

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

DEPT: Public Works *Chiesa*

BOARD AGENDA # *C-2

Urgent Routine

AGENDA DATE December 8, 2009

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 State Route 219 Widening Project, Parcel Owner Raymond U. Alessi, et al., APN: 046-006-031 and 046-006-032, 10-Sta-219-KP 5.40/5.50, Parcel 15322; 15322-01-01; 15325

STAFF RECOMMENDATIONS:

Consider and adopt a Resolution of Necessity to acquire Real Property or Interest in Real Property by Eminent Domain for the State Route 219 widening project, parcel owner Parcel Owner Raymond U. Alessi, et al., for APN: 046-006-031 and 046-006-032, 10-Sta-219-KP 5.40/5.50, Parcel 15322; 15322-01-01; 15325 , and make the findings contained therein.

FISCAL IMPACT:

Under the County's Memorandum of Understanding with the California Department of Transportation (Caltrans), Stanislaus County will bear the costs associated with noticing and conducting the Resolution of Necessity hearings. It is anticipated that these costs will be minimal and can be absorbed within the Public Works Road and Bridge budget.

BOARD ACTION AS FOLLOWS:

No. 2009-812

On motion of Supervisor Chiesa, Seconded by Supervisor Grover

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

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 State Route 219 Widening Project, Parcel Owner Raymond U. Alessi, et al., APN: 046-006-031 and 046-006-032, 10-Sta-219-KP 5.40/5.50, Parcel 15322; 15322-01-01; 15325

DISCUSSION:

The Caltrans widening of State Route 219 (Kiernan Avenue) from State Route 99 on the west to State Route 108 (Mc Henry Avenue) on the east is divided into two phases. The first phase, which is currently under construction, is from State Route 99 to just east of Dale Road. The second phase is from just east of Dale Road on the west to State Route 108. Caltrans completed right-of-way acquisition for Phase I and is now in the process of purchasing right-of-way for Phase II.

The County of Stanislaus, City of Modesto, Stanislaus Council of Governments (StanCOG), and Caltrans have been working together to accelerate this widening project and since the right-of-way acquisition procedures presented the largest delay, the County agreed to conduct the Resolution of Necessity hearings on behalf of the State. Typically, the Resolution of Necessity hearings are conducted at the California Transportation Commission (CTC), however, by conducting the hearings locally a long scheduling delay is avoided. In 2007, with the approval of a Memorandum of Understanding with Caltrans, the Board of Supervisors conducted the Resolution of Necessity hearings for Phase I. On June 3, 2008, the Board of Supervisors approved a similar Memorandum of Understanding with Caltrans, which outlined the various roles and responsibilities necessary to conduct the hearings for the Phase II improvements. These hearings are only for properties needed for the widening project that could not be obtained by negotiation. Conducting these hearings should result in approval or disapproval of a Resolution of Necessity containing the following four findings:

- 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 with the least private injury.
- C. This property is required for the proposed project.
- D. An offer to purchase the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

This hearing is for a partial acquisition of property described by Caltrans as Parcel 15322; 15322-01-01; 15325, has an Assessor's Parcel Number of 046-006-031 and 046-006-032 and is located at southwest and southeast corners of Kiernan Avenue and Carver Road. This property is a Williamson Act contract (77-2736). The property owner is Raymond U. Alessi, et al. The property owner is not contesting the items in the Resolution of Necessity, the only issue with the property owner is related to compensation.

Staff believes that Caltrans has complied with all requirements of the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970 as amended. The Caltrans staff appraisal of the property has been reviewed by the District/Region Appraisal Branch and Caltrans has confirmed that the value conclusions

Approval to Consider and Adopt a Resolution of Necessity to Acquire Real Property or Interest in Real Property by Eminent Domain for the State Route 219 Widening Project, Parcel Owner Raymond U. Alessi, et al., APN: 046-006-031 and 046-006-032, 10-Sta-219-KP 5.40/5.50, Parcel 15322; 15322-01-01; 15325

are valid and the appraisal represents current market value. The owner has been offered the full amount of the approved appraisal.

The amount of compensation is specifically excluded from consideration in the adoption of a Resolution of Necessity. Once a Resolution is passed, court proceedings can begin to consider the remaining issue of compensation. If the property owner wishes to contest any of the four issues (listed A - D above) considered in a Resolution of Necessity, a request to appear should be sent in advance of the hearing. Caltrans representatives will attend the hearing as needed to provide evidence and testimony sufficient to support adoption of the proposed Resolution of Necessity and the findings contained within.

This parcel is not in a Williamson Act contract and was evaluated in the Environmental Assessment pursuant to the Farmland Protection Policy Act, the California Land Conservation Act of 1965, and local farmland protection policies. Caltrans determined that there would be no substantial impact resulting from the construction of the proposed project.

