RESOURCE MANAGEMENT AGENCY
COUNTY OF TULARE
AGENDA ITEM

BOARD OF SUPERVISORS

ALLEN ISHIDA
District One

PETE VANDER POEL
District Two

PHILLIP A. COX
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: November 10, 2009

Public Hearing Required	Yes ☒	No ☐	N/A ☐
Scheduled Public Hearing w/Clerk	Yes ☒	No ☐	N/A ☐
Published Notice Required	Yes ☐	No ☒	N/A ☐
Advertised Published Notice	Yes ☐	No ☒	N/A ☐
Meet & Confer Required	Yes ☐	No ☒	N/A ☐
Electronic file(s) has been sent	Yes ☒	No ☐	N/A ☐
Budget Transfer (Aud 308) attached	Yes ☐	No ☒	N/A ☐
Personnel Resolution attached	Yes ☐	No ☒	N/A ☐
Resolution, Ordinance or Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes ☒	No ☐	N/A ☐

CONTACT PERSON: Celeste Perez PHONE: (559) 624-7000

SUBJECT: Acquisition of Property by Eminent Domain for the Road 80 Widening Project Pursuant to Code of Civil Procedure Section 1245.330; Ronald Vanderham and Cherylee Vanderham

REQUEST(S):

That the Board of Supervisors:

Adopt, finds, determines, declares and resolves as follows:

a. The public interest and necessity require the Project;
b. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
c. The property described in Appendix A attached hereto is necessary for the Project;
d. The offer required by section 7267.2(a) of the Government Code, together with the accompanying statement of and summary of the basis for the amount established as just compensation, was made to the owner or owners of record and the offer and accompanying statement and summary complied with the requirements of Government Code section 7267.2(a);
e. County Counsel is authorized to file a legal action against the property owner.

Two-thirds vote required.

SUMMARY:

The county of Tulare has undertaken a project to improve Road 80 between the cities of Visalia and Dinuba. The Road 80 Project (Project) consists of widening

Road 80 from two lanes to four lanes and creating a dividing center median from Goshen Avenue in the city of Visalia to Avenue 416/El Monte Way in the city of Dinuba, a distance of 14 miles, for the principal purposes of improving traffic flow, increasing safety, improving drainage, alleviating flooding and improving access to the city of Dinuba, together with incidental and related improvements.

On August 22, 2006 the Board of Supervisors approved (Resolution Number 2006-0663) a mitigated negative declaration/environmental assessment (MND) pursuant to the California Environment Quality Act (CEQA) for the project. On October 5, 2006 the Federal Highway Administration approved a finding of no significant impact (FONSI) pursuant to the National Environmental Policy Act (NEPA). The reader is directed Chapter 1 (copy attached) of the above referenced document for a complete discussion on the purpose and need for the project, alternatives that were considered and the permits and approvals needed to construct the project.

In December, 2006, the county of Tulare received an allocation from the California Transportation Commission (CTC) to prepare the plans, specifications and estimate (PS&E) and acquire the right of way (ROW) for the project. Shortly thereafter, the County began the process of preparing the PS&E and ROW for the project. In June 2008, the County received an allocation from the CTC to construct phase 1 of the project from Goshen Avenue in the city of Visalia to Avenue 328 in the County unincorporated area. The construction of phase 1 is complete.

The CTC has programmed in the 2010 State Transportation Improvement Program (STIP) funding for phase 2 of the project. Phase 2 limits are generally from Avenue 416/El Monte Way in the city of Dinuba to the Avenue 374 alignment, a distance of approximately five (5) miles. In order to access this funding, the County must complete the PS&E and acquire ROW for this segment. The PS&E for phase 2 will be complete by December 31, 2009.

The CTC has programmed in the 2011 STIP funding for phase 3 of the project. Phase 3 will complete the project and close the gap between the Avenue 374 alignment and the Avenue 342 alignment. The PS&E for phase 3 will be complete by March 1, 2010.

