

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

DEPT: Public Works *mlal*

BOARD AGENDA # *C-2

Urgent

Routine

AGENDA DATE October 4, 2011

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval of Purchase Agreement to Acquire Road Right-of-Way for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project, Parcel Owner Frederick B. Butterworth, APN: 136-020-010

STAFF RECOMMENDATIONS:

1. Approve the purchase agreement for the subject acquisition.
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 dated March 8, 2011 and Government Code 27281.
4. Direct the Auditor-Controller to issue a warrant in the total amount of \$185,000 payable to Fidelity National Title Company, for the purchase amount of \$182,750 and \$2,250 for estimated escrow fees and title insurance.

FISCAL IMPACT:

The total estimated cost for the SR 99/SR 219 (Kiernan Avenue) Interchange project is approximately \$46,000,000. The \$185,000 for the purchase of this right-of-way is funded 100% by the Regional Transportation Impact Fee Program (RTIF) and consists of \$182,750 for the purchase of the right-of-way, and \$2,250 for estimated escrow and title insurance fees. The SR 99/SR 219 (Kiernan Avenue) Interchange improvement project is an approved project in the County's Public Facilities Fee - Regional Transportation Impact Fee (RTIF) program.

BOARD ACTION AS FOLLOWS:

No. 2011-567

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

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

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 Purchase Agreement to Acquire Road Right-of-Way for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project, Parcel Owner Frederick B. Butterworth, APN: 136-020-010

DISCUSSION:

Stanislaus County, in cooperation with Caltrans District 10, proposes to reconstruct the Highway 99 at Kiernan Avenue interchange in the community of Salida. This project will help facilitate future growth, help alleviate traffic congestion, and will improve the operation of this interchange. Increasing the efficiency of the interchange will also encourage the free flow of goods and services for the region and the State. Two build alternatives and the no-build alternative were proposed and studied for this interchange. Alternative #1 was the preferred alternative and has been estimated to cost approximately \$46 million (in today's dollars) for construction and right-of-way acquisitions. The project is proposed for funding by the Stanislaus County Public Facilities Fees, environmental mitigation fees, and the State Route 99 Bond Savings funds. Once realized, the Bond Savings funds will provide up to \$40 million toward the construction phase of the project.

The proposed interchange improvements include reconstruction of the existing interchange to provide improved operations for turning movements to and from State Route (SR) 99, as well as associated local road improvements at adjacent intersections.

The interchange is located in the north part of Stanislaus County and on the northern edge of the City of Modesto, providing access to commercial and residential properties in the community of Salida.

Stanislaus County Public Works has completed the planning and environmental phases of the project, which were funded with contributions from developers in conjunction with the Salida Community Plan and the voluntary regional transportation contribution received from Kaiser Permanente.

In November of 2008, the Public Works Department issued a Request for Proposal (RFP) to perform the PA&ED (environmental) and the PS&E (design) phases for this project. In an effort to save time, money, and maintain the project schedule, it was the desire of the Department to move directly into the design and right-of-way acquisition phase of the project near the completion of the environmental phase. An agreement with Rajappan & Meyer Consulting Engineers for the environmental phase was entered into in February 2009. In September of 2010, R&M began the design phase of the project. Rajappan & Meyer (R&M) completed the environmental phase in May of 2011. To maintain the project schedule outlined in the SR 99 Bond Savings funding application, it was necessary to begin completing the initial design tasks, which included the preliminary engineering design, right-of-way engineering, and to begin preparing right-of-way acquisition documents. Along with working toward a final design, department staff are also in the process of acquiring the necessary lands to construct the planned improvements.

If the SR 99 Bond Savings funds do not get programmed as planned, the Department feels it is still important to proceed with the right-of-way acquisition phase of the project so that it will be "shelf ready" when a funding source is identified. Having a shelf ready project may increase the availability of funding opportunities.

Approval of Purchase Agreement to Acquire Road Right-of-Way for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project, Parcel Owner Frederick B. Butterworth, APN: 136-020-010

To accomplish the SR 99/SR 219 (Kiernan Avenue) Interchange project, the County will need to acquire the Frederick B. Butterworth parcel on the northwest corner of SR 219 (Kiernan Avenue) and Sisk Road. The property owner has agreed to accept the following compensation:

Property Owner: Frederick B. Butterworth
Amount of Compensation: \$182,750
Assessor's Parcel Number: 136-020-010
Right-of-Way Area: 0.225 acres

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

At the completion of the construction phase of the project, the acquired right-of-way will be dedicated over to the State for the operation and maintenance of the improved facility.