Caltrans also determined in a formal notification to the Department of Conservation that this project is considered exempt from making the findings as required in Government Codes Section 51292, per Section 51293 (f).

POLICY ISSUES:

The Board should consider if the recommended actions are consistent with its priorities of providing a safe community, a healthy community and a well-planned infrastructure system.

STAFFING IMPACT:

Staff from the Chief Executive Office, County Counsel and Public Works have been involved in preparing notices, agenda items and presentations associated with the Resolution of Necessity hearings.

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

Date: December 8, 2009

No. 2009-812

On motion of Supervisor Chiesa Seconded by Supervisor Grover
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

Item # *C-2

THE FOLLOWING RESOLUTION WAS ADOPTED:

TO ACQUIRE CERTAIN REAL PROPERTY OR INTEREST IN REAL PROPERTY
BY EMINENT DOMAIN HIGHWAY 10-Sta-219-KP 5.40/5.50, PARCEL 15322; 15322-01-01; 15325
APN: 046-006-031 and 046-006-032, OWNER: Raymond U. Alessi, et al.

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, Streets and Highways Code section 760 authorizes the Board of Supervisors, by four-fifths vote, to cooperate with the California Department of Transportation ("Caltrans") in the acquisition of land for state highway purposes if doing so will promote the interests of the County of Stanislaus; and

WHEREAS, on June 3, 2008, the Board of Supervisors adopted by four-fifths vote, a Resolution Authorizing a Memorandum of Understanding with Caltrans for the County to Conduct Resolution of Necessity Hearings to Assist Caltrans in Acquiring Property for State Route 219 Transportation Improvements.

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 hearing 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

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



WHEREAS, notice has been properly given to the Director of Conservation pursuant to Government Code section 51291 of the intent to consider the property for location of the project:

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of Supervisors of Stanislaus County that the following findings be made:

1. The public interest and necessity require the acquisition of the real property interests described in Exhibit "A", "B", and "C", attached hereto and incorporated by this reference for the proposed public project, namely a State highway; and
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; and
3. The property sought to be acquired and described by this resolution is necessary for the public project; and
4. The offer required by Section 7267.2 of the Government Code has been made to the owners of record.

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of Supervisors of Stanislaus County that the California Department of Transportation is hereby authorized and empowered;

To acquire, in the name of the People of the State of California, in fee simple absolute, unless a lesser estate is hereinafter expressly described, the real property, or interests in real property described in Exhibit "A", "B", and "C" attached hereto, by condemnation proceeding or proceedings in accordance with the provisions of the Streets and Highways Code, Code of Civil Procedure and of the Constitution of California relating to eminent domain;

The real property or interests in real property, which the Department of Transportation is by this resolution authorized to acquire, is situated in the County of Stanislaus, State of California, Highway 10-Sta-219 and described in Exhibit "A", "B", and "C" attached hereto.

1 **Parcel 15322**

2 For State highway purposes, a portion of that certain parcel of land
3 described in that certain document recorded December 14, 2000 as Document No.
4 2000-0106546-00, Official Records Stanislaus County, being a portion of Lot 13 of
5 ALBEMERL TRACT, recorded in Volume 4 of Maps at Page 19, Stanislaus County
6 Records, more particularly described as follows:

7 COMMENCING at the position for the North quarter corner of Section 6,
8 Township 3 South, Range 9 East, Mount Diablo Meridian and Base Line, said
9 position is South 00°56'10" East, a distance of 0.582 (1.91 feet) from a 2" iron pipe
10 marking a Witness Corner, as shown on Record of Survey filed in Book 16 of
11 Surveys at Page 16, Stanislaus County Records; THENCE (1) South 00°56'10"
12 East, along the North-South Quarter Section line of said Section 6, a distance of
13 85.487 meters, the South quarter corner of said Section 6 being marked by a 2"
14 iron pipe with a brass cap, as shown on Record of Survey filed in Book 16 of
15 Surveys at Page 16, Stanislaus County Records; THENCE (2) South 89°03'50"
16 West, a distance of 12.468 meters to a point on the westerly right of way line of
17 the new alignment of Carver Road (County Road, 60 feet wide), as said right of
18 way is described in the Grant Deed to the State of California, recorded October 7,
19 1988, as Document No. 069259, Official Records Stanislaus County, said point
20 being the TRUE POINT OF BEGINNING; THENCE (3) South 71°33'13" West, a
21 distance of 7.623 meters; THENCE (4) North 64°43'56" West, a distance of 37.353
22 meters to the easterly right of way line of the old alignment of Carver Road
23 (County Road, 40 feet wide); THENCE (5) North 00°38'32" West, along said
24 easterly right of way line of the old alignment of Carver Road, a distance of 37.000
25 meters; THENCE along said easterly right of way line of the old alignment of
26 Carver Road, the southerly right of way line of State Route 219 and said westerly
27 right of way line of the new alignment of Carver Road, the following courses: (6)

