

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

DEPT: Public Works *slm*

BOARD AGENDA # *C-8

Urgent Routine

AGENDA DATE May 22, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of Purchase Agreement to Acquire Road Right-of-Way for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project, Parcel Owners Richard A. and Brenda K. Lowry, APN: 135-045-029

STAFF RECOMMENDATIONS:

1. Approve the purchase agreement for the subject acquisition.
2. Authorize the Chairman of the Board to execute the agreement.
3. Authorize the Director of Public Works to sign the Certificate of Acceptance and cause to record the Grant Deed on behalf of Stanislaus County as authorized by Board Resolution dated March 8, 2011 and Government Code 27281.

(Continued on Page 2)

FISCAL IMPACT:

The total estimated construction cost for the SR 99/SR 219 (Kiernan Avenue) Interchange project is approximately \$34,000,000. The \$48,600 for the purchase of this right-of-way is funded by the Regional Transportation Impact Fee Program (RTIF) and consists of \$46,600 for the purchase of the right-of-way, and \$2,000 for estimated escrow and title insurance fees, available in the current fiscal year Road Projects' budget.

BOARD ACTION AS FOLLOWS:

No. 2012-254

On motion of Supervisor Monteith, Seconded by Supervisor Withrow
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of Purchase Agreement to Acquire Road Right-of-Way for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project, Parcel Owners Richard A. and Brenda K. Lowry, APN: 135-045-029

4. Direct the Auditor-Controller to issue a warrant in the total amount of \$48,600 payable to First American Title Company, for the purchase amount of \$46,600 and \$2,000 for estimated escrow fees and title insurance.

DISCUSSION:

Stanislaus County, in cooperation with Caltrans District 10, proposes to reconstruct the SR 99/SR 219 (Kiernan Avenue) Interchange in the community of Salida. This project will help facilitate future growth, help alleviate traffic congestion, and will improve the operation of this interchange. Increasing the efficiency of the interchange will also encourage the free flow of goods and services for the region and the State. Two build alternatives and the no-build alternative were proposed and studied for this interchange. Alternative #1 was the preferred alternative and has been estimated to cost approximately \$38 million (in today's dollars) for construction, right-of-way acquisitions, and utility relocations. The project is proposed for funding by the Stanislaus County Public Facilities Fees, environmental mitigation fees, and the State Route 99 Bond Savings funds. The Bond Savings funds will provide up to \$35 million toward the construction phase of the project.

The proposed interchange improvements include reconstruction of the existing interchange to provide improved operations for turning movements to and from State Route (SR) 99, as well as associated local road improvements at adjacent intersections.

The interchange is located in the north part of Stanislaus County and on the northern edge of the City of Modesto, providing access to commercial and residential properties in the community of Salida.

Stanislaus County Public Works has completed the planning and environmental phases of the project, which were funded with contributions from developers in conjunction with the Salida Community Plan and the voluntary regional transportation contribution received from Kaiser Permanente.

To accomplish the SR 99/SR 219 (Kiernan Avenue) Interchange project, the County will need to acquire a portion of the Richard and Brenda Lowry parcel on the western corner of the SR 219 (Kiernan Avenue) and Kiernan Court intersection. The property owner has agreed to accept the following compensation:

Property Owner:	Richard A. and Brenda K. Lowry
Amount of Compensation:	\$46,600
Assessor's Parcel Number:	135-045-029
Right-of-Way Area:	0.04 acres+/- (1,796 +/- SF)
Temporary Construction Easement:	0.08 acres+/- (3,503 +/- SF)

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The amount of compensation has been determined to be within the range of just compensation by an independent appraiser hired by the County.

At the completion of the construction phase of the project, the acquired right-of-way will be dedicated over to the State for the operation and maintenance of the improved facility.