As part of this right of way acquisition, the existing property owner has also agreed to \$1,900 compensation for moving expenses, as part of the Relocation Assistance process. As this is a project which is situated on a State Highway, and the parcel will be deeded to the State, the project comes under the policies and guidelines of the Federal Highway Administration (FHWA) and The California Department of Transportation (Caltrans). This means that the project sponsor (The County) must follow the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 as Amended (The Uniform Act).

POLICY ISSUES:

The SR 99/SR 219 (Kiernan Avenue) Interchange project supports the Board's priorities of providing A Safe Community, A Healthy Community and A Well-Planned Infrastructure System by 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.
Chris Brady, Public Works

District	County	Route	P.M.	E. A.	Caltrans Parcel No.	Federal Reference No.	Name	APN
10	STAN	Kiernan Ave. SR219	0.0/0.3	10-OL3309 BRI 10118	16524		Frederick B. Butterworth	136-020-010

Salida _____, California

September 1 _____, 2011

Frederick B. Butterworth

Grantor

COUNTY OF STANISLAUS RIGHT OF WAY CONTRACT

Document number 10-16524, in the form of a Grant Deed to the County of Stanislaus covering the property as delineated on the attached map and particularly described in the above referenced instrument and map labeled "Exhibit A" attached hereto and made a part hereof, has been executed and delivered to, Tom Ganyon, Senior Right of Way Agent, acting as Agent for the County of Stanislaus.

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 Stanislaus of all further obligations or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
- (B) The County of Stanislaus requires said property described in Exhibit "A" for roadway purposes, a public use for which the County of Stanislaus has the authority to exercise the power of eminent domain. Grantor is compelled to sell, and the County of Stanislaus is compelled to acquire the property.
- (C) Both Grantor and the County of Stanislaus 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 of Stanislaus shall:
 - (A) Pay the undersigned Grantor the sum of **\$182,750** for the property or interests therein which the parties agree includes compensation for all improvements conveyed by the above document, when title to said property vests in the County of Stanislaus free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes, except:
 - a. Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.
 - b. Covenants, conditions, restrictions and reservations of record, or contained in the above-referenced document.
 - c. Easements or rights of way over said land for public or quasi-public utility or public street purposes, if any.
 - (B) Pay all escrow and recording fees for this transaction, and if title insurance is desired by the County of Stanislaus, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer tax. This transaction will be handled through an escrow with Fidelity National Title Company of California, Escrow No. 10-5010450-A-PA located at 8950 Cal Center Drive, Bldg. 3, Suite 100 Sacramento CA 95928.
 - (C) Have the authority to deduct and pay from the amount shown on Clause 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow.

-----No Obligation Other Than Those Set Forth Herein Will Be Recognized-----

3. It is agreed and understood that the County of Stanislaus' valuation of the subject property located at 5000 Aylesbury Way, situated within the limits of the Salida, Stanislaus County, California further identified as APN 136-020-010 is based on a Market Approach to Value. The valuation including land and improvements is: \$149,000.
4. Any monies payable under this contract up to and including the total amount of unpaid principal and interest on note secured by deed of trust, if any, and all other amounts due and payable in accordance with terms and conditions of said trust deed, shall upon demand be made payable to the beneficiary entitled thereunder; said beneficiary to furnish grantor with good and sufficient receipt showing said monies credited against indebtedness secured by said Deed of Trust.
5. 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 of Stanislaus, including the right to remove and dispose of improvements, shall commence on the date of the close of the escrow controlling this transaction (see clause number 10 for further conditions). It is further agreed and confirmed by the parties that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including all improvements on and to the property including those improvements described and included in the fair market value appraisal of the property.
6. Grantor 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 grantor agrees to hold the County of Stanislaus harmless and reimburse the County of Stanislaus for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of grantor for a period exceeding one month. Grantor acknowledges that a quitclaim deed will be required from any lessee that has a lease term exceeding one month. Said quitclaim deeds are to be provided to Title Company's Escrow Agent by Grantor, prior to the close of escrow.
7. The County of Stanislaus agrees to indemnify and hold harmless the undersigned Grantor from any liability arising out of the County of Stanislaus' operations under this agreement. The County of Stanislaus further agrees to assume responsibility for any damages proximately caused by reason of the County of Stanislaus' operations under this agreement and the County of Stanislaus will, at its option, either repair or pay for such damage.
8. It is understood and agreed by and between the parties hereto that this Agreement inures to the benefit of, and is binding on, the parties, their respective heirs, personal representatives, successors, and or assignees.
9. It is further understood and agreed by and between the parties hereto that the subject property is currently in a "Negative Equity" situation whereby the subject property is encumbered by a mortgage (or other qualified lien) that exceeds the current Fair Market Value of the property evidenced by County's Market Value Appraisal.