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Parcel 15322 (continued)

North 44°58'54" East, a distance of 16.183 meters; (7) South 88°53'22" East, a distance of 19.502 meters; (8) South 50°50'37" East, a distance of 16.689 meters; (9) South 00°52'52" East, a distance of 10.918 meters to the beginning of a tangent curve concave westerly and having a radius of 249.936 meters; (10) southerly along said tangent curve, through a central angle of 09°13'56", an arc distance of 40.273 meters to the TRUE POINT OF BEGINNING.

The bearings and distances used in this description are on the California Coordinate System of 1983, Zone 3. Multiply distances by 1.00006972 to convert to ground distances.

1 **Parcel 15322-01-01 (Excess)**

2 For State Highway purposes, That portion of the land described in that
3 certain document recorded December 14, 2000 as Document No. 2000-0106546-
4 00, Official Records Stanislaus County, being a portion of Lots 13 and 14 of
5 ALBEMERL TRACT, recorded in Volume 4 of Maps at Page 19, Stanislaus County
6 Records, lying westerly of the land granted to the State of California per Grant
7 Deed recorded October 7, 1988 as Document No. 069259, Official Records
8 Stanislaus County.

9 Excepting therefrom that certain parcel of land granted to the State of
10 California, per Grant Deed recorded September 4, 1981 as Document No. 13056 in
11 Volume 3475, at Page 684, Official Records Stanislaus County.

12 Also excepting therefrom a portion of that certain parcel of land described
13 in that certain document recorded December 14, 2000 as Document No. 2000-
14 0106546-00, Official Records Stanislaus County, being a portion of Lot 13 of
15 ALBEMERL TRACT, recorded in Volume 4 of Maps at Page 19, Stanislaus County
16 Records, more particularly described as follows:

17 COMMENCING at the position for the North quarter corner of Section 6,
18 Township 3 South, Range 9 East, Mount Diablo Meridian and Base Line, said
19 position is South 00°56'10" East, a distance of 0.582 (1.91 feet) from a 2" iron pipe
20 marking a Witness Corner, as shown on Record of Survey filed in Book 16 of
21 Surveys at Page 16, Stanislaus County Records; THENCE (1) South 00°56'10"
22 East, along the North-South Quarter Section line of said Section 6, a distance of
23 85.487 meters, the South quarter corner of said Section 6 being marked by a 2"
24 iron pipe with a brass cap, as shown on Record of Survey filed in Book 16 of
25 Surveys at Page 16, Stanislaus County Records; THENCE (2) South 89°03'50"
26 West, a distance of 12.468 meters to a point on the westerly right of way line of
27 the new alignment of Carver Road (County Road, 60 feet wide), as said right of

1 **Parcel 15322-01-01 (Excess) (continued)**

2 way is described in the Grant Deed to the State of California, recorded October 7,
3 1988, as Document No. 069259, Official Records Stanislaus County, said point
4 being the TRUE POINT OF BEGINNING; THENCE (3) South 71°33'13" West, a
5 distance of 7.623 meters; THENCE (4) North 64°43'56" West, a distance of 37.353
6 meters to the easterly right of way line of the old alignment of Carver Road
7 (County Road, 40 feet wide); THENCE (5) North 00°38'32" West, along said
8 easterly right of way line of the old alignment of Carver Road, a distance of 37.000
9 meters; THENCE along said easterly right of way line of the old alignment of
10 Carver Road, the southerly right of way line of State Route 219 and said westerly
11 right of way line of the new alignment of Carver Road, the following courses: (6)
12 North 44°58'54" East, a distance of 16.183 meters; (7) South 88°53'22" East, a
13 distance of 19.502 meters; (8) South 50°50'37" East, a distance of 16.689 meters;
14 (9) South 00°52'52" East, a distance of 10.918 meters to the beginning of a
15 tangent curve concave westerly and having a radius of 249.936 meters; (10)
16 southerly along said tangent curve, through a central angle of 09°13'56", an arc
17 distance of 40.273 meters to the TRUE POINT OF BEGINNING.

