

RESOLUTION NO. 2013-022

A RESOLUTION OF NECESSITY BY THE CITY COUNCIL OF THE CITY OF ROHNERT PARK, CALIFORNIA, AUTHORIZING THE ACQUISITION OF PROPERTY BY EMINENT DOMAIN FOR THE WILFRED AVENUE WIDENING PROJECT

WHEREAS, the City of Rohnert Park ("City") proposes to acquire approximately 7,396 square feet of perpetual easement and right of way (the "Property") as more fully described and depicted in Exhibits A and B attached hereto and incorporated herein by this reference for the Wilfred Avenue/Golf Course Drive West Widening Project ("the Project"); and

WHEREAS, pursuant to section 1245.235 of the Code of Civil Procedure, the City scheduled a hearing for February 12, 2013 at 5:00pm at the Council Chambers, located at 130 Avram Avenue, Rohnert Park, CA 94928 and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters set forth herein; and

WHEREAS, said hearing has been held by the City and each affected property owner was afforded an opportunity to be heard on said matters; and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to section 1240.040 of the Code of Civil Procedure.

THE CITY COUNCIL OF THE CITY OF ROHNERT PARK DOES FIND, DETERMINE, RESOLVE, AND ORDER AS FOLLOWS:

SECTION 1. The City Council hereby finds, based upon the substantial evidence contained in the record, including the written and oral staff reports presented to the City Council with respect to the proposed acquisition of the Property for the Project, as well as all other written and oral testimony submitted at the February 12, 2013 hearing, as follows:

A. That the interests to be acquired by the City consist of approximately 7,396 square feet of perpetual easement and right of way, (the "Property") as more fully described and depicted in Exhibits A and B attached hereto and incorporated herein by this reference.

B. That the Project shall include the replacement of the driveway approach on the remaining property to provide access to and from the newly widened Wilfred Avenue/Golf Course Drive West.

C. That the public interest, convenience and necessity require the Project and all public uses and purposes appurtenant thereto. The Project and these public uses and purposes are further described in the City of Rohnert Park's Agenda Staff Report, attached as Exhibit C and incorporated herein by this reference.

D. That the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

E. That the Property is necessary for the Project and such taking is authorized by Section 19, of Article I of the California Constitution, Sections 37350.5 and 40401 *et seq.* and 40404 of the California Government Code, Sections 1810 and 5100 *et seq.* and 5115 of the California Streets & Highways Code, Sections 5301 *et seq.* of the California Public Resources Code, Sections 1230.010 *et. seq.* and 1240.140 of the California Code of Civil Procedure, and other applicable law.

F. That all conditions and statutory requirements to exercise the power of eminent domain to acquire the Property described herein have been complied with by the City.

G. That the offer required by section 7267.2 of the Government Code was made to the owner or owners of record.

H. That the City of Rohnert Park has complied with Code of Civil Procedure section 1245.235 regarding the provision of necessary notice of the hearing on this Resolution.

I. That the Project was previously approved by the City pursuant to a Notice of Exemption on September 25, 2012, that the City filed a notice of exemption with the County Clerk on September 26, 2012 who posted it that same day through October 29, 2012, that the condemnation action proposed in this Resolution was anticipated in the Project's approval and is a subsequent action toward implementing the Project, and that the acquisition efforts proposed do not involve any substantial changes to the Project, nor would they cause new or more severe impacts.

SECTION 2. Based upon the forgoing facts, findings and conclusions, the City Council hereby declares its intention to acquire the Property in accordance with all applicable laws of the State of California governing proceedings in eminent domain.

SECTION 3. If any portion of the area of the Property has been appropriated to some public use, the public use in furtherance of the Project is a more necessary and paramount public use, pursuant to Code of Civil Procedure section 1240.610 or, alternatively, will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future, pursuant to Code of Civil Procedure section 1240.510.

SECTION 4. The law firm of Burke, Williams & Sorensen, LLP, is authorized and directed to bring an action in the Superior Court of the State of California, County of Sonoma, against all owners and claimants of the Property described herein for the purpose of acquiring the Property for the public use of the Project and to do all things necessary to prosecute such an action to its final determination in accordance with applicable law. The authorized attorneys are instructed to make an application to the court for an order fixing the amount of security by way of money deposits as the court may direct and for an order permitting the City to take possession and use of the Property for the use and purposes herein described.