Grantor hereby warrants the following is the only existing mortgage, assignment, or lien against the subject property:

Interest Holder	Current Lien Amount	Type of Lien or Interest
	(estimated amount projected to 10/15/11)	
GMAC Finance	\$177,750	First Deed of Trust

It is further understood and agreed by and between the parties hereto that payment in Clause 2(A) above includes the Just Compensation offered by County based on an appraisal of Fair Market Value of the property of \$149,000 and an additional \$33,750 (\$28,750± to satisfy lien holder and \$5,000 cash to Grantor) as an Administrative Settlement amount in order to allow the parties to reach agreement. The amount of additional funds estimated at \$33,750 (\$28,500 + \$5,000) represents the estimated payoff of the lien on the real property over and above the fair market value of the property assuming a 45-day escrow and a \$5,000 cash payment to Grantor.


-----**No Obligation Other Than Those Set Forth Herein Will Be Recognized**-----

In the event payment in Clause 2(A) above exceeds the actual payoff amount (less a \$5,000 payment to Grantor) the difference shall be refunded to the County of Stanislaus. Grantor waives any and all claims to said refund. In the event the payment in Clause 2(A) above is insufficient to satisfy any actual payoff amount(s) as of the date of the close of escrow, the difference shall be deposited into escrow by the County.

It is also further understood and agreed that Grantor shall not further encumber, assign, lien, or otherwise create any new security interest(s) in the subject property and that doing so shall constitute a material breach of this agreement."

- 10. It is agreed that Grantor shall have a 15-day grace period commencing on the day following the date of recordation of the deed conveying title to The County of Stanislaus and that Grantor shall deliver the above-described premises vacant to County on or before the 15th day after the date of recordation of the deed conveying title to County, in good order and condition, without further notice, and immediately thereafter deliver the keys thereto to Stanislaus County at 1716 Morgan Road, Modesto, CA 95358. Grantor shall also pay all closing utility bills up to and including the date of vacation.
- 11. Escrow Agent shall deliver payment under this contract to Grantor when title to the property vests in Stanislaus County's name, free and clear of all liens, encumbrances, assessments, easements, leases (recorded and/or unrecorded), and taxes unless otherwise indicated in Escrow Instructions as executed by the parties and submitted to Escrow Agent.
- 12. Grantor understands and agrees that the compensation in the amount of \$182,750 offered in this Agreement is subject to and contingent upon approval of the Stanislaus County Board of Supervisors by adopting a Resolution authorizing the execution of the Agreement at their October 4, 2011 meeting. Should Grantor agree to sell to County, and County is unable to approve funding of the purchase of this property by October 15, 2011, this Agreement becomes null and void, and County shall have no further obligation to Grantor. If Grantor agrees to sell, and County approves funding by said date, all terms and condition of this Agreement apply.


In Witness whereof, the Parties vested have executed this agreement the day and year first above written.



 By: Frederick B. Butterworth Date
 Grantor

RECOMMENDED FOR APPROVAL:

APPROVED AND ACCEPTED:

THE COUNTY OF STANISLAUS


 By: Tom Ganyon
 Senior Right of Way Agent


 By: Matt Machado
 Director of Public Works
 Stanislaus County California

-----No Obligation Other Than Those Set Forth Herein Will Be Recognized-----

APPROVED AND ACCEPTED (continued):

COUNTY OF STANISLAUS

By: 

Dick Monteith

Chairman of the Board of Supervisors

ATTEST:

Christine Ferraro Tallman

Clerk of the Board of Supervisors of the
County of Stanislaus, State of California

By: 

Deputy Clerk

APPROVED AS TO FORM:

John P. Doering, County Counsel

By: 

Thomas E. Boze

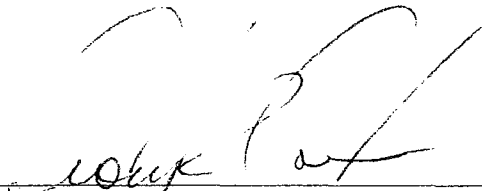
Deputy County Counsel

Exhibit A Legal Description

All that certain real property situate in the County of Stanislaus and State of California and being Lot 10 in Block A of Clarendon Woods Unit No. 1, as said Lot is shown on that certain Map filed for Record on January 13, 1987 in Volume 31 of Maps, at Page 53 Official Records of said County.