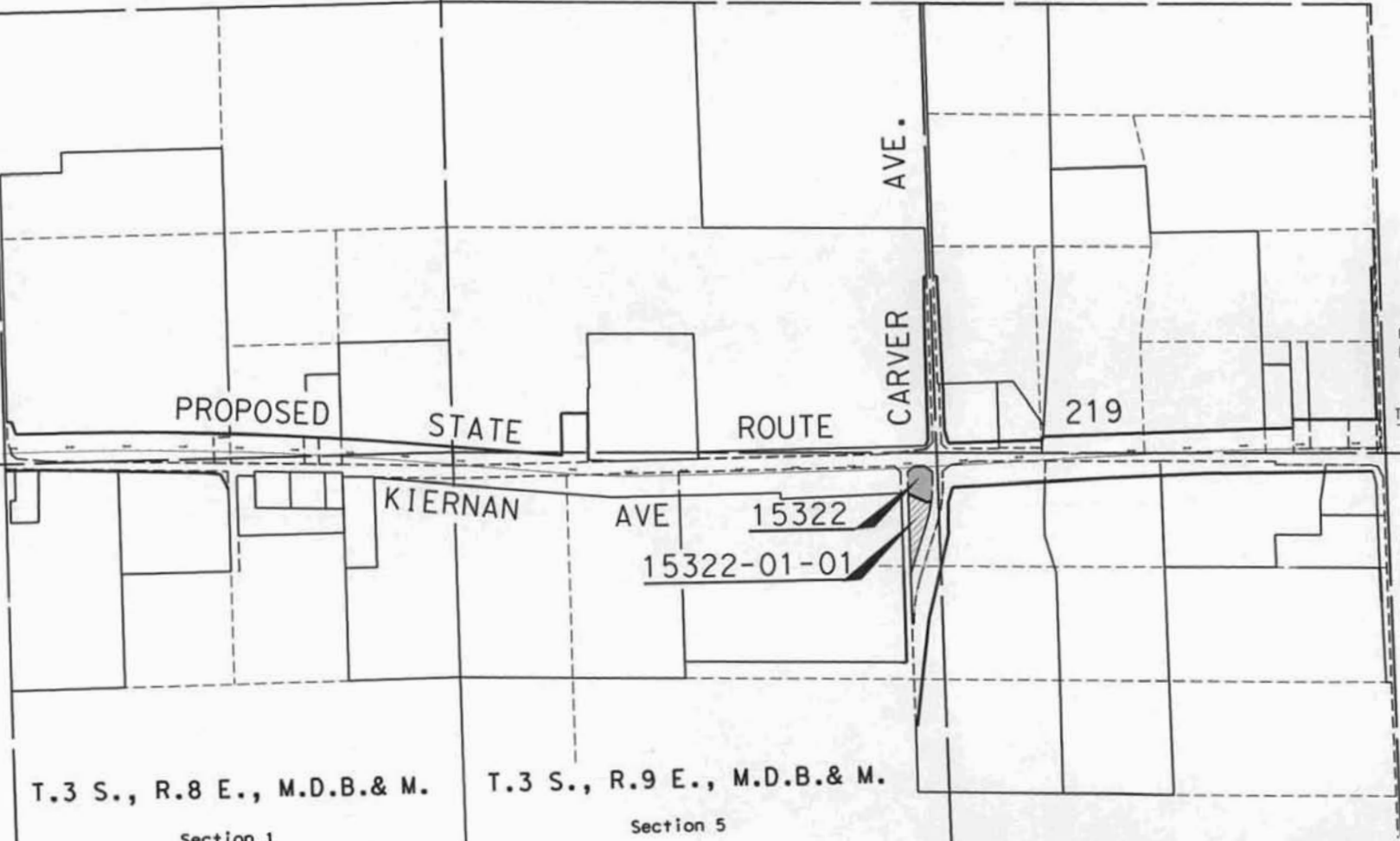
18 The bearings and distances used in this description are on the California
19 Coordinate System of 1983, Zone 3. Multiply distances by 1.00006972 to convert
20 to ground distances.
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EXHIBIT A



