



**RESOURCE MANAGEMENT  
AGENCY  
COUNTY OF TULARE  
AGENDA ITEM**

**BOARD OF SUPERVISORS**

ALLIEN ISHIDA  
District One

PETE VANDER POEL  
District Two

PHILLIP A. COX  
District Three

J. STEVEN WORTHLEY  
District Four

MIKE FENNIS  
District Five

**AGENDA DATE:** February 9, 2010

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; Richard Robert Zupp, 1996 Zupp Revocable Trust (Robert Richard Zupp and Carol Ann Zupp), Mary Lou Zupp Living Trust

**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.

**SUBJECT:** Acquisition of Property by Eminent Domain for the Road 108 Widening Project Pursuant to Code of Civil Procedure Section 1245.330; Richard Robert Zupp, 1996 Zupp Revocable Trust (Robert Richard Zupp and Carol Ann Zupp), Mary Lou Zupp Living Trust

**DATE:** February 9, 2010

**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 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 to 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 5 outstanding property owners it is currently dealing with to acquire the necessary ROW to construct the project. One property is owned by The 1996 Zupp Revocable Trust (Robert Richard Zupp and Carol Ann Zupp, Trustees), Richard Robert Zupp, and The Mary Lou Zupp Living Trust (Zupp).

The County has been negotiating with the Zupps since December 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 offer was made on December 1, 2009. The Zupp property is located along the west side of Road 108, south of Avenue 248. It is commonly referred to as Assessor Parcel Number (APN) 166-010-032. The right of way (ROW) required is 18 feet in width and approximately 500 feet in length. In addition to the ROW requirement, there is a need for a 15 foot

**SUBJECT:** Acquisition of Property by Eminent Domain for the Road 108 Widening Project Pursuant to Code of Civil Procedure Section 1245.330; Richard Robert Zupp, 1996 Zupp Revocable Trust (Robert Richard Zupp and Carol Ann Zupp), Mary Lou Zupp Living Trust

**DATE:** February 9, 2010

easement for Tulare Irrigation District (TID) and a 25 foot temporary construction easement (TCE). Detailed legal descriptions and plats of the required ROW, TID easement and TCE are attached to the Resolution of Necessity.

On January 21, 2010 the County mailed notice of the public hearing to Robert Richard Zupp and Carol Ann Zupp, Trustees of the 1996 Zupp Revocable Trust, Richard Robert Zupp, and The Mary Lou Zupp Living Trust, 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 FEIR/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 FEIR/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 FEIR/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 FEIR/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

**SUBJECT:** Acquisition of Property by Eminent Domain for the Road 108 Widening Project Pursuant to Code of Civil Procedure Section 1245.330; Richard Robert Zupp, 1996 Zupp Revocable Trust (Robert Richard Zupp and Carol Ann Zupp), Mary Lou Zupp Living Trust

**DATE:** February 9, 2010

Appendix A are the legal descriptions and plats for the ROW, TID easement and TCE to be acquired from the Zupps. The ROW, TID easement 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 December 1, 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 the Zupps. Staff does not recommend this alternative as the County has negotiated with the Zupps and has not been able to come to agreement on the terms and price for the acquisition of the necessary ROW, TID easement and TCE. Any further delay in acquiring this ROW could jeopardize the access to funding for the construction of the project.

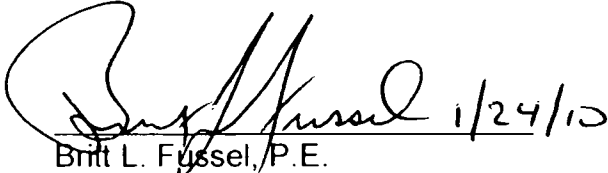
**INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES:**

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; Richard Robert Zupp, 1996 Zupp Revocable Trust (Robert Richard Zupp and Carol Ann Zupp), Mary Lou Zupp Living Trust

**DATE:** February 9, 2010

**ADMINISTRATIVE SIGN-OFF:**

A handwritten signature in black ink, appearing to read "Britt L. Fussel", followed by the date "1/24/10".

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, Zupp  
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; RICHARD ROBERT ZUPP, )  
1996 ZUPP REVOCABLE TRUST )  
(ROBERT RICHARD ZUPP AND )  
CAROL ANN ZUPP), MARY LOU )  
ZUPP LIVING TRUST )**

**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 parcel APN No. 166-010-032. The parcel is located along the west side of Road 108, south of Avenue 248. It is more particularly described in Appendix A, attached hereto;
5. On January 21, 2010, a Notice of Hearing on the proposed adoption of this Resolution of Necessity was mailed to Robert Richard Zupp and Carol Ann Zupp, Trustees of the 1996 Zupp Revocable Trust, Richard Robert Zupp, and

The Mary Lou Zupp Living Trust, whose names 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 February 9, 2010, 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;
- 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 FEBRUARY 9, 2010,  
BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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

BY: \_\_\_\_\_  
Deputy Clerk