Included in this right of way acquisition is a Relocation Assistance Process (RAP). As part of the RAP, the existing property owner has agreed to approximately \$15,750 compensation for expenses associated with relocating items of personal and/or business related property situated within the Temporary Construction Easement or Permanent Fee acquisition areas of Grantor's property. These costs are not included in the sale price of the property, but will be handled separately under the RAP. These RAP costs are also included in the overall project budget. As this is a project which is situated on a State Highway, and the parcel will be deeded to the State, the project comes under the policies and guidelines of the Federal Highway Administration (FHWA) and The California Department of Transportation (Caltrans). This means that the project sponsor (The County) must follow the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 as Amended (The Uniform Act).

POLICY ISSUES:

The SR 99/SR 219 (Kiernan Avenue) Interchange project supports the Board's priorities of providing A Safe Community, A Healthy Community and A Well-Planned Infrastructure System by reducing traffic congestion on the County road system.

STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT PERSON:

Matt Machado, Public Works Director. Telephone: (209) 525-4130.
Chris Brady, Public Works

District	County	Route	P.M.	E. A.	Caltrans Parcel No.	Federal Reference No.	Name	APN
10	STAN	Kiernan Ave. SR219	0.0/0.3	10-OL3309 BRI 10118	16521-1&2		Richard and Brenda Lowry	135-045-029

Salida _____, California

April _____, 2012

Richard A. and Brenda K. Lowry

Grantors

COUNTY OF STANISLAUS RIGHT OF WAY CONTRACT

Document number 10-16521-1, in the form of a Grant Deed with attached Legal Description Granting to the County of Stanislaus (County) covering the property as delineated on the Appraisal Map, and particularly described in the above referenced Instrument and Plat Map labeled "Exhibit A" attached hereto and made a part hereof, along with Document number 16521-2 in the form of a Temporary Construction Easement (TCE) with attached Legal Description and Plat Map labeled "Exhibit B", have been executed and delivered to, Tom Ganyon, Senior Right of Way Agent, acting as Agent for the County of Stanislaus California, by Richard A. and Brenda K. Lowry (Grantors).

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. (A) The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve County of all further obligations or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
 - (B) County requires said property described in Exhibits "A and B" for roadway purposes, a public use for which the County has the authority to exercise the power of eminent domain. Grantors are compelled to sell, and County is compelled to acquire the property.
 - (C) Grantors acknowledge that this transaction is a negotiated settlement in lieu of condemnation and agree that the Purchase Price to be paid herein is in full settlement of any claims for compensation or damages that may have arisen, including, but not limited to, attorney fees, pre-condemnation damages, severance damages, business goodwill, or any other claim regarding the acquisition of the Property or construction of improvements thereon.
Both Grantors and County recognize the expense, time, effort, and risk to both parties in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is in compromise and settlement, in lieu of such litigation.
2. County of Stanislaus shall:
 - A. Pay the undersigned Grantors the sum of **\$32,396.00** for the property or interests therein conveyed by the above document number 10-16521-1, when title to said property vests in County free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes, except:
 - a. Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.
 - b. Covenants, conditions, restrictions and reservations of record, or contained in the above-referenced document.
 - c. Easements or rights of way over said land for public or quasi-public utility or public street purposes, if any.
 - B. Pay the undersigned Grantors the sum of **\$14,185.00** for the property or interests therein conveyed by the above document number 10-16520-2 in the form of a Temporary Construction Easement.
 - C. Pay all escrow and recording fees for this transaction, and if title insurance in the amount of **\$46,600.00** is desired by County, the premium charged therefore. Said escrow and recording charges shall not, however,

----- **No Obligation Other Than Those Set Forth Herein Will Be Recognized** -----

include documentary transfer tax. This transaction will be handled through an escrow with First American Title Company located at 1506 H Street, Modesto CA 95354, Escrow No. 5005-3918851.

