

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

DEPT: Public Works

BOARD AGENDA # C-3i

Urgent Routine

AGENDA DATE July 16, 2013

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 Claribel Road Widening Project, Parcel Owner: Big Sky Investments 3 LLC, a California Limited Liability Company, APN 082-004-038

STAFF RECOMMENDATIONS:

1. Find that the public interest and necessity require the proposed project.
 2. Find that the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
 3. Find that the subject property described in the attached Resolution is necessary for the proposed project.
 4. Find that the offer required by section 7267.2 of the Government Code has been made to the owners of record of the property to be acquired.
- (CONTINUED ON PAGE 2)

FISCAL IMPACT:

The costs associated with conducting the Resolution of Necessity hearings are funded by the Regional Transportation Impact Fee (RTIF) funds. Although the costs have not been identified, it is anticipated that they will be minimal and will be absorbed within the current year Public Works Road Projects Budget.

BOARD ACTION AS FOLLOWS:

No. 2013-363

On motion of Supervisor O'Brien, Seconded by Supervisor De Martini

and approved by the following vote,

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

Noes: Supervisors: None

Excused or Absent: Supervisors: Monteith

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



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 Claribel Road Widening Project, Parcel Owner: Big Sky Investments 3 LLC, a California Limited Liability Company, APN 082-004-038

STAFF RECOMMENDATIONS (Continued):

5. Adopt a Resolution of Necessity in the form attached hereto as Attachment A.
6. Authorize County Counsel to initiate eminent domain proceedings to acquire the subject property.

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 (MID) 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 Right of Way (ROW) necessary to complete the project.

The County needs to acquire 0.716 acres of the property 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 and extending approximately 750 feet east (hereby referred to as the "subject property"), to accomplish the proposed improvements. The owner of the subject property is Big Sky Investments 3 LLC, (hereby referred to as the "owner").

The property is zoned General Agriculture District A-2-10, and the entire parcel contains 13.1 acres. The property is developed with mature almond trees.

The County has offered the owner of the subject property the sum of \$30,224, which an appraiser hired by the County determined to be the fair market value for the subject property, pursuant to section 7267.2 of the Government Code. A copy of the offer letter is attached hereto as Attachment B.

The County and owner's representative, John Hanks, have been in correspondence since March 2012, to discuss the project and ROW acquisition needed for the project. On February 5, 2013, the County's ROW consultant, Overland Pacific and Cutler (OPC), met with the owner's representative to discuss the offer letter sent on January 31, 2013. On February 20, 2013, the County and OPC met with John Hanks to review the project design plans.

The owner has requested an independent appraisal pursuant to Code of Civil Procedure section 1263.025, for which the County will compensate the owner the reasonable cost for the independent appraisal, not to exceed \$5,000. On June 20, 2013, the owner sent the

Approval to Consider and Adopt a Resolution of Necessity to Acquire Real Property or Interest in Real Property by Eminent Domain for the Claribel Road Widening Project, Parcel Owner: Big Sky Investments 3 LLC, a California Limited Liability Company, APN 082-004-038

independent appraisal to OPC for review by the County. The independent appraisal valued the subject property at \$31,558. The County is agreeable to compensate the owner at the independent appraised amount.

Public Works staff recommends beginning the process of acquiring the ROW from the owner through the eminent domain process. Starting the eminent domain process now allows the County to obtain an order of possession while the Agreement for Acquisition of property is prepared, reviewed, and signed by the owner.

To authorize the use of the power of eminent domain, the Board must first adopt a Resolution of Necessity required by section 1245.220 of the Code of Civil Procedure. The purpose of the Resolution of Necessity hearing is to provide the owners of the property the opportunity to be heard on the matters referred to in section 1240.030 of the Civil Code as follows:

1. Whether the public interest and necessity require the project;
2. Whether the project is planned or located in the manner that will be most compatible with the greatest public good and least private harm;
3. Whether the property sought to be acquired is necessary for the project; and
4. Find that the offer required by section 7267.2 of the Government Code has been made to the owners of record of the property to be acquired.

The owner was sent a written Notice of Hearing on Monday June 24, 2013, as required by section 245.235 of the Code of Civil Procedure, refer to Attachment C.

The Department of Public Works offers the following in support of each of the above-mentioned matters:

1. The Public Interest and Necessity Require the Project.

Purpose

The purpose of the Project is to improve the corridor to accommodate east/west interregional traffic between the cities of Riverbank, Modesto, Oakdale, and Stanislaus County and to State Highway 108 (McHenry Avenue), which would improve regional network circulation, relieve existing traffic congestion, reduce traffic delay, accommodate future traffic, improve safety, and promote non-motorized modes of transportation consistent with the County General Plan.

Need

The segment of Claribel Road between McHenry Road and Coffee Road is one of the County's most congested roadways and carries significant volumes of traffic. The

Approval to Consider and Adopt a Resolution of Necessity to Acquire Real Property or Interest in Real Property by Eminent Domain for the Claribel Road Widening Project, Parcel Owner: Big Sky Investments 3 LLC, a California Limited Liability Company, APN 082-004-038

consideration of "Level of Service" (LOS) is very important in traffic planning. The most common scale for measuring level of service, that describes traffic flows in relation to the speed limit and traffic mobility between lanes, is designation of an LOS A to F. LOS A describes free flow of traffic traveling at or above the posted speed limit with complete mobility between lanes; whereas, LOS F describes a breakdown in vehicular flow with heavy traffic congestion and no allowance for movement between lanes. The minimum standard LOS the County seeks to maintain is "C" where traffic flows at near free-flow speeds at the posted speed limit and maneuverability between lanes is restricted due to traffic congestion, but with driver awareness can be achieved safely. The existing LOS for the project segment of Claribel Road Widening is currently operating at E at peak hours, which is described in the 2010 Highway Capacity Manual (HCM) as a road where the demand is approaching capacity, speeds are significantly reduced, and passing is not possible. Claribel Road will continue to operate at an LOS of E at the peak hour until the year 2025, when the two-way flow rate is projected to exceed 3,200 passenger cars per hour, which is the limit between E and F. The current and future operation of the corridor does not meet the County's required LOS of C at peak hours; however, with the project, the LOS will improve from E to B at peak hours, where there is not vehicle impedence and traffic moves freely, resulting in reduced traffic incidences.