T.2 S., R.8 E., M.D.B.& M.
Section 36

T.2 S., R.9 E., M.D.B.& M.
Section 32



TO HWY 99

TO HWY 108

T.3 S., R.8 E., M.D.B.& M.
Section 1

T.3 S., R.9 E., M.D.B.& M.
Section 5

NO SCALE

RESOLUTION OF NECESSITY
AREA MAP

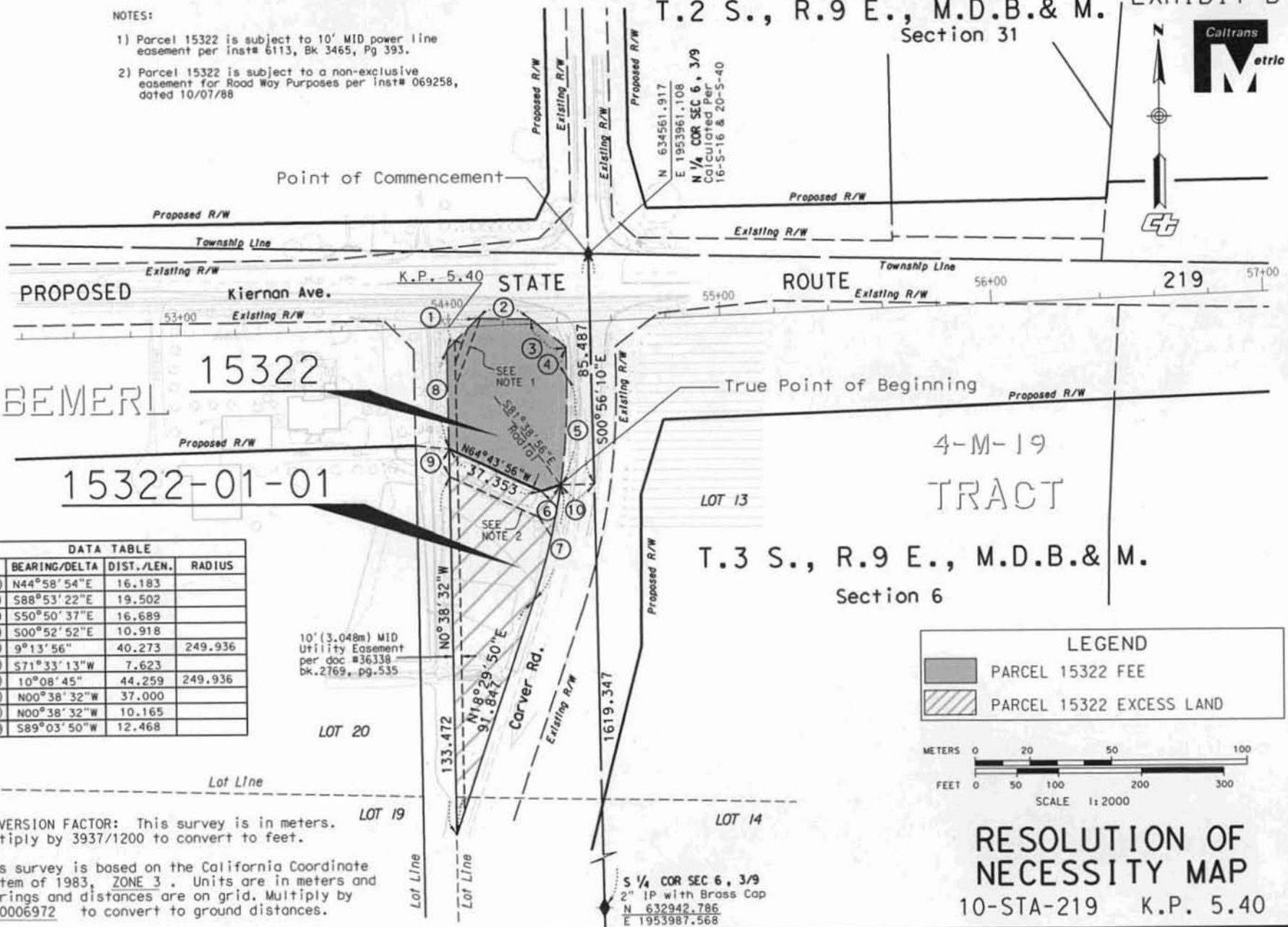
10-Sta-219 K.P. 5.40

NOTES:

- 1) Parcel 15322 is subject to 10' MID power line easement per inst# 6113, Bk 3465, Pg 393.
- 2) Parcel 15322 is subject to a non-exclusive easement for Road Way Purposes per inst# 069258, dated 10/07/88

T.2 S., R.9 E., M.D.B. & M. Section 31

EXHIBIT B



ALBEMERL

15322

15322-01-01

4-M-19

TRACT

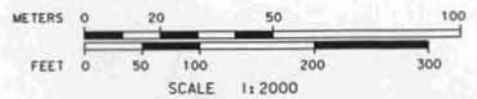
T.3 S., R.9 E., M.D.B. & M. Section 6

DATA TABLE			
#	BEARING/DELTA	DIST./LEN.	RADIUS
1	N44°58'54"E	16.183	
2	S88°53'22"E	19.502	
3	S50°50'37"E	16.689	
4	S00°52'52"E	10.918	
5	9°13'56"	40.273	249.936
6	S71°33'13"W	7.623	
7	10°08'45"	44.259	249.936
8	N00°38'32"W	37.000	
9	N00°38'32"W	10.165	
10	S89°03'50"W	12.468	

10' (3.048m) MID Utility Easement per doc #36338 bk.2769, pg.535

LEGEND

- PARCEL 15322 FEE
- PARCEL 15322 EXCESS LAND



CONVERSION FACTOR: This survey is in meters. Multiply by 3937/1200 to convert to feet.