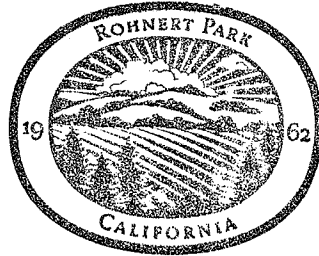
SECTION 5. The City Manager is authorized to engage the services of any consultant deemed necessary to complete the acquisition of the Property and to sign and verify any and all

complaints or other instruments necessary to maintain and complete an action in eminent domain.

SECTION 6. This Resolution shall take effect immediately upon its adoption.

SECTION 7. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 12th day of February, 2013.



Pam Stafford
Pam Stafford, Mayor

ATTEST:

JoAnne Buergler
JoAnne Buergler, City Clerk

APPROVED AS TO FORM:

Michelle Marchetta Kenyon
Michelle Marchetta Kenyon, City Attorney

AHANOTU: AYE BELFORTE: AYE MACKENZIE: AYE CALLINAN: AYE STAFFORD: AYE
AYES: (5) NOES: (0) ABSENT: (0) ABSTAIN: (0)

I, JoAnne Buerger, City Clerk of the City of Rohnert Park, do hereby certify that the foregoing Resolution was duly passed and adopted by the City Council of the City of Rohnert Park at a regular meeting of the City Council held on the 12th day of February, 2013 by the following vote:

YESES: (5) COUNCIL MEMBERS: Ahanotu, Belforte, Mackenzie, Callinan and Mayor Stafford

NOES: (0) COUNCIL MEMBERS: None

ABSENT:(0) COUNCIL MEMBERS: None

ABSTAIN(0) COUNCIL MEMBERS: None

ATTACHMENTS

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

PLAT MAP

EXHIBIT C

CITY'S STAFF REPORT

RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

October 26, 2012
JN: 50-100964
Page 1 of 1

EXHIBIT "A"
LEGAL DESCRIPTION
RIGHT OF WAY AND UTILITY
EASEMENT
APN 045-072-008

That certain parcel of land situated in the County of Sonoma, State of California, being a portion of Lot 97, Santa Rosa Farms No. 2, filed on March 7, 1910 in Book 21 of Maps, at Page 14, in the Office of the County Recorder of said Sonoma County and being a portion of Lot 97 as described in the Grant Deed, from Han Erh Huang and Chu Tin Huang to Yu Chuan She and Mary Shu Chang, recorded on April 2, 2003, in Document Number: 2003064164 of Official Records, in said Office of County Recorder, more particularly described as follows:

BEGINNING at the intersection of the westerly line said Lot 97 (21 M 14) and the southerly right of way line of Wilfred Avenue as shown on said map (21 M 14);

Thence, easterly along said southerly right of way of Wilfred Avenue, South 89°35'41" East 229.82 feet to the northeast corner of the parcel of land described in the deed to Noah S. Bonham and wife, recorded December 18, 1959, as Serial No. F.-96483 in said County Recorder's Office;

Thence, southerly along the easterly line of said Bonham parcel (F.-96483), South 00°29'35" West 34.57 feet;

Thence, leaving said Bonham parcel (F.-96483), North 88°24'04" West 229.87 feet to the westerly line of said Lot 97;

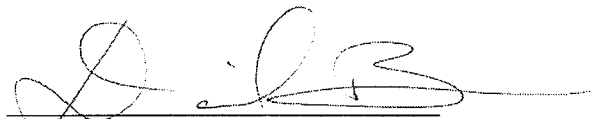
Thence, northerly along said westerly line North 00°29'51" East 29.79 feet to the **POINT OF BEGINNING**.

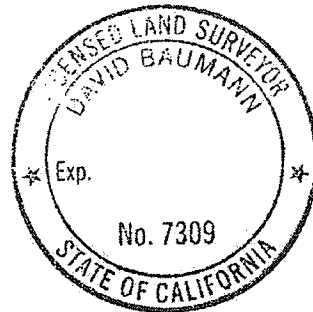
CONTAINING 7,396 Square Feet, more or less.