The existing intersection of Claribel Road and Coffee Road is controlled by an all-way stop. The intersection operates at an LOS of F with average AM and PM delays of 84.1 and 205.7 seconds, respectively. Signalization of the intersection will significantly reduce traffic delays, reduce congestion, and improve air quality and safety, by improving average AM and PM delays to 12.2 and 11.8 seconds, respectively.

There were 66 collisions along this segment of Claribel Road from 2007-2011. The project will improve safety by reducing traffic collisions because of increased driver comfort and restricted turning movements on and off Claribel Road.

2. The project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.

The widening of Claribel Road requires an average of 90 feet of ROW take on the northern side of the corridor, with a limited ROW take on the southern side of the corridor. County staff considered widening to the south, as opposed to the north. Widening to the north is more feasible because there are fewer conflicts with existing structures on the northern side of Claribel Road. Major structures on the southern side of the roadway include Bambacigno Steel, Morningside Mobile Home Park, and the MID Substation.

Approval to Consider and Adopt a Resolution of Necessity to Acquire Real Property or Interest in Real Property by Eminent Domain for the Claribel Road Widening Project, Parcel Owner: Big Sky Investments 3 LLC, a California Limited Liability Company, APN 082-004-038

3. The property sought to be acquired is necessary for the project.

To relieve current congestion, improve safety, and maintain a minimum standard LOS for the Claribel Road corridor, and Claribel Road and Coffee Road intersection, the proposed ROW acquisition of the subject property is necessary for the project to be built.

4. Find that the offer required by section 7267.2 of the Government Code has been made to the owners of record of the property to be acquired.

The offer was sent to Big Sky Investments 3 LLC, a California Limited Liability Company on January 31, 2013.

ROW acquisition is required from 17 parcels in order to construct the project. ROW is being negotiated with the owners of 10 parcels, which includes this parcel.

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 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.

AV/sn
L:\ROADS\9732 - Claribel Road Widening Project\Design\BOS\Big Sky - 082-004-038\7-16-13 BOS Item_Claribel Rd Widening
RON_Big Sky 038_for AVerburg

"ATTACHMENT A"

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

Date: July 16, 2013

No. 2013-363

On motion of Supervisor O'Brien Seconded by Supervisor De Martini
and approved by the following vote,
Ayes: Supervisors: O'Brien, Withrow, De Martini and Chairman Chiesa
Noes: Supervisors: None
Excused or Absent: Supervisors: Monteith
Abstaining: Supervisor: None

Item # C-3i

THE FOLLOWING RESOLUTION WAS ADOPTED:

**RESOLUTION OF NECESSITY
TO ACQUIRE CERTAIN REAL PROPERTY OR INTEREST IN REAL PROPERTY
BY EMINENT DOMAIN PARCEL APN: 082-004-038
OWNER: BIG SKY INVESTMENTS 3 LLC,
A CALIFORNIA LIMITED LIABILITY COMPANY**

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, the real properties to be taken are described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the take of the real property required for the project; and

WHEREAS, the County 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 (MID) Lateral No. 6 bridge with concrete pipe culverts, and signalize the intersection of Coffee Road at Claribel Road; and

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 meeting 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

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of Supervisors of Stanislaus County by no less than two-thirds vote of its members:

1. The public interest and necessity require the acquisition of the real property interests described in Exhibit "A" attached hereto and incorporated by this reference for the proposed public project.
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.
3. The properties sought to be acquired and described by this resolution is necessary for the public project.
4. The offer required by section 7267.2 of the Government Code has been made to the owners of record.
5. The findings and determinations contained in this Resolution are based on and incorporate the record before the Board on April 19, 2011, and May 22, 2012, which include the staff Board reports regarding CEQA compliance, the environmental analysis of the proposed project contained in the Mitigated Negative Declaration, project approval, and all other documents referenced above and in the staff Board report to this Resolution.. The findings and determinations contained herein are also based on any testimony, records, and documents produced at the hearing, all of which are incorporated herein by this reference.
6. The County Counsel is hereby authorized to institute eminent domain proceedings in the Superior Court of the State of California for the County of Stanislaus, for the purpose of acquiring the properties described herein above, and is further authorized to institute proceedings for taking pre-judgment possession of said properties and to deposit the probable amount of compensation therefore, in accordance with California Code of Civil Procedure section 1255.010, as directed by the Superior Court as security for said possessions. Counsel is further authorized to associate with, at its election, a private law firm for the prosecution of said proceedings.
7. In order to timely complete the project and provide the benefits of the project in a timely and orderly manner, the County has an overriding need for possession of the property described and depicted in Exhibit "A" attached hereto and prior to entry of denied, the County and the residents of California to be served by the proposed project, will suffer a substantial hardship. County Counsel is hereby authorized to request an Order from the Court authorizing the County to take prejudgment possession of the property.
8. That the Auditor/Controller of Stanislaus County is directed to draw all necessary warrants payable to the State Treasurer or County Clerk in the amount specified in the Written Summary of Just Compensation prepared in accordance with the Code of Civil Procedure sections 1255.010, et seq. All warrants shall be drawn from the County Treasury. No warrant shall be drawn on that account for purposes of furthering the eminent domain action unless sufficient funds have been deposited to fund any such warrant.