- D. Have the authority to deduct and pay from the amount shown on Clause 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow.
 - E. Grantor agrees that if claims are submitted by lien-holders, the County is hereby authorized to honor such claims and deduct the amount of said claims from the amount to be paid to the property owner. The County will notify the Grantor of any such claims prior to payment.
3. It is agreed and understood that County's valuation of the subject property located at 4612 Kiernan Avenue, situated within the limits of the Town of Salida, Stanislaus County, California further identified as APN 135-045-029 is based on a Market Approach to Value. The valuation including land and improvements is segregated as follows:

\$26,940.00	Fee Simple Land = 1,796 ± square feet (0.04± acres)
\$14,185.00	Temporary Construction Easement 3,503± square feet (or 0.08± acres)
<u>\$ 5,455.00</u>	Improvements (relocate Kaplan College sign out of acquisition area to remainder area)
\$ 46,581.00	Total
\$ 46,600.00	Rounded

- 4. Any monies payable under this contract up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with terms and conditions of said trust deed(s) or mortgage(s), shall upon demand(s) be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder; said mortgagee(s) or beneficiary(ies) to furnish grantor with good and sufficient receipt showing said monies credited against indebtedness secured by said mortgage(s) or deed(s) of trust.
- 5. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by County, including the right to remove and dispose of improvements, shall commence on the date of the close of the escrow controlling this transaction or **April 30, 2012**. It is further agreed and confirmed by the parties that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including all improvements on and to the property including those improvements described in the fair market value appraisal of the property.
- 6. Grantors warrant that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the grantors agree to hold County harmless and reimburse County for any and all of its losses and expenses occasioned by reason of any lease of said property held by any Tenant of Grantors for a period exceeding one month. Grantors acknowledge that a quitclaim deed will be required from any lessee that has a lease term exceeding one month. Said quitclaim deeds are to be provided to Title Company's Escrow Agent by Grantors, prior to the close of escrow.
- 7. County agrees to indemnify and hold harmless the undersigned Grantors from any liability arising out of County's operations under this agreement. County further agrees to assume responsibility for any damages proximately caused by reason of County's operations under this agreement and County will, at its option, either repair or pay for such damage.
- 8. County agrees that Grantor's will have un-impaired access to their remainder property and business operations during construction with said access maintained in such a way so that it does not impact or interfere with normal business operations. Temporary fencing provided by County will be installed by County's contractor along northerly limit of the Temporary Construction Easement and be attached to the easterly and westerly property fencing prior to removal of Grantor' existing southerly property fencing as per owners specifications delineated on Exhibit C attached hereto. Said temporary fencing will become the property of Grantor upon completion of construction. County will notify Grantor at least 30-days prior to start of construction.

-----**No Obligation Other Than Those Set Forth Herein Will Be Recognized**-----

9. Grantor's hereby represent and warrant that during the period of Grantor's ownership of the Property, there have been no disposals or releases of hazardous substances on, from, or under the Property. Grantors further represent and warrant that Grantor's have no knowledge of any disposal or release of hazardous substances, on, from, or under the Property which may have occurred prior to Grantor's taking title to the Property.
10. Purchase Price of the Property reflects the fair market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous substances which requires mitigation under Federal or County law, County reserves the right to recover its clean-up costs from those who caused or contributed to the contamination.
11. It is further understood and agreed between the parties to this contract that any work required to restore and/or replace; existing property fencing, driveway approach (s) and or landscaping items removed or otherwise damaged by County's Roadway Contractor during the course of the project will be the responsibility of County, and will be performed under separate contract at County/Project expense.
12. Items of personal and/or business related property situated within the Temporary Construction Easement or Permanent Fee acquisition areas of Grantor's property will require either temporary or permanent relocation to areas on Grantor's remainder property, as delineated on Exhibit D attached hereto. Relocation and storage costs associated with these items estimated by Grantor to be, \$15,750, are provided for by County under the Uniform Relocation Assistance Program (RAP) portion of this acquisition, and as such, are addressed in a separate document contract; Claim For Relocation Assistance – Nonresidential (State of California - Department of Transportation Form 10-30).
13. Grantor understands and agrees that the compensation in the amount of \$46,600 offered in this Agreement is subject to and contingent upon approval of the Stanislaus County Board of Supervisors by adopting a Resolution authorizing the execution of the Agreement at their May 8, 2012 meeting. Should Grantor agree to sell to County, and County is unable to approve funding of the purchase of this property by October 1, 2012, this Agreement becomes null and void, and County shall have no further obligation to Grantor. If Grantor agrees to sell, and County approves funding by said date, all terms and condition of this Agreement apply. County shall deliver the Purchase Price no later than 45 days after Board of Supervisors approval and after delivery and execution of all necessary transfer documents.
14. Escrow Agent shall deliver payment under this contract to Grantors when title to the property vests in County's name, free and clear of all liens, encumbrances, assessments, easements, leases (recorded and/or unrecorded), and taxes unless otherwise indicated in Escrow Instructions as executed by the parties and submitted to Escrow Agent.
15. It is understood and agreed by and between the parties hereto that this Agreement inures to the benefit of, and is binding on, the parties, their respective heirs, personal representatives, successors, and or assignees.

