



**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	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Published Notice Required	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Advertised Published Notice	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Resolution, Ordinance or Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>						
CONTACT PERSON: Celeste Perez PHONE: (559) 624-7000						

SUBJECT: Acquisition of Property by Eminent Domain for the Road 108 Widening Project Pursuant to Code of Civil Procedure Section 1245.330; James Edward Rogers

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 108 between the cities of Visalia and Tulare. The Road 108 Project (Project) consists of widening

SUBJECT: Acquisition of Property by Eminent Domain for the Road 108 Widening Project Pursuant to Code of Civil Procedure Section 1245.330; James Edward Rogers

DATE: November 10, 2009

Road 108 from two lanes to four lanes and creating a dividing center median from Caldwell Avenue in the city of Visalia to Leland Avenue in the city of Tulare, a distance of approximately 5 miles, for the principal purposes of improving traffic flow, increasing safety, improving drainage, and improving access between the cities of Visalia and Tulare, together with incidental and related improvements.

On February 6, 2007 the Board of Supervisors approved (Resolution Number 2006-0070) a final environmental impact report (FEIR) pursuant to the California Environment Quality Act (CEQA) for the project. On January 30, 2007 the Federal Highway Administration approved a categorical exclusion (CE) 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 June, 2007, 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. The preparation of the PS&E and ROW acquisition is funded by both a State Transportation Improvement Program (STIP) allocation and an allocation from the Tulare County Transportation Sales Tax Measure (Measure R).

The CTC has programmed in the 2010 STIP Proposition 1B State Local Partnership Program (SLPP) funding to construct the project. The SLPP funding will be matched by funding from Measure R, Proposition 1B discretionary funding and Tulare County Local Transportation Fund (LTF) funding.

The County has approximately 6 outstanding property owners it is currently dealing with to acquire the necessary ROW to construct the project. One property owner is James Edward Rogers.

The County has been negotiating with James Edward Rogers since January 2009 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 January 20, 2009 for APN 126-240-035 and July 3, 2009 for APN 143-030-012. The Rogers property is located along the east side of Road 108 south of Avenue 272. A second parcel is located at the southeast corner of Road 108 and Avenue 264. The properties are commonly referred to as Assessor Parcel Numbers (APNs) 126-240-035 and 149-030-012. The ROW south of Avenue 272 tapers from slightly less than 26 feet on the north to close to zero feet on the south (plus the acquisition of the underlying fee to an existing road easement) and is slightly more than 650 feet in length. South of Avenue 264, the Road 108 ROW required is approximately 18 feet in width and slightly more than 1,300 feet in length. The

SUBJECT: Acquisition of Property by Eminent Domain for the Road 108 Widening Project Pursuant to Code of Civil Procedure Section 1245.330; James Edward Rogers
DATE: November 10, 2009

acquisition of the underlying fee to an existing road easement on Avenue 264 is 25 feet in width and over 1,900 feet in length. 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) along the Road 108 ROW and 25 foot TCE along the Avenue 264 ROW 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 22, 2009 the County mailed notice of the public hearing to James Edward Rogers pursuant to Code of Civil Procedure Section 1245.235.

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 EIR/CE (copy attached) discusses in detail the Road 108 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 issues and provide for improved access between the cities of Visalia and Tulare. Based on the information contained in the EIR/CE, 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 EIR/CE 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 EIR/CE, 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 TCEs to be

SUBJECT: Acquisition of Property by Eminent Domain for the Road 108 Widening Project Pursuant to Code of Civil Procedure Section 1245.330; James Edward Rogers
DATE: November 10, 2009

acquired from James Edward Rogers. The ROW and TCEs 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 January 20, 2009 and the Board can make this finding.

FISCAL IMPACT/FINANCING:

There is no net cost to the County General Fund. The ROW acquisition is funded from an allocation from the STIP and Measure R. The cost for ROW 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:

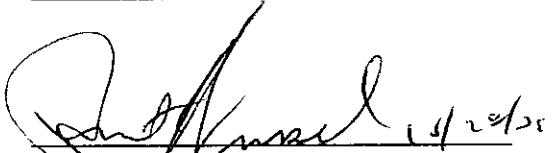
Do not proceed with eminent domain and continue to negotiate with James Edward Rogers. Staff does not recommend this alternative as the County has negotiated with James Edward Rogers and has not been able to come to agreement on the terms and price for the acquisition of the necessary ROW and TCEs. Any further delay in acquiring this ROW could jeopardize the access to funding for the construction 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 108 Widening
Project Pursuant to Code of Civil Procedure Section 1245.330; James
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ADMINISTRATIVE SIGN-OFF:



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 108 Project
Location Map, James Edward Rogers
Chapter 1, Environmental Impact Report/Categorical Exclusion

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 108

WIDENING PROJECT

PURSUANT TO CODE OF

CIVIL PROCEDURE SECTION

1245.330; JAMES EDWARD ROGERS)

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RESOLUTION NO. _____

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 108 Widening Project (the "Project"), which consists of widening Road 108 from two lanes to four lanes and creating a dividing center median from Caldwell Avenue in the City of Visalia to Leland Avenue in the City of Tulare, a distance of 5 miles, for the principal purposes of improving traffic flow, increasing safety, improving drainage, and improving access between the cities of Visalia and Tulare, 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 APNs 126-240-035 and 149-030-012. These parcels are generally located along the east side of Road 108, south of Avenue 272 and the southeast corner of Road 108 and Avenue 264, in the unincorporated area of Tulare County. They are more particularly described in Appendix A, attached hereto;
5. On October 22, 2009, a Notice of Hearing on the proposed adoption of this Resolution of Necessity was mailed to James Edward Rogers whose name and address appears on the last equalized assessment roll. 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 place 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