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

Christine Ferraro

File No.

AV/sn
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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:

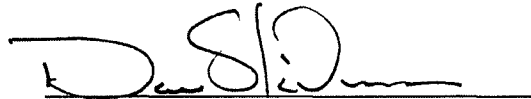
ALL that portion of that certain parcel of land conveyed to the Lance E. Ellis and Carol L. Ellis, Trustees of the Lance and Carol Ellis Family Trust under instrument dated October 30, 1992, by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on October 16, 1998 as Document No. 98-0096009, 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 Ellis parcel; thence South 01°08'27" East along last said extension line, a distance of 10.00 feet to a point on the North 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 North 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
11/15/12



SECTION 34

APN: 074-014-010

SEC. COR. COMMON TO
SEC. 3, 4, 33 & 34
POC

PROPOSED R/W

TOWNSHIP LINE

CENTER LINE

CLARIBEL ROAD

589°27'47"E
457.11'

589°27'47"E 2643.28'

589°27'47"E 663.95'

501°08'27"E
10.00'

164.72'
N09°27'47"W

N01°08'27"W
52.02'

198.51'
S88°24'41"W

299.35'
N89°57'30"W

500°31'27"W
42.05'

CLARIBEL ROAD WIDENING
31,166 S.F. ±

SECTION 3

APN: 082-004-038

LCL ELLIS FAMILY PARTNERSHIP

ELLIS FAMILY TRUST
DOC. NO 98-0096009

24 - S - 66

COFFEE ROAD

SECTION LINE

APN: 082-004-030

APN: 082-004-039



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

EXHIBIT "B"

APN: 082-004-038

DRAWN:	DLS
DATE:	11/15/12
SCALE:	1"=100'
JOB #:	784-10
DWG:	1d_plats

"ATTACHMENT B"



8950 Cal Center Drive, Suite 102

Sacramento, California 95826

916.857.1520 ph

916.857.1525 fax

www.OPCservices.com

January 31, 2013

Big Sky Investments 3, LLC
c/o Mr. John Hanks
4912 Coffee Road
Modesto, California 95357

Regarding: County of Stanislaus ~ Claribel Road Widening Project
Acquisition portion of APN: 082-004-038

Dear Mr. Hanks, et al:

The County of Stanislaus is currently finalizing plans for a public improvement project for the widening of Claribel Road. As discussed with you, this project will require the acquisition of a portion of your property. The County seeks to acquire in fee a portion of your property consisting of 0.7155+/- Acres or approximately 31,166 Sq. Ft. on your parcel known as APN: 082-004-038.

Accordingly, the County hereby makes an offer for the fee simple acquisition of a portion of your property located on the south side of Claribel Road, second parcel east of Coffee Road, Modesto, California, for the sum of \$30,224.00, which is segregated as follows:

<u>\$26,474.00</u>	Fee Simple: 0.7155+/- Acres (or 31,166 Sq. Ft.)
<u>\$ N/A</u>	Temporary Construction Easement
<u>\$ 3,750.00</u>	Cost to Cure (removal of 35 trees, agricultural lane)
<u>\$ N/A</u>	Severance Damage
<u>\$30,224.00</u>	Total

The County's offer is the full amount determined to be just compensation for the property interest. The basis for that determination is explained in the attached Information and Appraisal Summary Statements. It is the County's hope that this price is agreeable to you and that the acquisition can begin immediately.

I, Steve Long of Overland, Pacific & Cutler, Inc., the County's acquisition agent, will work with you in this acquisition. If you have any questions regarding this Notice and accompanying statements, please contact me or Burt Presnell at (916) 857-1520 or (800) 400-7356.

If this offer is acceptable, please contact me to open escrow services.

Big Sky Investments 3, LLC
APN: 082-004-038
January 31, 2013
Page 2 of 2

This offer is subject to and conditioned upon acceptable soils conditions and the absence from the property of toxic or hazardous substances and any other kind of soil or water contamination, and to the grant of a right-of-entry to the County for the purpose of conducting a soils, toxic and hazardous substances investigation of the Property at the County's expense. This offer is subject to modification depending on the results of that investigation.

Finally, any agreement that you make with the County's staff or consultants for the County's purchase of the Property will not be binding on the County unless and until it is approved by the County's Board of Supervisors.

Also enclosed is an informational pamphlet about the California Eminent Domain Law. Under California Law, the County is required to provide you with the attached informational pamphlet detailing the eminent domain process and your rights under the Californian Eminent Domain Law.

Alternatively, it is requested that you acknowledge receipt of the County's offer by signing a copy of this letter and returning same in the enclosed self-addressed stamped envelope. Your signature on the copy does not signify acceptance of the offer to settle the acquisition by the County, it only acknowledges receipt of the County's offer.

Your cooperation in this matter will be greatly appreciated.

Sincerely,



Steven F. Long
Project Manager

SL:dm
cc: Aja Verburg – Stanislaus County

OFFER RECEIVED

By  _____

Date 2/5/2013

Receipt of Offer Does Not
Constitute Acceptance

INFORMATION STATEMENT

This offer is presented in settlement of the acquisition of a portion of your property at Claribel Road, Modesto, California.