IN WITNESS WHEREOF, the parties have executed this Agreement on 4/25/12 as follows:

COUNTY OF STANISLAUS

By: William O'Brien
William O'Brien
Chairman of the Board of Supervisors

GRANTORS

By: Richard A. Lowry
Richard A. Lowry
By: Brenda K. Lowry
Brenda K. Lowry

ATTEST:
Christine Ferraro Tallman
Clerk of the Board of Supervisors of the
County of Stanislaus, State of California

By: Christine Ferraro Tallman
Deputy Clerk

APPROVED AS TO CONTENT:
Department of Public Works

By: Matt Machado
Matt Machado
Public Works Director

APPROVED AS TO FORM:
John P. Doering, County Counsel

By: Thomas E. Boze
Thomas E. Boze
Deputy County Counsel


~~RECOMMENDED FOR APPROVAL:~~

By: Not Applicable
~~Tom Ganyon~~
~~Senior Right of Way Agent~~
~~Bender Rosenthal Inc.~~

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed to the County of Stanislaus, by the within instrument, the provisions of which are incorporated by this reference as though fully set forth in this Certification, is hereby accepted by the undersigned officer(s) on behalf of the County, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: 5/23/12

By: 
Matt Machado
Director of Public Works
Stanislaus County

Richard A. and Brenda K. Lowry
APN: 135-045-029



Stanislaus, County Recorder
 Lee Lundrigan Co Recorder Office
DOC- 2012-0081066-00

Acct 503-First American Title Co
 Wednesday, SEP 12, 2012 08:00:00
 Ttl Pd \$0.00 Rcpt # 0003266026
 OLD/R3/1-6

RECORDING REQUESTED BY:

Fidelity National Title Co.

WHEN RECORDED RETURN TO:

County of Stanislaus
 1021 I Street, Suite 100
 Modesto, CA 95354-0847
 Attn: County Clerk Recorder

No Fee Document – per Government Code 6103

No Document Transfer Tax – Per R&T Code 11922

SPACE ABOVE THIS LINE FOR RECORDERS USE

GRANT DEED

Caltrans District	County	Route	Post Mile	Assessors' Parcel Number
10	Stanislaus	Kiernan Avenue SR 219	0.0/0.3	135-045-029

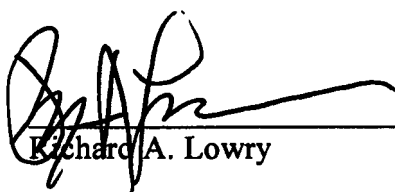
APN: 135-045-029

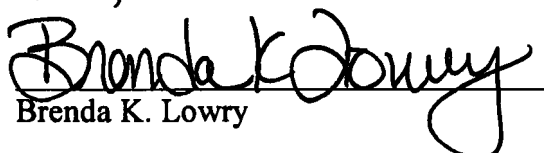
Richard A. Lowry and Brenda K. Lowry (Grantors) do hereby GRANT to the County of Stanislaus, a California municipal corporation of the State of California (Grantee) all that real property in the City of Salida, County of Stanislaus, State of California, described as:

SEE EXHIBIT "A", LEGAL DESCRIPTION, AND EXHIBIT "A-1", PLATS TO ACCOMPANY LEGAL DESCRIPTION, ATTACHED HERETO AND MADE A PART HEREOF

The grantors further understand that the present intention of the grantee is to construct and maintain public roadway improvements and appurtenances on the lands hereby conveyed in fee and the grantors, for themselves, their successors and assigns, hereby waive any claims for any and all damages to grantor's remaining property (if applicable) contiguous to the property hereby conveyed by reason of the location, construction, landscaping or maintenance of said roadway.

Dated: Sept. 7, 2012


 Richard A. Lowry


 Brenda K. Lowry

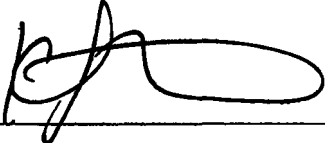
OLD

State of California }
County of Stanislaus }

On Sept. 7, 2012, before me, K. Stephens, Notary Public, personally appeared, RICHARD A. LOWRY and BRENDA K. LOWRY, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity(ies), and that by their signatures on the instrument the persons, or the entities on behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



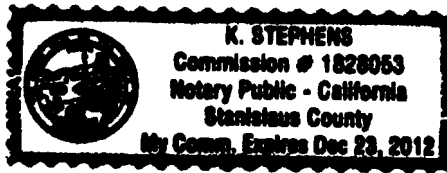


Exhibit A Legal Description

Being a portion of the lands described in the deed to Lowry filed on February 23, 1999 at Document No. 1999-0019376 situate in the County of Stanislaus and State of California and located in the northwest quarter of Section 3, Township 3 South, Range 8 East, M.D.B. & M. more particularly described as follows:

Commencing at a 2" iron pipe with brass cap, in monument well, marking the North Quarter corner of said Section 3, from which the Northwest corner of said Section 3 bears South 89°33'45" West, a distance of 2,641.34 feet and is marked by a 2" iron pipe with Stanislaus County brass disk, in monument well, as both corners are shown on the Record of Survey filed in Book 27 of Surveys at Page 50, Stanislaus County Records;

Thence South 89°33'45" West, along the North line of the Northwest quarter of said Section 3, a distance of 725.03 feet to a point;

Thence leaving said line South 75°59'34" East a distance of 245.60 feet;

Thence South 21°03'29" East a distance of 53.70 feet to a point on the westerly line of lands granted to the State of California in the deed filed for record on August 1, 2007 at Document No. 2007-0099280 and the Point of Beginning;

Thence along said westerly line South 47°01'07" West a distance of 336.18 feet to a point on the northerly line of Parcel 3 and the southerly line of Lands of Lowry.

Thence leaving said westerly line North 82°56'52" West a distance of 1.95 feet;

Thence North 45°44'44" East, 326.78 feet;

Thence along the arc of a tangent curve concave northwesterly, having a radius of 44.00 feet, through a central angle of 20°47'28", for a distance of 15.97 feet to a point on the northwesterly line of the Deed to the State of California, recorded August 1, 2007 and Instrument No. 2007-0099280;

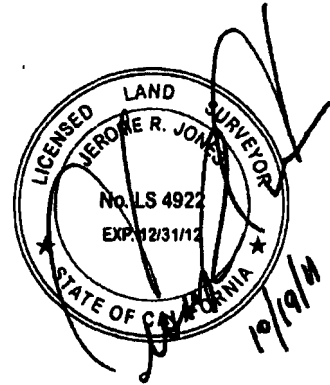
Thence non-tangent to said curve, along said northwesterly line South 21°03'29" East, 12.90 feet to the Point of Beginning.