BASIS OF BEARINGS The bearings and distances contained herein are based upon the Record of Survey filed December 16, 2011 in Book 747 of Maps at Pages 50-53, in said County Recorder's Office.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.


David Baumann, P.L.S. 7309
License Expires March 31, 2013



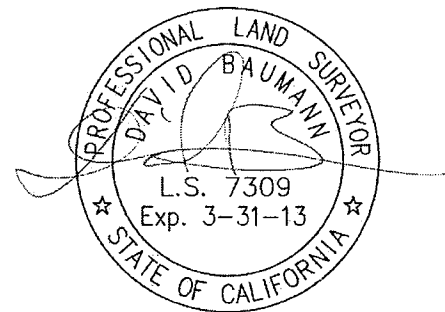
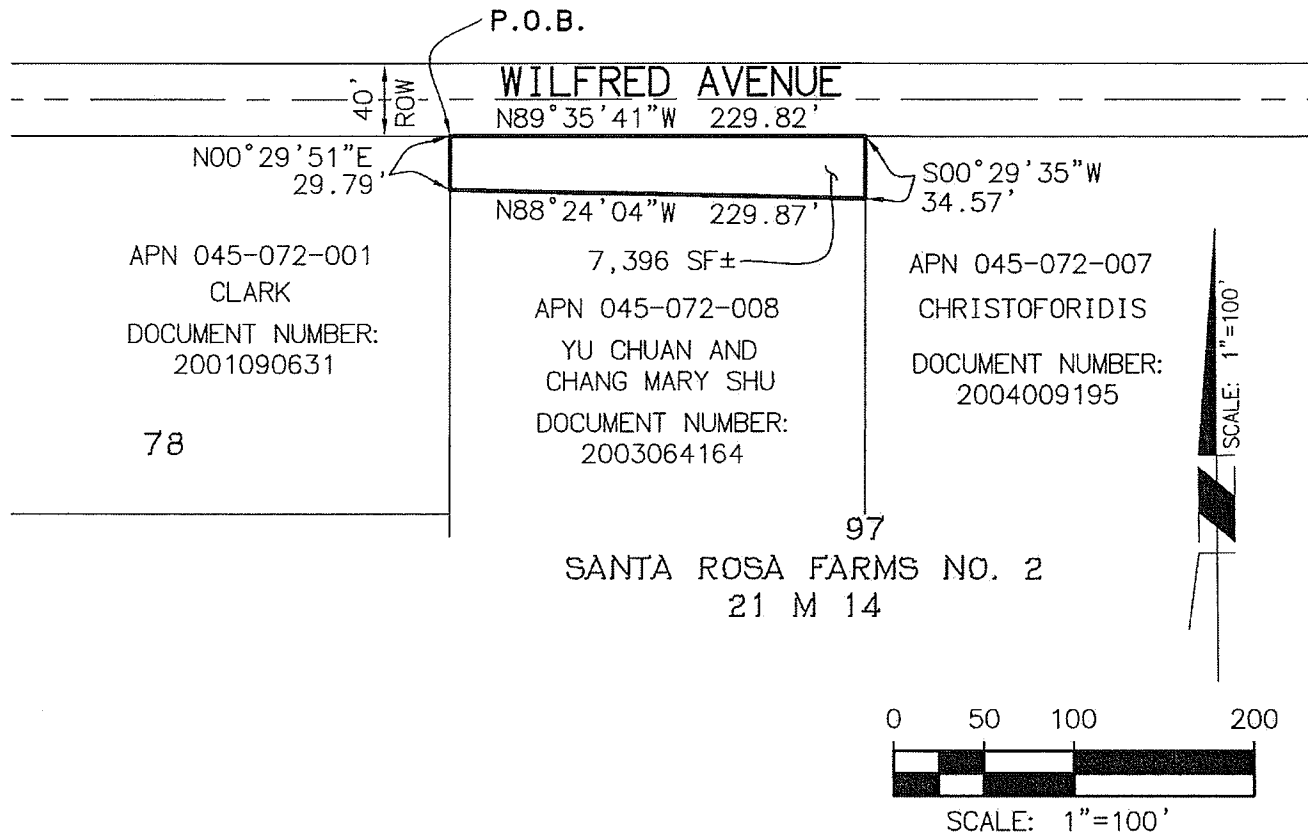