<u>\$26,474.00</u>	Fee Simple: 0.7155+/- Acres (or 31,166 Sq. Ft.)
<u>\$ N/A</u>	Temporary Construction Easement
<u>\$ 3,750.00</u>	Cost to Cure (removal of 35 trees, agricultural lane)
<u>\$ N/A</u>	Severance Damage
<u>\$30,224.00</u>	Total

The value of the portion of your property being purchased is based upon a market value appraisal prepared by an independent appraisal firm in accordance with accepted appraisal procedures. Valuation of your property is based upon an analysis of, where applicable, recent sales of comparable sites and similar properties in this locality with consideration to the highest and best use for development of the property; an income approach based on the potential fair rental for your property has been considered where applicable; and a replacement cost approach considering the estimated depreciated cost of the improvements, together with the value of the land, has been considered where applicable. Any diminution in value of the remainder parcel, or costs to mitigate same, has also been considered.

Before arriving at a conclusion of value, the appraiser conducted an investigation in order to obtain the information necessary. The investigation generally includes an inspection of the property and improvements, and review of the improvements, a review of the immediate surrounding and regional influences, the property zoning and uses permitted, a study of the highest and best use to which the property can be put, easements which may exist on the property, the availability of utilities, access and street improvements. The appraiser conducted interviews with knowledgeable persons, collect comparable data, information relating to fair rental value of the property and the cost of reproducing the improvements on the property.

The offer is the full amount believed by the County of Stanislaus to be just compensation for the portion of your property. It is not less than the County's approved appraisal of the Fair Market Value of the property. Any decreases or increases in the Fair Market Value of the real property to be acquired prior to the date of the valuation caused by the public improvements or project for which the property is to be acquired, or by the likelihood that the property would be acquired for such improvement or project, other than that due to physical deterioration within the reasonable control of the owner, has been disregarded by the County and its appraiser in making their determination of the Fair Market Value of such property.

FAIR MARKET VALUE, as used in the appraisal, is (a) "... the fair market value of the property taken is the highest price on the date of valuation that would be agreed by a seller, being willing to sell but under no particular or urgent necessity for doing so, nor obligated to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. (b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable." (Section 1263.320 Code of Civil Procedure)

The determination of just compensation does not reflect any consideration of or allowance for relocation assistance and payments to which you may be entitled to receive under applicable State or Federal Law or of the County's agreement to pay certain settlement costs.

This summary of the basis of the amount offered as just compensation is presented in compliance with State, and where applicable, Federal Law. Attached is an Appraisal Summary Statement including information pertinent to our offer to acquire a portion of the property.

In the event you are the owner of a business conducted on the property being acquired by the County, you may be entitled to compensation for loss of goodwill, if any, if you are able to make a showing of such loss pursuant to the requirements of California Code of Civil Procedure Section 1263.510. For your information, Section 1263.510 is reprinted below in its entirety.

(A) The owner of a business conducted on the property taken, or on the remainder if such property is part of a larger parcel, shall be compensated for loss of goodwill if the owner proves all of the following:

(1) The loss is caused by the taking of the property or the injury to the remainder.

(2) The loss cannot reasonably be prevented by relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill.

(3) Compensation for the loss will not be included in payments under Section 7262 of the Government Code.

(4) Compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

(B) Within the meaning of this article, "goodwill" consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.

Pursuant to Civil Code of Procedure section 1263.025 should you elect to obtain an independent appraisal, the County will pay for the actual reasonable costs up to \$5,000 subject to the following conditions;

(A) You, not the County, must order the appraisal. Should you enter into a contract with the selected appraiser, the County will not be a party to the contract.

(B) The selected appraiser must be licensed with the Office of Real Estate Appraisers (OREA).

- (C) Appraisal cost reimbursement requests must be made in writing, and submitted to the County of Stanislaus, 1716 Morgan Road, Modesto, California 95358 within 90 days of the earliest of the following dates: (1) the date the selected appraiser requests payment from you for the appraisal; or, (2) the date upon which you, or someone on your behalf, remitted full payment to the selected appraiser for the appraisal, copies of the contract (if a contract was made), appraisal report, and invoice for completed work by the appraiser must be provided to the County concurrent with submission of the appraisal cost reimbursement request. The costs must be reasonable and justifiable.

BASIS OF APPRAISAL
(Claribel Road, Modesto, California)

The market value for the fee simple portion of property to be acquired by the County is based upon an appraisal prepared in accordance with accepted appraisal principles and procedures.

Recent sales of comparable properties and income data are utilized as appropriate. Full consideration is given to zoning, development potential and the income the property is capable of producing.

1. The Sales Comparison approach is based on the consideration of comparable land sales.

Value of the fee simple portion of Property pursuant to Sales Comparison approach (See attached sheet for Exhibit "C" principal transactions)	\$26,474.00
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2. The Cost approach is based in part on a replacement cost new of improvements less depreciation.

Total Replacement Cost New	\$ N/A
Depreciation from all causes	\$ N/A
Value of Improvements in Place	\$ N/A
Land (estimated by direct sales comparison)	\$ N/A
Indicated value of the larger parcel (entire Property) by Cost approach	\$ N/A

3. The Income approach is based on an analysis of income and expenses to the property.

Overall Capitalization Rate	N/A
Net Operating Income	\$ N/A
Indicated value of the larger parcel by Income approach	\$ N/A

Valuation Conclusion Fair Market Value of Property: \$26,474.00

APPRAISAL SUMMARY STATEMENT

PROJECT: CLARIBEL ROAD WIDENING

Date of Valuation: January 18, 2013

Assessor's Parcel Number: 082-004-038 (portion thereof), Stanislaus County

Property Owner: Big Sky Investments 3, LLC, a California limited liability company

Owners Mailing Address: 4912 Coffee Road, Modesto, CA

Subject Property Address: Claribel Road, Modesto, CA

Legal Description/Plat Map: See Exhibits "A" and "B", attached hereto

Site Area: 13.097+/- Acres

Fee Simple Area: 0.7155+/- Acres (or 31,166 Sq. Ft.)