The County has approximately 23 outstanding property owners it is currently dealing with to acquire the necessary ROW for phase 2 and 3. One property owner is Ronald Vanderham and Cherylee Vanderham.

The County has been negotiating with Ronald Vanderham and Cherylee Vanderham since March 2008 and has not been able to come to an agreement on terms and price thereby necessitating the need to utilize eminent domain. The section 7267.2(a) offer was made on March 3, 2008. The Ronald Vanderham and Cherylee Vanderham property is located along the west side of Road 80 north of

Avenue 376. It is commonly referred to as Assessor Parcel Numbers (APN) 047-010-042. The ROW required is generally 40 feet in width and slightly more than 381 feet in length. In addition to the ROW needs on Road 80 15 feet of ROW is being acquired along the north side of Avenue 376 for a distance of approximately 141 feet. In addition to the ROW, which is to be acquired in fee title, there is a need for a ten foot (10') temporary construction easement (TCE) to allow for the construction of the project. Detailed legal descriptions and plats of the required ROW and TCE are attached to the Resolution of Necessity.

On October 1, 2009 the County mailed notice of the public hearing to Ronald Vanderham and Cherylee Vanderham pursuant to Code of Civil Procedure Section 1245.235. On October 26, 2009 the notice of the public hearing was hand delivered to Mr. Vanderham.

In order to begin the eminent domain process, the Tulare County Board of Supervisors must adopt, by two-thirds of its members, a Resolution of Necessity which makes the following findings:

a. The public interest and necessity require the Project;
b. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
c. The property described in Appendix A attached to the Resolution of Necessity hereto is necessary for the Project; and
d. The offer required by section 7267.2(a) of the Government Code, together with the accompanying statement of and summary of the basis for the amount established as just compensation, was made to the owner or owners of record and the offer and accompanying statement and summary complied with the requirements of Government Code section 7267.2(a).

The public interest and necessity require the Project. Chapter 1, Proposed Project, of the mitigated negative declaration/environment assessment (copy attached) discusses in detail the Road 80 Project. Section 1.2, Purpose and Need, identifies the purpose and need of the project including that the project will reduce congestion and improve the level of service, improve safety, resolve drainage and flooding issues and provide for improved access to the city of Dinuba. Based on the information contained in the mitigated negative declaration/environment assessment, the Board can make this finding.

The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury. Section 1.3, Alternatives, of the MND identifies the alternatives that were considered including the build alternative, the no-build alternative and alternatives considered and withdrawn. Through the environmental review process, the preferred alternative was identified which would provide greatest public good with the least private injury.

Based on the information contained in the mitigated negative declaration/environment assessment, the Board can make this finding.

The property described in Appendix A attached to the Resolution of Necessity hereto is necessary for the Project. Attached to the Resolution of Necessity as Appendix A are the legal descriptions and plats for the ROW and TCE to be acquired from Ronald Vanderham and Cherylee Vanderham. The ROW and TCE being required are consistent with the project description in the approved environmental document and are necessary for the project. As such, the Board can make this finding.

The offer required by section 7267.2(a) of the Government Code, together with the accompanying statement of and summary of the basis for the amount established as just compensation, was made to the owner or owners of record and the offer and accompanying statement and summary complied with the requirements of Government Code section 7267.2(a). The offer required by Government Code section 7267.2(a) was made to the property owner on March 3, 2008 and the Board can make this finding.

FISCAL IMPACT/FINANCING:

It is intended to fund ROW acquisition from the STIP. The cost for acquisition is budgeted in the Road Fund.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

This project will enhance the safety and security of the public by improving the transportation infrastructure for both the general population in the region and the motorists using this facility.