This survey is based on the California Coordinate System of 1983, ZONE 3. Units are in meters and bearings and distances are on grid. Multiply by 1.00006972 to convert to ground distances.

S 1/4 COR SEC 6, 3/9
2" IP with Brass Cap
N 632942.786
E 1953987.568

RESOLUTION OF NECESSITY MAP
10-STA-219 K.P. 5.40

1 **Parcel 15325**

2 For State highway purposes, a portion of that certain parcel of land
3 described in the Grant Deed recorded April 3, 1979 as Document No. 62260, in
4 Book 3173, Page 260, Official Records Stanislaus County, being a portion of Lots
5 13, 14 and 15 of ALBEMERL TRACT, recorded in Volume 4 of Maps at Page 19,
6 Stanislaus County Records, more particularly described as follows:

7 COMMENCING at the position for the North quarter corner of Section 6,
8 Township 3 South, Range 9 East, Mount Diablo Meridian and Base Line, said
9 position is South 00°56'10" East, a distance of 0.582 (1.91 feet) from a 2" iron pipe
10 marking a Witness Corner as shown on Record of Survey filed in Book 16 of
11 Surveys at Page 16, Stanislaus County Records; THENCE (1) South 00°56'10"
12 East, along the North-South Quarter Section line of said Section 6, a distance of
13 205.453 meters to the TRUE POINT OF BEGINNING, the South quarter corner of
14 said Section 6 being marked by a 2" iron pipe with a brass cap, as shown on
15 Record of Survey filed in Book 16 of Surveys at Page 16, Stanislaus County
16 Records; THENCE (2) North 14°09'04" East, a distance of 61.274 meters; THENCE
17 (3) North 00°16'25" East, a distance of 56.657 meters; THENCE (4) North
18 17°05'43" East, a distance of 29.024 meters; THENCE (5) North 87°45'18" East, a
19 distance of 166.108 meters to the easterly line of the land described in above said
20 Grant Deed; THENCE (6) North 02°56'39" East, along said easterly line, a distance
21 of 34.966 meters to the southerly right of way line of State Route 219; THENCE
22 along said southerly right of way line of State Route 219 and the easterly right of
23 way line of the new alignment of Carver Road (County Road, 60 feet wide), as said
24 right of way is described in the Grant Deed to the State of California, recorded
25 October 7, 1988, as Document No. 069259, Official Records Stanislaus County,
26 the following courses: (7) North 88°54'18" West, a distance of 127.165 meters; (8)
27 South 83°40'48" West, a distance of 42.986 meters; (9) South 52°22'03" West, a

1 **Parcel 15325 (continued)**

2 distance of 19.416 meters; (10) South 00°52'52" East, a distance of 10.898
3 meters to the beginning of a tangent curve concave westerly, said curve has a
4 radius of 268.225 meters; (11) southerly along said tangent curve an arc distance
5 of 90.718 meters, through a central angle of 19°22'42" to a point of tangency; (12)
6 South 18°29'50" West, a distance of 93.117 meters to the beginning of a tangent
7 curve concave easterly, said curve has a radius of 249.936 meters; (13) southerly
8 along said tangent curve a distance of 83.490 meters, through a central angle of
9 19°08'22" to a point of non-tangency; (14) South 89°21'28" West, a distance of
10 3.048 meters to the westerly line of said Lot 14; THENCE (15) South 00°38'32"
11 East, along said westerly line of said Lot 14 and westerly line of said Lot 15, a
12 distance of 184.889 meters; THENCE (16) North 89°21'28" East, a distance of
13 3.184 meters; THENCE (17) North 07°12'40" East, a distance of 193.505 meters to
14 the southerly prolongation of above described course (2); THENCE (18) North
15 14°09'04" East, a distance of 95.228 meters to the TRUE POINT OF BEGINNING.