Improvements to be acquired: Almond trees and agricultural lane/berm

Zoning: A-2-10, General Agricultural

Present Use: Agricultural: Almond Orchard

Highest & Best Use Determination: Agricultural: Almond Orchard

Interest Being Valued: Fee Simple Estate

VALUATION APPROACHES USED:

Market Data Approach: Yes

Cost/Data Reproduction Approach: No

Income Approach: No

Damage to Remainder (Severance Damage): No

BASIS FOR CALCULATION:

Fee Simple: 0.7155+/- Acres x \$37,000/Acre = \$26,474.00

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 that certain parcel of land conveyed to the Lance E. Ellis and Carol L. Ellis, Trustees of the Lance and Carol Ellis Family Trust under instrument dated October 30, 1992, by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on October 16, 1998 as Document No. 98-0096009, 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 Ellis parcel; thence South 01°08'27" East along last said extension line, a distance of 10.00 feet to a point on the North 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 North 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.

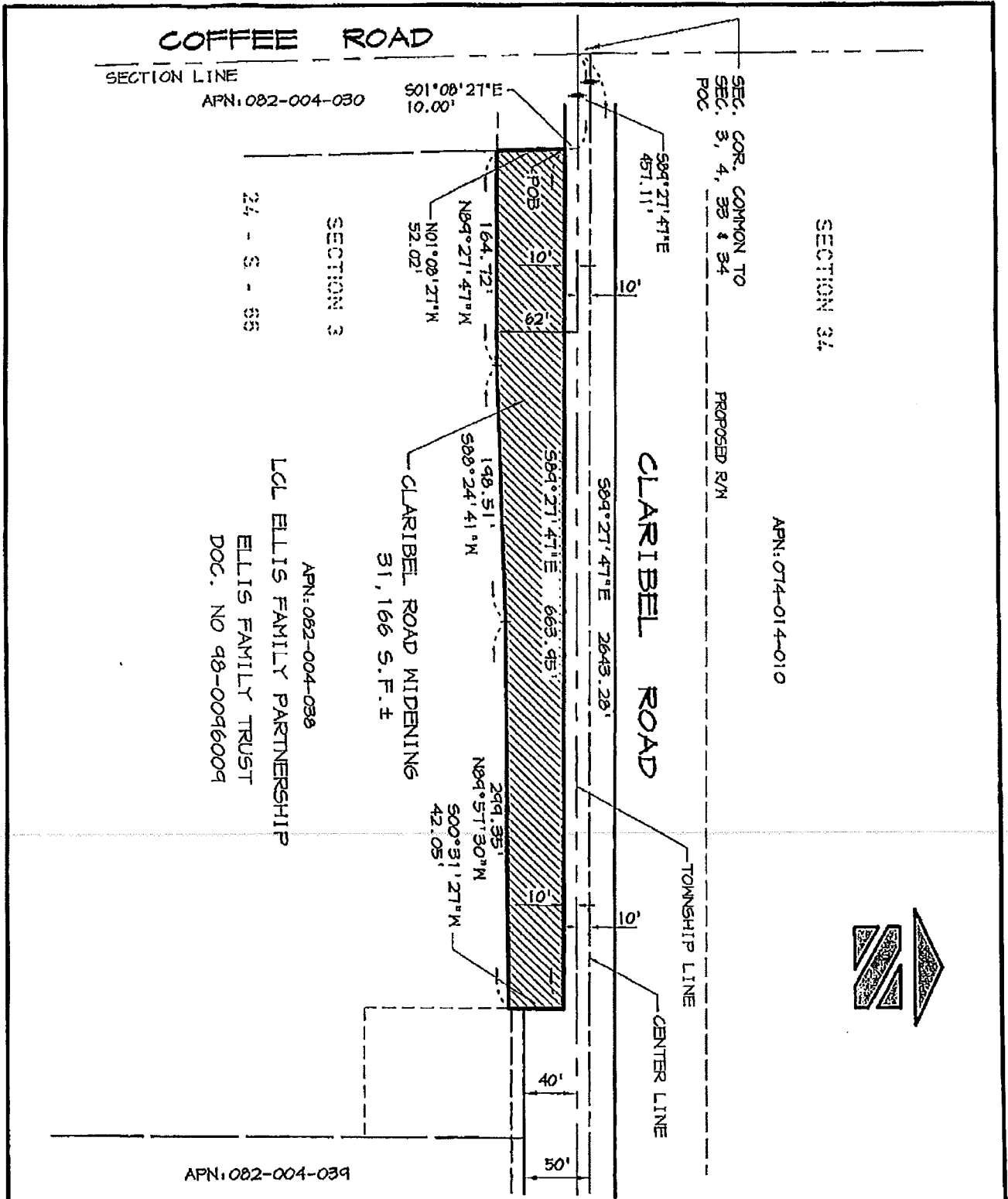
CONTAINING 31,166 Square feet more or less.