EXHIBIT "B"

SKETCH TO ACCOMPANY A
LEGAL DESCRIPTION FOR
WILFRED AVENUE
RIGHT OF WAY
CITY OF ROHNERT PARK
COUNTY OF SONOMA
STATE OF CALIFORNIA

RBF
CONSULTING
A Baker Company

500 YGNACIO VALLEY ROAD, SUITE 300
WALNUT CREEK, CALIFORNIA 94596-3847
925.908.1460 • FAX 925.908.1465 • www.RBF.com

SHEET 1 OF 1

OCTOBER 26, 2012

JOB NO. 50-100964

H:\DATA\50100964\CADD\WAPPING\EXHIBITS\WILFRED AVE\WILFRED EX07.DWG JERRY MILLER 1/23/13 4:49 pm


DEVELOPMENT SERVICES



City of Rohnert Park 130 Avram Avenue Rohnert Park, CA 94928 [707] 588-2243 Fax: [707] 794-9242

EXHIBIT C
2/12/13 City Council Agenda
Item Nos. 7-11
SUPPLEMENTAL

MEMORANDUM

DATE: February 12, 2013
TO: City Council
FROM: Patrick Barnes, Deputy City Engineer 
RE: Corrections to Wilfred Avenue Improvement Project Acquisition Agenda Items 7 through 11

Please be advised that the Resolution Number 2013-020, for City Council Agenda Item Number 8, Resolution of Necessity for Authorizing Acquisition and Condemnation of Real Property Identified as lands of Tesconi Properties LLC, APN 045-075-001, for the Wilfred Avenue Improvement Project, has been revised and is hereby replaced by the attached Resolution Number 2013-020. The following sentence has been added to Section 1, Paragraph A:

The temporary construction easement is for a period of three (3) months, to commence upon fourteen (14) days written notice from the City, and shall terminate three (3) months after such commencement, but in no event shall extend beyond completion of construction of the Project.

Please also be advised that there was a typographical error in Staff Reports for City Council Agenda Item Numbers 7, 8, 9, 10, and 11. In the body of all five (5) staff reports, there is a list of three (3) findings. The first finding in all five (5) reports is hereby revised as follows:

1. That the public interest, convenience and necessity require ~~the acquisition of the~~ proposed project. As proposed and more particularly provided for above and in the JEPA, the Wilfred Avenue Improvement Project will serve public purposes, for example, it will mitigate traffic, circulation and public safety impacts of the Casino;

Finally, there was a typographical error in Staff Report for City Council Agenda Item Number 7. In the body of the staff report, there is a list of three (3) findings. The third finding in the report is hereby revised as follows:

3. That the property interest sought to be acquired is necessary for the Wilfred Avenue Improvement Project. This section of Wilfred Avenue will be widened to create two through lanes in each direction, an eastbound left turn lane, ~~a westbound~~ an eastbound right turn lane, and bike lanes, consistent with the City of Rohnert Park's General Plan. The improvements include storm water capture, flood mitigation, water quality treatment and require that existing utilities be relocated to accommodate the roadway and drainage improvements.

ATTACHMENT: Resolution Number 2013-020



Mission Statement

*"We Care for Our Residents by Working Together to Build a
Better Community for Today and Tomorrow."*

**CITY OF ROHNERT PARK
CITY COUNCIL AGENDA REPORT**

Meeting Date: February 12, 2013
Department: Development Services
Submitted By: Darrin Jenkins, Assistant City Manager
Prepared By: Patrick Barnes, Deputy City Engineer
Agenda Title: Resolution of Necessity for Authorizing Acquisition and Condemnation of Real
Property Identified as lands Mary Shu Chang, APN 045-072-008, for the
Wilfred Avenue Improvement Project

RECOMMENDED ACTION: Staff recommends the City Council:

1. Conduct a hearing on the attached Resolution finding and determining that the public interest, convenience and necessity require the acquisition of certain property identified as land of Mary Shu Chang, APN 045-072-008 for the Wilfred Avenue Improvement Project; and
2. Review the evidence presented, including this staff report and public comments and close the hearing; and
3. Adopt the attached Resolution authorizing the commencement of eminent domain proceedings so as to acquire the interest in real property described therein (Note: This requires an affirmative supermajority [4/5] vote of the City Council).