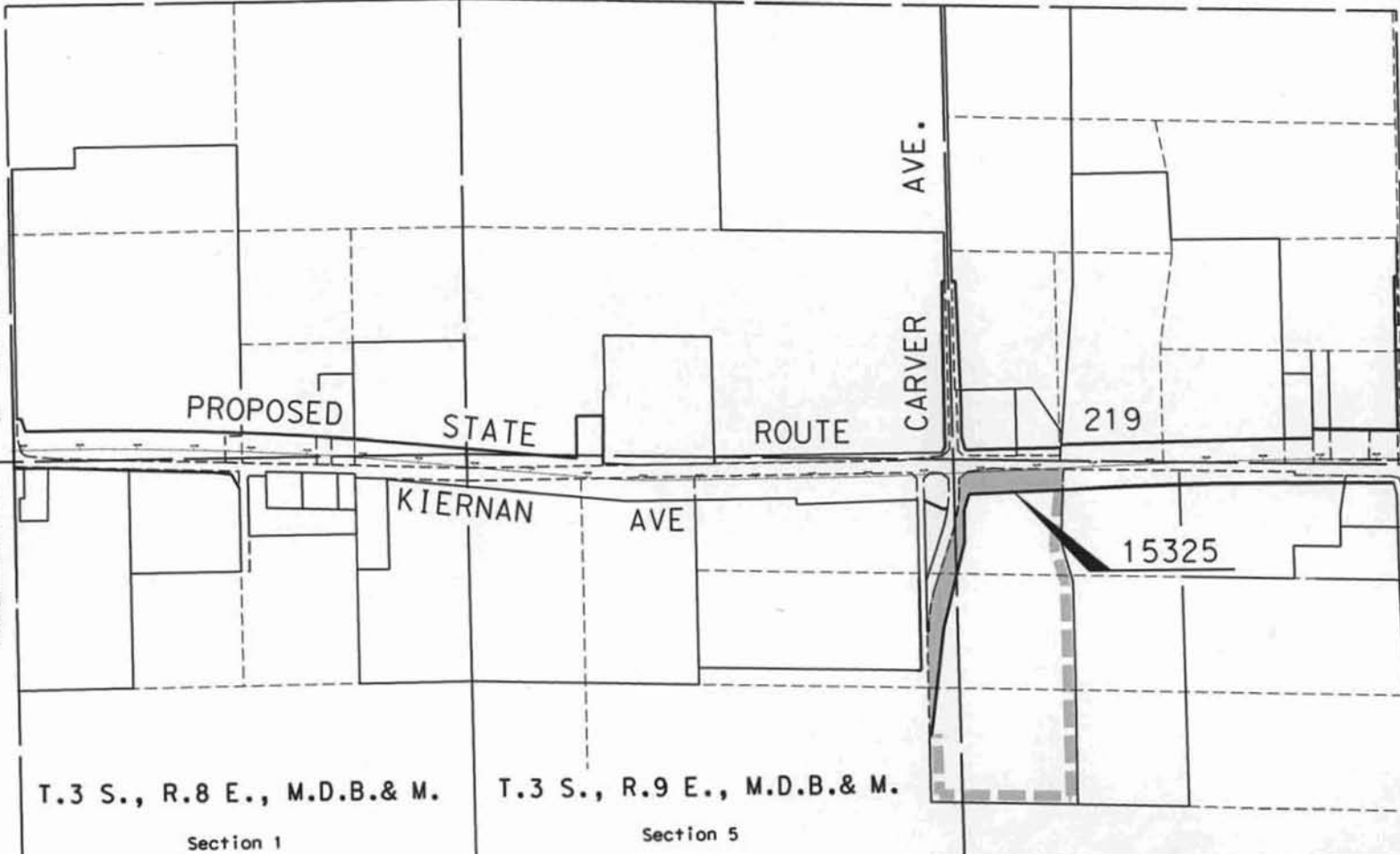
16 The bearings and distances used in this description are on the California
17 Coordinate System of 1983, Zone 3. Multiply distances by 1.00006972 to convert
18 to ground distances.