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





Dave Skidmore, P.L.S. 7126
11/15/12



DRAWN:	DLS
DATE:	11/15/12
SCALE:	1"=100'
JOB #:	784-10
DWG:	ld_plats

EXHIBIT "B"

APN: 082-004-038



**ASSOCIATED
ENGINEERING
GROUP**

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

EXHIBIT "C"

TRANSITIONAL/AG LAND SALES SUMMARY

Sale No.	Location / APN	Grantor / Grantee / Doc./MLS#	Sale Date	Sale Price	Size/AC	\$/Acre	Zoning	Shape	Status of Property / A.T.O.S.
1	NEC Dale Rd & Kiernan Ave, Modesto, CA. / 003-009-044 and -045	<u>Vella</u> <u>Grover</u> 20636	Mar-10	\$800,000	23.32	\$34,305	AG	Irregular	Almond Orchard Inside Modesto GP
2	831 Bangs Avenue, and Modesto, CA. / 046-012-004,003 & 046-002-002	<u>Luchessa</u> <u>Bangs Prop. LLC</u> 42606	May-10	\$2,972,950	80.44	\$36,959	A-2-10 (Urban Trans.)	Rectangle	Almond Orchard Inside Modesto SOI
3	4309 Oakdale Rd. Modesto, CA/ 082-005-007	<u>Ursini</u> <u>Grover</u> 52155	Apr-10	\$3,000,000	80.15	\$37,430	A-2-40 (Urban Trans.)	Rectangle	Vineyard Inside Modesto SOI
4	1111 Beckwith Ct. Modesto, CA/ 005-034-023	<u>Lawson</u> <u>Jaswant</u> 26598	Mar-10	\$285,000	10.00	\$28,500	A-2-40 (Urban Trans.)	Basically Rectangle	Agriculture Inside Modesto GP
5	Dakota Ave. Modesto, CA. / 076-032-011	<u>Elickerstaff Trst.</u> <u>Catholic Diocess</u> 49693	Mar-09	\$1,100,000	25.33	\$43,427	A-2-40 (Urban Trans.)	Basically Rectangle	Almond Orchard Inside Modesto GP Approved for Cemetery
6	5242 Chapman Rd. Modesto, CA/ 003-019-002,007	<u>Bianchi</u> <u>Wildwood Acres</u> 77741	Aug-12	\$1,678,080	48.64	\$34,500	SCP-PI	Rectangle	Almond Orchard Inside Modesto GP/Salida Plan
7	644 Frazine Rd. Modesto, CA. / 009-004-001	<u>Arakelian</u> <u>Baker</u> 59899	Jul-11	\$1,541,000	77.00	\$20,013	A-2-40	Rectangle	Irrigated Field crops Inside Modesto SOI
8	3406 Kiernan Ave., Modesto, CA/ 078-069-013,014	<u>West America Bank</u> <u>Mastagni</u> 98094	Nov-11	\$980,000	28.87	\$33,945	P/SP/BP	Rectangle	Agriculture Inside Modesto GP



"ATTACHMENT C"



DEPARTMENT OF PUBLIC WORKS

Matt Machado, PE, LS
Director

Colt Esenwein, PE
Deputy Director, Engineering/Operations

Diane Haugh
Assistant Director, Business/Finance

1716 Morgan Road, Modesto, CA 95358
Phone: 209.525.6550 email: publicworks@stancounty.com

June 24, 2013

**TO ACQUIRE CERTAIN REAL PROPERTY OR INTEREST IN REAL PROPERTY
BY EMINENT DOMAIN HIGHWAY**

APN: 082-004-038,

OWNER: BIG SKY INVESTMENTS 3, LLC, a California limited liability company

(Code of Civil Procedure, section 1245.235)

BIG SKY INVESTMENTS 3, LLC
c/o Mr. John Hanks
4912 Coffee Road
Modesto, CA 95357

Dear Mr. Hanks,

The law provides procedures for public agencies to acquire private property for public use. It presently requires that every agency, which intends to condemn property, notify the owners of that property of its intention to condemn. California Code of Civil Procedure section 1240.030, provides that the power of eminent domain may be exercised to acquire property for a proposed project if the following three conditions are established:

- (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 and the least private injury.
- (C) The property sought to be acquired is necessary for the project.

Also, CCP section 1245.230 requires that the offer required by section 7267.2 of the Government Code has been made to the owner of record.

You are hereby notified that the Board of Supervisors at its meeting to be held on July 16, 2013, at 6:30 PM, at 1010 10th Street, Board Chambers (Basement), Modesto, California, will be asked to decide if the above conditions are met concerning your property and, if so, to adopt a Resolution of Necessity. Questions regarding the amount of compensation to be paid are not part of this proceeding and the Board of Supervisors does not consider such in determining whether a Resolution should be adopted.

The adopted Resolution will authorize Stanislaus County to acquire the property by eminent domain. A description of the required property is attached to this Notice and is marked Exhibit A and Exhibit B.

This Notice of Intent gives you an opportunity to appear before the Board of Supervisors and raise questions concerning the three conditions referred to in CCP 1240.030 as cited above. If you file a written request to appear (within 15 days from the mailing of this Notice) you are entitled to appear and object to the adoption of the Resolution.

Objections are limited as set forth below.

All requests to appear must be sent for filing to: Aja Verburg, Project Manager, Stanislaus County Department of Public Works, 1716 Morgan Road, Modesto, CA, 95358. If you desire to appear, you will be notified of the date, time, and location of the meeting at a later date.

The written request must actually be received within the 15-day period. Failure to file a written request to appear will result in a waiver of your rights to appear and be heard.

Your written request to appear should include a statement of the condition(s), which you feel are pertinent to your property. The three conditions that may affect your property are set forth above (designate (A), (B), and/or (C)). By designating which condition forms the basis of your concerns, and why, you will enable the Board of Supervisors to have a full and expeditious review made of the project's effect on your property.

For your convenience, the Board of Supervisors will consider any written observations you may wish to submit, so long as such written observations are filed with the Public Works Department within the 15-day period.