BACKGROUND AND ANALYSIS: The subject of this resolution is the initiation of eminent domain to obtain legal possession of right-of-way along the south side of Wilfred Avenue, located in the County of Sonoma. Attached for ease of reference is a map titled Exhibit B to the Resolution.

The widening of Wilfred Avenue/Golf Course Drive West¹ (hereinafter Wilfred Avenue Improvement Project) is called for in the City's and County's respective general plans. The City of Rohnert Park entered into a Joint Exercise of Powers Agreement ("JEPA") with Sonoma County representatives, and the Federated Indians of Graton Rancheria ("Tribe") to facilitate the road widening of Wilfred Avenue (hereinafter Wilfred Avenue Improvement Project). The Wilfred Avenue Improvement Project helps mitigate traffic impacts of proposed development and implements the City and County General Plan Transportation Elements.

¹ The City renamed Wilfred Avenue to Golf Course Drive West within the City limits to be consistent with the existing Golf Course Drive, recently connected to Wilfred Avenue underneath a new overpass on Highway 101.

Pursuant to California Government Code sections 6500 et seq., 7267.2, 37350.5, and 40401 et seq. and 40404, and California Code of Civil Procedure Section 1230.010 et seq., 1240.410 and 1240.020, and Section 19, Article I of the California Constitution, and other authorities, including authorization in the JEPA, the City is authorized to acquire the subject property by eminent domain, provided certain procedural steps are followed.

A portion of the necessary right of way for the Wilfred Avenue Improvement Project has been acquired through voluntary negotiations, which are continuing. At this time, negotiations have not been successful with a few property owners, including 7,396 square feet for a perpetual easement, which is the subject of this Resolution. Formal offers to acquire the necessary road right-of-way were made to the property owner by both the Tribe and the City – but the owner has not executed an agreement to voluntarily sell the easement. The background for the subject property is described in the attachments, which will be addressed by City staff at the hearing.

The property identified in the attached Resolution is owned by Mary Shu Chang. The use to which the property is currently put is vacant land. The property is zoned DA B6-10 - Diverse Agriculture District. The lot is 2.0 Acres (87,120 square feet) in size, and there are no improvements.

The Project shall include the replacement of the driveway approach on the remaining property to provide access to and from the newly widened Wilfred Avenue.

Due to the length of time that has elapsed since the first offers were made, staff is recommending acquiring the easement from the subject property mentioned above through the City's eminent domain powers. This will allow the acquisition process to proceed in a timely and orderly manner in order to meet project construction deadlines. A delay in obtaining all of the required right-of-way for this project within the current schedule may delay the project construction for an additional year.

Consistent with Section 1240.140 of the Code of Civil Procedure, the JEPA provides for the City to exercise its authority to acquire property outside its territorial limits, including all right of way and temporary easements necessary to develop the Wilfred Avenue Improvement Project, pursuant to Streets and Highways Code Section 1810, with the County's consent as provided for in Section 3.1.12 of the JEPA, as well as Public Resources Code Section 5301 *et seq.*, and Streets and Highways Code Section 5115.

The City must make an offer to purchase to the property owner, which offer must be transmitted in writing, based upon an appraisal. The City tendered a statutory Offer to Purchase (Exhibit 1) to the Property owner as required by law based upon an approved appraisal. To date, the offer has not been accepted.

In order to meet construction timing obligations, it is now necessary that an action in eminent domain be commenced to acquire the property interests referenced herein. Prior to the filing of an eminent domain action, the City must hold a hearing on the proposed Resolution of Necessity, (Exhibit 2) and provide the owner of the affected property an opportunity to be heard, provided that the owner has filed a request to be heard in writing with the City prior to the hearing.