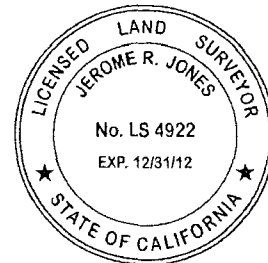
Excepting therefrom that portion described in the Deed recorded June 11, 2007 as Instrument No. 2007-0077185, Official Records of said County.

Said Parcel contains 9,810± square feet of land, more or less.



Jerome R. Jones L.S. 4922
License Expires: December 31, 2012

8/8/11
Date



RECORDING REQUESTED BY:

Fidelity National Title Co.

WHEN RECORDED RETURN TO:

County of Stanislaus
1021 I Street, Suite 100
Modesto, Ca 95354-0847

Attn: County Clerk Recorder

No Fee Document – per Government code 6103
No Document Transfer Tax – Per R&T Code 11922

Space above this line for Recorder's Use

GRANT DEED

APN: 136-020-010

Caltrans District	County	Route	Post Mile	Assessors' Parcel Number
10	STAN	Kiernan Avenue SR 219	0.0/0.3	136-020-010

Frederick B. Butterworth (Grantor) does hereby GRANT to the County of Stanislaus, a California municipal corporation of the State of California (Grantee) all that real property in the City of Salida, County of Stanislaus, State of California, described as:

SEE EXHIBIT "A", LEGAL DESCRIPTION, ATTACHED HERETO AND MADE A PART HEREOF.

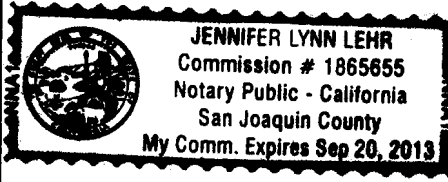

The grantor further understand that the present intention of the grantee is to construct and maintain public roadway improvements and appurtenances on the lands hereby conveyed in fee and the grantor, for himself, his successors and assigns, hereby waives any claims for any and all damages to grantor's remaining property (if applicable) contiguous to the property hereby conveyed by reason of the location, construction, landscaping or maintenance of said roadway.

Date: September 1, 2011

By: Frederick B. Butterworth
FREDERICK B. BUTTERWORTH
Grantor *Sept 2, 2011*

By: _____

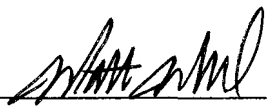
(print name): _____

State of <u>California</u> } County of <u>San Joaquin</u> } On <u>9-2-2011</u> before me, <u>Jennifer Lynn Lehr, Notary Public</u> Date Name, Title of Officer, e.g., "Jane Doe, Notary Public" personally appeared <u>Frederick B Butterworth</u> Name(s) of Signer(s) <input type="checkbox"/> personally known to me - OR - <input checked="" type="checkbox"/> proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instruments 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 entity upon behalf of which the person(s) acted, executed the instrument	CAPACITY CLAIMED BY SIGNER <input checked="" type="checkbox"/> INDIVIDUALS <input type="checkbox"/> CORPORATE OFFICER(S) _____ Title(s) <input type="checkbox"/> PARTNER(S) <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> SUBSCRIBING WITNESS <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER: _____
	SIGNER IS REPRESENTING: Name of person(s) or entity(ies) <u>Himself</u>
Witness my hand and official seal.  Signature of Notary	
ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized document.	
THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:	Title or Type of Document <u>Grant Deed APN 136 020-010</u> Number of Pages <u>01</u> Date of Document <u>September 1, 2011</u> Signer(s) Other Than Named Above <u>n/a</u>

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed to the County of Stanislaus, by the within instrument, the provisions of which are incorporated by this reference as though fully set forth in this Certification, is hereby accepted by the undersigned officer(s) on behalf of the County, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: 10/10/11

By: 
Matt Machado
Director of Public Works
Stanislaus County