The Board of Supervisors must adopt a Resolution of Necessity before an eminent domain proceeding can be commenced. Within six months of the adoption of the Resolution of Necessity, the Stanislaus County Department of Public Works will commence eminent domain proceedings in the Superior Court in the County where the property is located. In that proceeding, the court will determine the amount of compensation to which you are entitled.

If you have any questions, please call Aja Verburg at telephone number (209) 525-4133 or Right of Way Agent - Steve Long, Overland Pacific & Cutler, Inc. at telephone number (916) 857-1520.

Sincerely,



Aja Verburg, P.E.
Project Manager

Enclosure(s): Plat and Legal Description

**STANISLAUS COUNTY, DEPARTMENT OF PUBLIC WORKS
DECLARATION OF MAILING**

I declare that I am employed in the County of Stanislaus, State of California, I am over the age of eighteen years and not a party to the within entitled cause, and my business address is: Stanislaus County Department of Public Works, 1716 Morgan Road, Modesto, California 95358.

On June 24, 2013, I served the following document(s) in the manner(s) indicated below:

**NOTICE OF INTENT TO ADOPT RESOLUTION OF NECESSITY TO ACQUIRE CERTAIN REAL
PROPERTY OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN**

(CERTIFIED U.S. MAIL): I caused true and correct copies of the above document(s), by following ordinary business practices, to be placed and sealed in an envelope at the Stanislaus County Department of Public Works, 1716 Morgan Road, Modesto, CA, 95358, for collection and mailing in the United States Postal Service. The envelope was addressed to the below-named addressee. I am familiar with the Stanislaus County Department of Public Works' office practice for collection and processing of correspondence for mailing with the United States Postal Service, and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.

BIG SKY INVESTMENTS 3, LLC
c/o Mr. John Hanks
4912 Coffee Road
Modesto, CA 95357

(FEDERAL EXPRESS) by placing a true and correct copy thereof enclosed in a sealed envelope, for overnight delivery, delivered to Federal Express for overnight courier service, at the address(es) set forth above.

(PERSONAL DELIVERY) by personal delivery to the party or to their attorney, if known, at the address(es) set forth above.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on June 24, 2013.

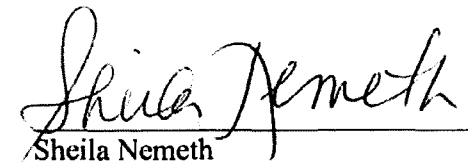

Sheila Nemeth

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 that certain parcel of land conveyed to the Lance E. Ellis and Carol L. Ellis, Trustees of the Lance and Carol Ellis Family Trust under instrument dated October 30, 1992, by Grant Deed filed in the Office of the Recorder of the County of Stanislaus on October 16, 1998 as Document No. 98-0096009, being more particularly described as follows:

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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
11/15/12



SECTION 34

APN: 074-014-010

SEC. COR. COMMON TO
SEC. 3, 4, 33 & 34
POC

PROPOSED R/W

CLARIBEL ROAD

TOWNSHIP LINE

CENTER LINE

589°27'47"E
457.11'

10'

589°27'47"E 2643.28'

10'

501°08'27"E
10.00'

SECTION LINE
APN: 082-004-030

COFFEE ROAD

POB

164.72'
N89°27'47"W
N01°08'27"W
52.02'

SECTION 3

24 - 3 - 88

CLARIBEL ROAD WIDENING
31,166 S.F. ±

APN: 082-004-038
LCL ELLIS FAMILY PARTNERSHIP
ELLIS FAMILY TRUST
DOC. NO 98-0096009

589°27'47"E 663.95'

198.51'
S88°24'41"W

299.35'
N89°57'30"W
500°31'27"W
42.05'

10'

40'

50'

APN: 082-004-039

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: 11/15/12
SCALE: 1" = 100'
JOB #: 784-10
DWG: 1d.plats

DEPARTMENT OF PUBLIC WORKS

**Approval to Consider and Adopt
a Resolution of Necessity to
Acquire Real Property or
Interest in Real Property by
Eminent Domain**