In addition, the hearing must be duly noticed. Attached is a copy of the Notice of Hearing, which was delivered in accordance with the applicable statutes (Exhibit 3).

After conducting the public hearing, if the City finds that the public necessity so requires, the City should adopt the attached Resolution of Necessity, authorizing condemnation proceedings for the purpose of acquiring the property which is described therein.

The findings, which need to be made, are as set forth in the Resolution of Necessity. Specifically, the City must find:

1. That the public interest, convenience and necessity require the acquisition of the proposed project. As proposed and more particularly provided for above and in the JEPA, the Wilfred Avenue Improvement Project will serve public purposes, for example, it will mitigate traffic, circulation and public safety impacts of the implementation of the city's general plan and nearby casino development;
2. That the Wilfred Avenue Improvement Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury. Wilfred Avenue is already in existence. As such, the widening of the currently-existing road will offer the least injury to private property as the construction of a new, wider road would require the acquisition of additional property. Additionally, constructing a new, wider road at a different location at this point would be unreasonable and unnecessarily costly to the public.
3. That the property interest sought to be acquired is necessary for the Wilfred Avenue Improvement Project. This section of Wilfred Avenue will be widened to create larger motor vehicle lanes and add safety shoulders incorporating bike lanes, consistent with the Sonoma County General Plan. The improvements include storm water capture, flood mitigation, water quality treatment and require that existing utilities be relocated to accommodate the roadway and drainage improvements.

Questions relating to value are not relevant to this proceeding. This action begins a process where the property owner will be allowed to make their case to the court as to the value of their property. However, that does not mean that negotiations for the acquisition of the property interests are at an end. After the hearing, counsel and the City's right-of-way consultant will continue to negotiate with the owner and diligently pursue satisfactory conclusions to the right-of-way acquisitions.

ENVIRONMENTAL ANALYSIS:

With respect to environmental review, the Wilfred Avenue Improvement Project was previously approved by the City pursuant to a Notice of Exemption on September 25, 2012. The Notice of Exemption relied upon a statutory exemption in Government Code Section 12012.56 which acknowledges that federal environmental review had already been conducted for the Casino and its offsite impacts such as traffic. That exemption provides that the timely mitigation accomplished through an intergovernmental agreement, such as the JEPA, of any significant

effect on the environment, including traffic and public safety impacts, and compensation therefore, which is attributable in whole or in part to the Casino is not a project for CEQA purposes. The City filed a notice of exemption with the County Clerk on September 26, 2012 who posted it that same day through October 29, 2012.

The acquisition of land for widening Wilfred Avenue by eminent domain, which proceedings are proposed to be initiated herein by adoption of a Resolution of Necessity, was anticipated in the approval of the Wilfred Avenue Improvement Project and is a subsequent action toward implementing said project. As a result, staff has determined that efforts to acquire the property described herein have already been analyzed and found to be statutorily exempt from CEQA. Adopting the Resolution of Necessity and initiating eminent domain proceedings does not involve any substantial changes to the Project, nor would such action cause new or more severe environmental impacts. For those reasons, neither the obligation to comply with CEQA nor is the statute of limitations on that prior action are re-triggered by this action toward implementing the project.

OPTIONS CONSIDERED: Project will not be constructed as planned.

FISCAL IMPACT/FUNDING SOURCE: In accordance with the JEPa, the Tribe is solely responsible for paying for all design, permitting, construction, review, inspection, project management, staff, legal, right of way acquisition, and operating and maintenance costs incurred for the construction of the Wilfred Avenue Improvement Project.

Department Head Approval Date: 2/7/2013

City Manager Approval Date: 2/7/2013

City Attorney Approval Date: 1/30/2013

Attachments (list in packet assembly order):

Exhibit 1. Offer Letter

Exhibit 2. Resolution of Necessity with Exhibits (legal description and plat map)

Exhibit 3. Notice of Hearing regarding intent of the City Council for the City of Rohnert Park to consider the adoption of a resolution of necessity to acquire property by eminent domain