EXHIBIT A



T.2 S., R.8 E., M.D.B.& M.
Section 36

T.2 S., R.9 E., M.D.B.& M.
Section 32



TO HWY 99

TO HWY 108

T.3 S., R.8 E., M.D.B.& M.
Section 1

T.3 S., R.9 E., M.D.B.& M.
Section 5

NO SCALE

RESOLUTION OF NECESSITY
AREA MAP

10-Sta-219 K.P. 5.50

T.3 S., R.9 E., M.D.B.& M.
Section 6

EXHIBIT B



PROPOSED

STATE

ROUTE

Kiernan Ave. Point of Commencement

LEGEND

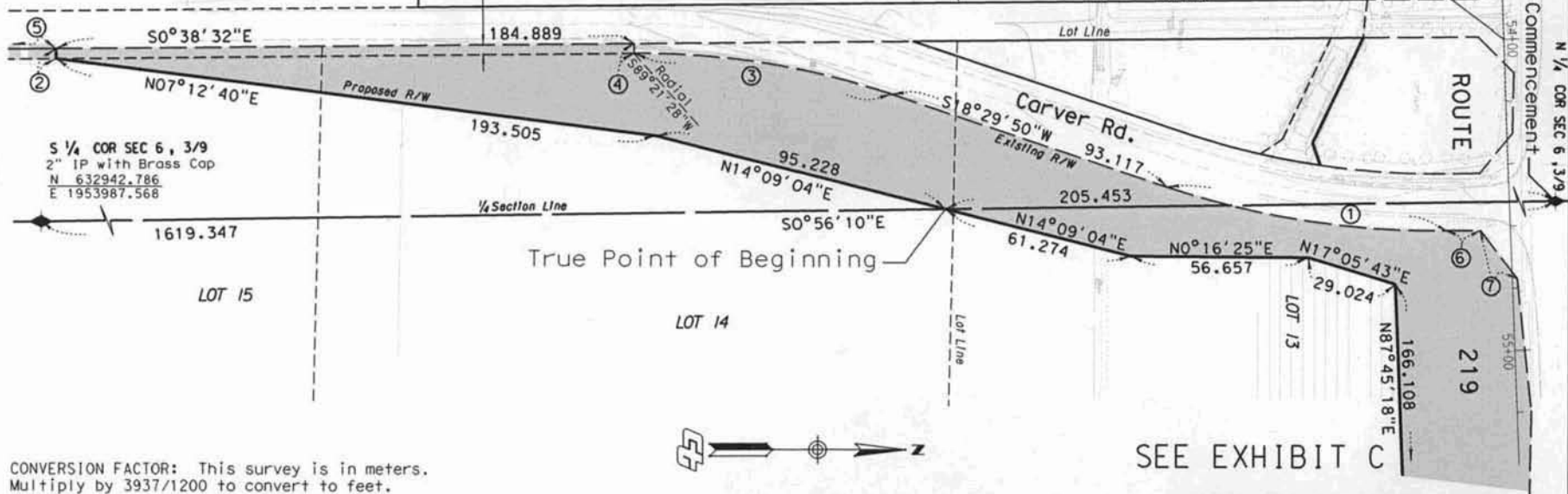
PARCEL 15325 FEE

PARCEL 15325 PROPERTY BOUNDARY

DATA TABLE			
#	BEARING/DELTA	DIST./LEN.	RADIUS
①	19°22'42"	90.718	268.225
②	N89°21'28"E	3.184	
③	19°08'22"	83.490	249.936
④	S89°21'28"W	3.048	
⑤	S00°38'32"E	118.938	
⑥	S00°52'52"E	10.898	
⑦	S52°22'03"W	19.416	

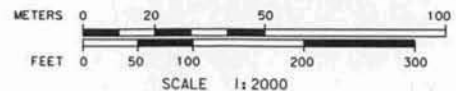
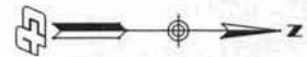
10' (3.048m) WID
UTILITY EASEMENT
Per doc #36338
Dk. 2169, pg. 535

ALBEMERL
TRACT
4-M-19



CONVERSION FACTOR: This survey is in meters.
Multiply by 3937/1200 to convert to feet.

This survey is based on the California Coordinate System of 1983, Zone 3. Units are in meters and bearings and distances are on grid. Multiply by 1.00006972 to convert to ground distances.



SEE EXHIBIT C

RESOLUTION OF NECESSITY MAP

10-Sta-219 K.P. 5.50



T.2 S., R.9 E., M.D.B.& M.

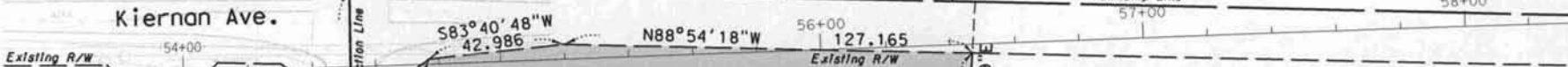
Section 31

Point of Commencement

N 634561.917
E 1953961.108
S 1/4 COR SEC 31, 2/9
Calculated Per
16-S-16 & 20-S-40

PROPOSED STATE ROUTE 219

Kiernan Ave.



ALBEMARLE

DATA TABLE			
#	BEARING/DELTA	DIST./LEN.	RADIUS
①	19°22'42"	90.718	268.225

Centerline of Irrigation ditch per Albemarle Tract

T.3 S., R.9 E., M.D.B.& M.

Section 6

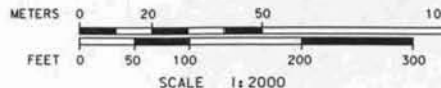
TRACT

SEE EXHIBIT B

LEGEND	
	PARCEL 15325 FEE
	PARCEL 15325 PROPERTY BOUNDARY

CONVERSION FACTOR: This survey is in meters. Multiply by 3937/1200 to convert to feet.

This survey is based on the California Coordinate System of 1983, Zone 3. Units are in meters and bearings and distances are on a grid. Multiply by 1.00006972 to convert to ground distances.



RESOLUTION OF NECESSITY MAP

10-Sta-219 K.P. 5.50