July 16, 2013

**Claribel Road
Widening**

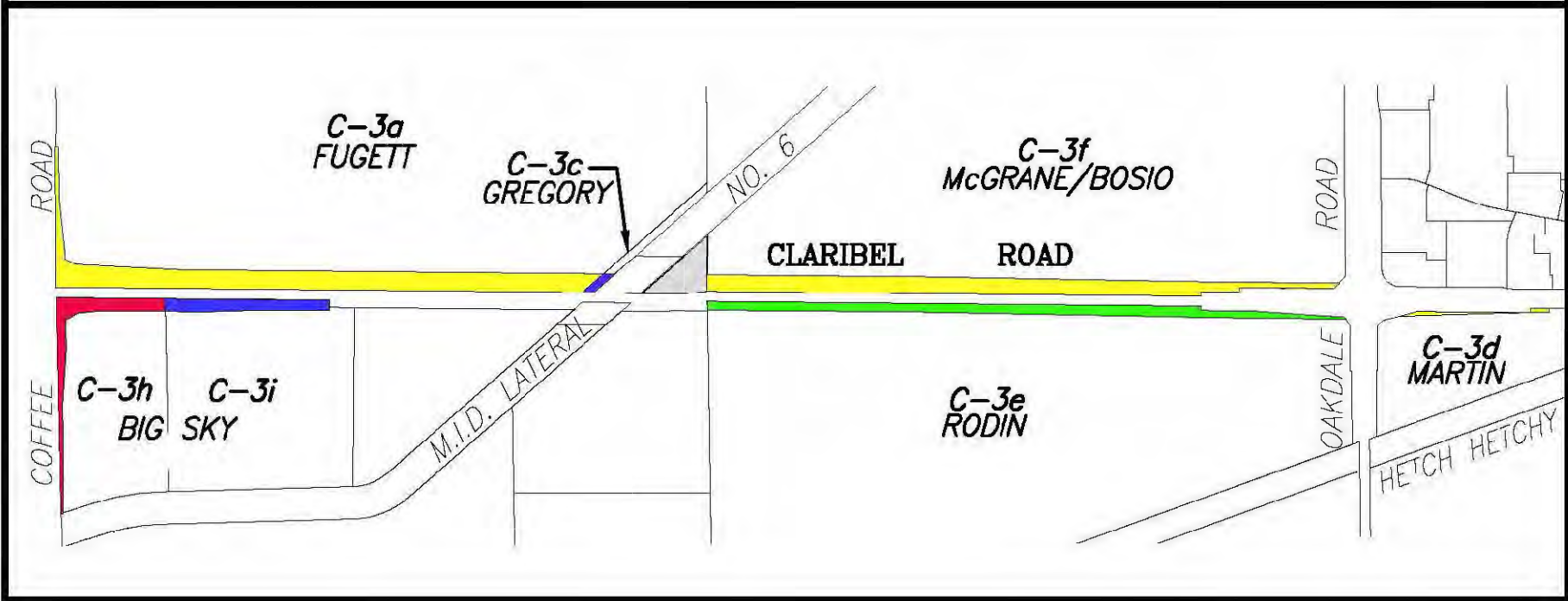
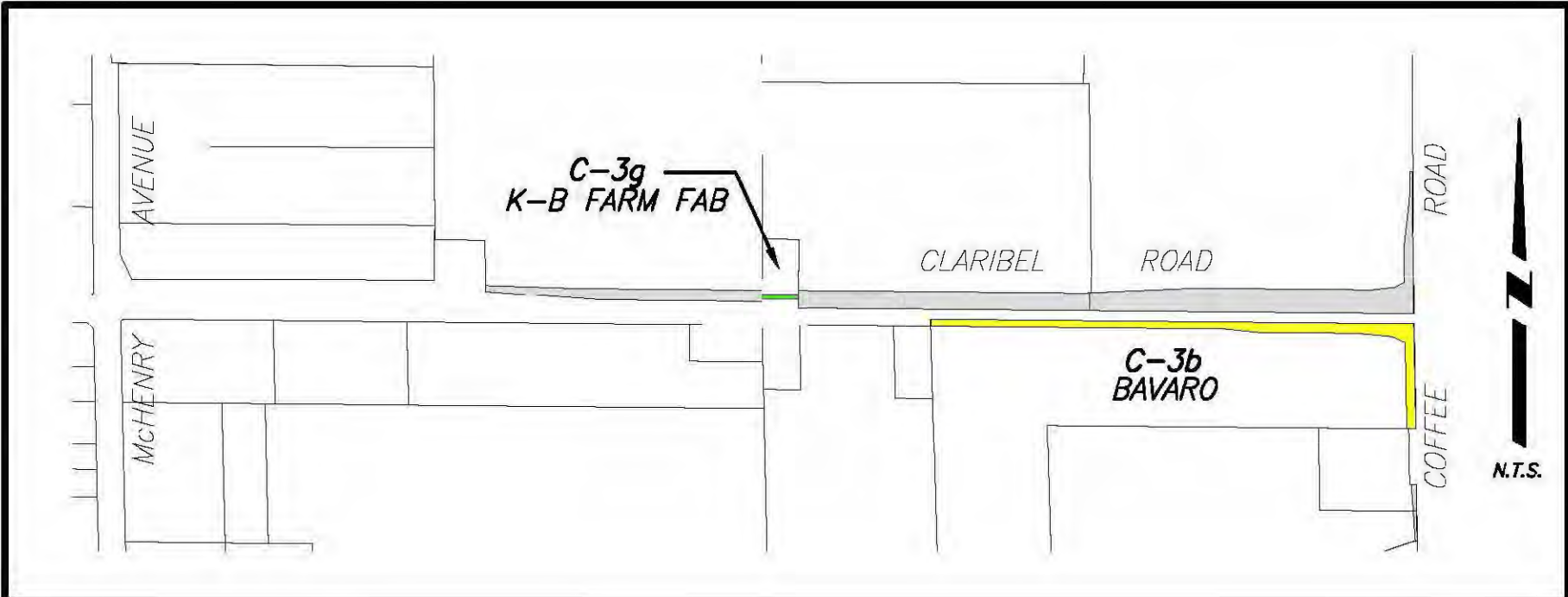
PROJECT LOCATION AND PURPOSE



To improve regional network circulation between the cities of Riverbank, Modesto, Oakdale, and Stanislaus County; relieve existing traffic congestion; reduce traffic delay; accommodate future traffic; improve safety; improve air quality; and promote non-motorized modes of transportation.

PROJECT NEED

- Existing level of service for corridor is “E” at peak hours, where demand is approaching capacity, speeds are significantly reduced, and passing is not possible.
- Existing Claribel Road/Coffee Road intersection experiences an average of one and one half minute and three and one half minute delays at morning and evening peak hours.
- The two mile segment has experienced 66 collisions in a 5 year period.



STAFF RECOMMENDATIONS

1. Find that the public interest and necessity require the proposed project.
2. Find that the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. Find that the subject property described in the Resolution is necessary for the proposed project.
4. Find that the offer required by Section 7267.2 of the Government Code has been made to the owners of record of the property to be acquired.
5. Adopt a Resolution of Necessity.
6. Authorize County Counsel to initiate eminent domain proceedings to acquire the subject property.