ALTERNATIVES:

Do not proceed with eminent domain and continue to negotiate with Ronald Vanderham and Cherylee Vanderham. Staff does not recommend this alternative as the County has negotiated with Ronald Vanderham and Cherylee Vanderham and has not been able to come to agreement on the terms and price for the acquisition of the necessary ROW and TCE. Any further delay in acquiring this ROW could jeopardize the access to funding for the construction of phase 2 or phase 3 of the project.

INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES:

County Counsel has been involved in the preparation of the necessary documents for eminent domain.

SUBJECT: Acquisition of Property by Eminent Domain for the Road 80 Widening Project Pursuant to Code of Civil Procedure Section 1245.330; Ronald Vanderham and Cherylee Vanderham

DATE: November 10, 2009

ADMINISTRATIVE SIGN-OFF:

10/27/09

Britt L. Fussel, P.E.
Assistant Director—Engineering
County Surveyor

BF

cc: Auditor/Controller
County Counsel
County Administrative Office (2)

Attachment(s) Vicinity Map, Road 80 Project
Location Map, Ronald Vanderham and Cherylee Vanderham
Chapter 1, Mitigated Negative Declaration/Environmental Assessment

RESOLUTION OF NECESSITY
BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER		
OF THE ACQUISITION	)	
OF PROPERTY BY EMINENT	)	
DOMAIN FOR THE ROAD 80	)	
WIDENING PROJECT	)	**RESOLUTION NO. _____**
PURSUANT TO CODE OF	)	
CIVIL PROCEDURE SECTION	)	
1245.330; RONALD H. VANDERHAM	)	
AND CHERYLEE VANDERHAM	)	

The Board of Supervisors of the County of Tulare, by vote of at least two-thirds of its members, FINDS, DETERMINES, DECLARES, AND RESOLVES as follows:

1. The County of Tulare intends to construct the Road 80 Widening Project (the "Project"), which consists of widening Road 80 from two lanes to four lanes and creating a dividing center median from Goshen Avenue in the City of Visalia to Avenue 416 in the City of Dinuba, a distance of 14 miles, for the principal purposes of improving traffic flow, increasing safety, improving drainage, alleviating flooding and improving access to the City of Dinuba, together with incidental and related improvements;

2. The purposes described in Paragraph 1 are public purposes within the meaning of the California Constitution and the California Eminent Domain Law;

3. The County of Tulare is authorized to acquire the property described in Appendix A attached hereto by eminent domain for the public uses set forth herein pursuant to Government Code section 25350.5 and Streets and Highways Code section 943;

4. The property to be acquired consists of parcels APN No. 047-010-042. The parcel is generally located at the northwest corner of Road 80 and Avenue 376. It is more particularly described in Appendix A, attached hereto;

5. On October 1, 2009, a Notice of Hearing on the proposed adoption of this Resolution of Necessity was mailed to Ronald Vanderham and Cherylee Vanderham whose name and address appears on the last equalized assessment roll. On October 26, 2009 the notice of the public hearing was hand delivered to Mr. Vanderham. A copy of the Notice of Hearing is attached hereto as Appendix B.

6. The hearing described in the Notice of Hearing was held on November 10, 2009, at the time and placed stated therein and all interested persons were heard as required by section 1245.235 of the Code of Civil Procedure;

The Board of Supervisors of the County of Tulare, by vote of at least two-thirds of its members, further FINDS, DETERMINES, DECLARES, AND RESOLVES as follows:

a. The public interest and necessity require the Project;
b. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
c. The property described in Appendix A attached hereto is necessary for the Project; and
d. The offer required by section 7267.2(a) of the Government Code, together with the accompanying statement of and summary of the basis for the amount established as just compensation, was made to the owner or owners of record and the offer and accompanying statement and summary complied with the requirements of Government Code section 7267.2(a); and
e. County Counsel is authorized to file a legal action against the property owner.

UPON MOTION OF SUPERVISOR, _____SECONDED BY SUPERVISOR_____, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD NOVEMBER 10, 2009,

BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JEAN M. ROUSSEAU
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk