluated in the Environmental Assessment pursuant to the Farmland Protection Policy Act, the California Land Conservation Act of 1965, and local farmland protection policies. Caltrans determined that there would be no substantial impact resulting from the construction of the proposed project.

Caltrans also determined in a formal notification to the Department of Conservation that this project is considered exempt from making the findings as required in Government Codes Section 51292, per Section 51293 (f).

POLICY ISSUES:

The Board should consider if the recommended actions are consistent with its priorities of providing a safe community, a healthy community and a well-planned infrastructure system.

STAFFING IMPACT:

Staff from the Chief Executive Office, County Counsel and Public Works have been involved in preparing notices, agenda items and presentations associated with the Resolution of Necessity hearings.

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

Date: January 12, 2010

No. 2010-022

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

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Grover

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

THE FOLLOWING RESOLUTION WAS ADOPTED:

Item # *C-6

**TO ACQUIRE CERTAIN REAL PROPERTY OR INTEREST IN REAL PROPERTY
BY EMINENT DOMAIN HIGHWAY 10-Sta-219-KP 6.0, PARCEL 15328,
APN: 046-006-005 and APN: 046-006-006, OWNER: Oscar Rudolph Wedegaertner, Trustee, et ux.**

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, Streets and Highways Code section 760 authorizes the Board of Supervisors, by four-fifths vote, to cooperate with the California Department of Transportation ("Caltrans") in the acquisition of land for state highway purposes if doing so will promote the interests of the County of Stanislaus; and

WHEREAS, on June 3, 2008, the Board of Supervisors adopted by four-fifths vote, a Resolution Authorizing a Memorandum of Understanding with Caltrans for the County to Conduct Resolution of Necessity Hearings to Assist Caltrans in Acquiring Property for State Route 219 Transportation Improvements.

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 hearing 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

ATTEST: **CHRISTINE FERRARO TALLMAN, Clerk**
Stanislaus County Board of Supervisors,
State of California

Christine Ferraro

WHEREAS, notice has been properly given to the Director of Conservation pursuant to Government Code section 51291 of the intent to consider the property for location of the project:

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of Supervisors of Stanislaus County that the following findings be made:

1. The public interest and necessity require the acquisition of the real property interests described in Exhibit "A", "B", and "C", attached hereto and incorporated by this reference for the proposed public project, namely a State highway; and
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; and
3. The property sought to be acquired and described by this resolution is necessary for the public project; and
4. The offer required by Section 7267.2 of the Government Code has been made to the owners of record.

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of Supervisors of Stanislaus County that the California Department of Transportation is hereby authorized and empowered;

To acquire, in the name of the People of the State of California, in fee simple absolute, unless a lesser estate is hereinafter expressly described, the real property, or interests in real property described in Exhibit "A", "B", and "C" attached hereto, by condemnation proceeding or proceedings in accordance with the provisions of the Streets and Highways Code, Code of Civil Procedure and of the Constitution of California relating to eminent domain;

The real property or interests in real property, which the Department of Transportation is by this resolution authorized to acquire, is situated in the County of Stanislaus, State of California, Highway 10-Sta-219 and described in Exhibit "A", "B", and "C" attached hereto.

1 **Parcel 15328**

2 For State highway purposes, a portion of that certain parcel of land
3 described in the Grant Deeds recorded May 17, 1999 as Documents No. 1999-
4 0049574-00 and 1999-0049575-00, Official Records Stanislaus County, being a
5 portion of Lot 12 of ALBEMERL TRACT, filed April 13, 1909, in Volume 4 of Maps
6 at Page 19, Stanislaus County Records, lying northerly of courses (6) and (7) of
7 the following described courses:

8 BEGINNING at the position for the North quarter corner of Section 6,
9 Township 3 South, Range 9 East, Mount Diablo Meridian, said position is South
10 00°56'10" East, a distance of 0.582 (1.91 feet) from a 2" iron pipe marking a
11 Witness Corner as shown on Record of Survey filed in Book 16 of Surveys at
12 Page 16, Stanislaus County Records; THENCE (1) South 00°56'10" East, along
13 the North-South Quarter Section line of said Section 6, a distance of 205.453
14 meters, the South quarter corner of said Section 6 being marked by a 2" iron pipe
15 with a brass cap, as shown on Record of Survey filed in Book 16 of Surveys at
16 Page 16, Stanislaus County Records; THENCE (2) North 14°09'04" East, a
17 a distance of 61.274 meters; THENCE (3) North 00°16'25" East, a distance of
18 56.657 meters; THENCE (4) North 17°05'43" East, a distance of 29.024 meters;
19 THENCE (5) North 87°45'18" East, a distance of 275.797 meters; THENCE (6)
20 North 88°43'12" East, a distance of 177.581 meters; THENCE (7) South 89°39'54"
21 East, a distance of 297.008 meters; THENCE (8) South 15°02'46" East, a distance
22 of 21.949 meters; THENCE (9) South 01°05'53" East, a distance of 124.769
23 meters; THENCE (10) South 02°01'08" East, a distance of 232.082 meters to the
24 southerly line of Lot 11 of said ALBEMERL TRACT; THENCE (11) South 88°32'59"
25 East, a distance of 15.558 meters to the easterly line of the Northeast Quarter of
26 said Section 6; THENCE (12) North 01°06'31" West, along said easterly line, a
27 distance of 410.419 meters to the Northeast corner of said Section 6, said corner

1 **Parcel 15328 (continued)**

2 being marked by a 2 1/2" brass cap in monument well, as shown in Record of
3 Survey, recorded in Book 20 of Surveys at Page 40, Stanislaus County Records;
4 **THENCE (13) North 88°49'10" West, a distance of 801.312 meters to the POINT OF**
5 **BEGINNING.**

6 The bearings and distances used in this description are on the California
7 Coordinate System of 1983, Zone 3. Multiply distances by 1.00006972 to convert
8 to ground distances.

9 **TOGETHER WITH** all of the existing improvements which are located
10 partially within and partially outside the boundaries of the above-described
11 parcel, together with the right and easement to enter upon the owner's remaining
12 land outside the boundaries of said parcel at any time within 120 days after the
13 date possession is authorized as indicated in the order for possession, or within
14 **120 days after FINAL JUDGEMENT IN CONDEMNATION, for the purpose of**
15 **removing all of the said existing improvements.**

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EXHIBIT A



T.2S., R.9E., M.D.M.

E 1/4 COR SEC 31, 2/9

N 1/4 COR SEC 31, 2/9

Section 31

CARVER

T.2S., R.9E.,
M.D.M.

Section 32

TRACT

Corver Rd.

Proposed R/W

Kiernan Ave.

219

Proposed R/W

Township Line

PROPOSED
N 1/4 COR SEC 6, 3/9

STATE ROUTE

ALBEMERL

NE COR SEC 6, 3/9

15328

PORTION OF
Lot 12

TRACT

Section 6

T.3S., R.9E., M.D.M.

T.3S., R.9E.,
M.D.M.

Section 5

E 1/4 COR SEC 6, 3/9

LEGEND

- PARCEL 15328 FEE
- PARCEL 15328 PROPERTY BOUNDARY



NO SCALE

CONVERSION FACTOR: This survey is in meters.
Multiply by 3937/1200 to convert to feet.

This survey is based on the California Coordinate
System of 1983, Zone 3. Units are in meters and
bearings and distances are on grid. Multiply by
1.00006972 to convert to ground distances.

RESOLUTION OF NECESSITY
AREA MAP
10-Sta-219 K.P. 6.0

EXHIBIT B



T.2S., R.9E., M.D.M.

CARVER

Section 31

TRACT

N 1/4 COR SEC 6, 3/9
Calc'd from Witness Cor.
per 16-S-16 & 20-S-40
POINT OF BEGINNING

Proposed R/W

Exst'ng R/W

Township Line

To NE Cor Sec 6

Kiernan Ave.

801.312 N88°49'10"W

Exst'ng R/W

PROPOSED STATE ROUTE 219

N87°45'18"E

275.797

96.935

166.108

Proposed R/W

109.689

N88°43'12"E 177.581

ALBEMERL

TRACT

Section 6

T.3S., R.9E., M.D.M.

Carver Rd.

205.453

S0°56'10"E

1619.347

N0°16'25"E N17°05'43"E

56.657

29.024

N14°09'04"E

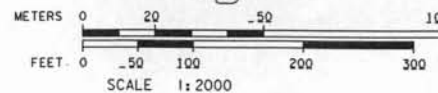
61.274

S 1/4 COR SEC 6, 3/9
2" IP with Brass Cap

SEE EXHIBIT C

CONVERSION FACTOR: This survey is in meters.
Multiply by 3937/1200 to convert to feet.

This survey is based on the California Coordinate
System of 1983, Zone 3. Units are in meters and
bearings and distances are on grid. Multiply by
1.00006972 to convert to ground distances.



RESOLUTION OF
NECESSITY MAP

10-Sta-219 K.P. 6.0

EXHIBIT C



NE COR SEC 6, 3/9
Fd 2 1/2" Brass Cap
in Monument Well
per 20 S 40

PROPOSED STATE ROUTE 219

Proposed R/W

Township Line

Kiernan Ave.

To Point Of Beginning 801.312 N88°49'10"W
N01°18'29"E 6.308

S88°55'24"E 89.450 N10°11'15"E 12.285

S88°54'18"E 204.297

80.646

N88°43'12"E 177.581

210.276
297.008

S89°39'54"E

Proposed R/W

52.274
S10°11'15"W

21.949
S15°02'46"E

S00°58'41"W
60.770

124.769
S01°05'53"E

Tully Rd:
N01°06'31"W 410.419

232.082
S02°01'08"E

S88°32'59"E
15.558

Southerly Line of Lot 11

SEE EXHIBIT B

S01°07'09"E
24.559

163.601
S01°07'09"E

ALBEMERL

Portion of
Lot 12

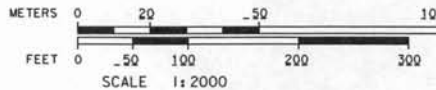
Section 6

T.3S., R.9E., M.D.M.

15328

PORTION OF LOT 12

TRACT



CONVERSION FACTOR: This survey is in meters.
Multiply by 3937/1200 to convert to feet.

This survey is based on the California Coordinate
System of 1983, Zone 3. Units are in meters and
bearings and distances are on grid. Multiply by
1.00006972 to convert to ground distances.

LEGEND	
	PARCEL 15328 FEE
	PARCEL 15328 PROPERTY BOUNDARY

RESOLUTION OF
NECESSITY MAP
10-Sta-219 K.P. 6.0