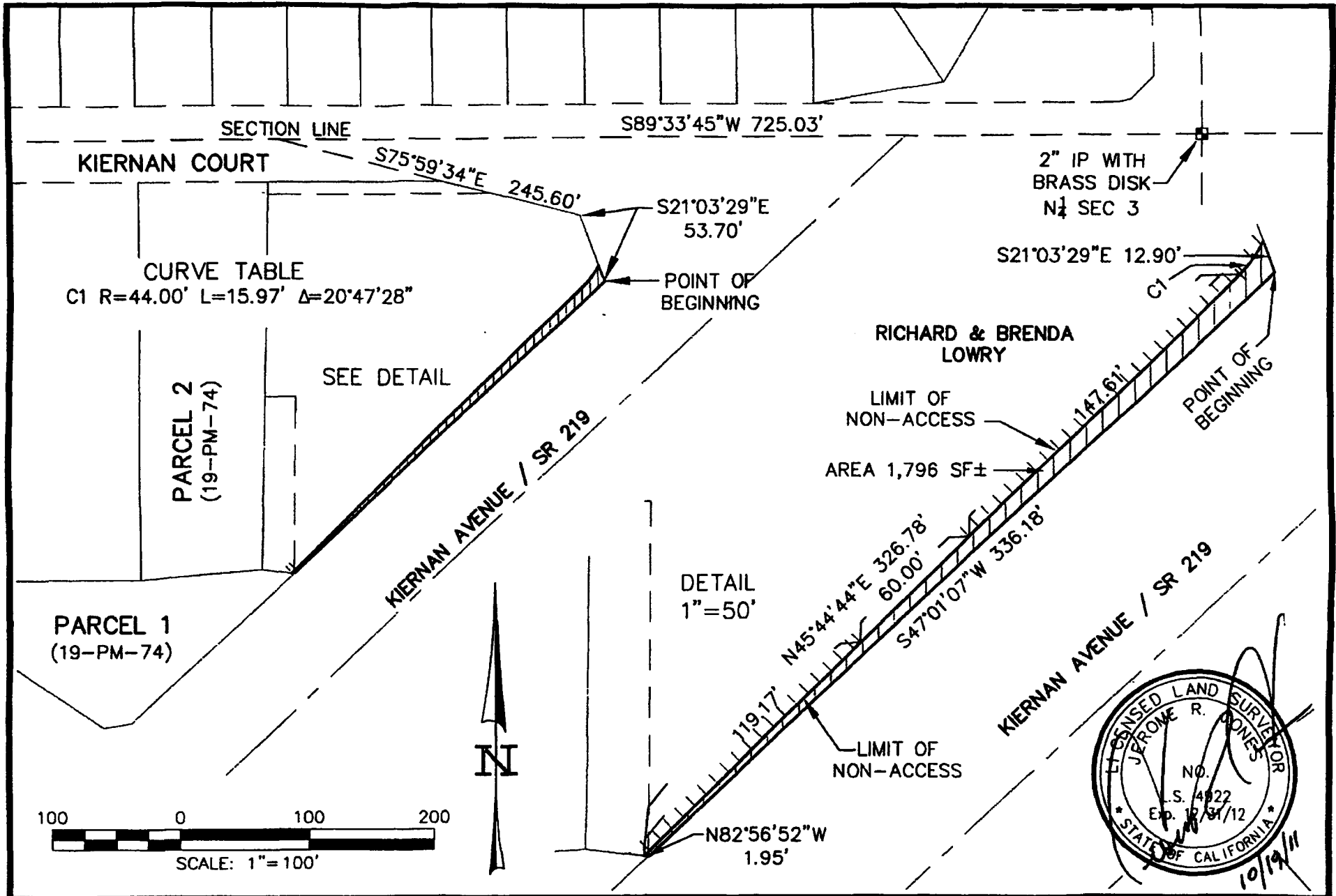
Said Parcel contains 1,796± square feet of land, more or less.

This conveyance is made for the purpose of a freeway and the grantor hereby releases and relinquishes to the grantee any and all abutter's rights including access rights, appurtenant to grantor's remaining property, in and to said freeway over and across the southwest 119.17 feet, and the northeast 147.61 of that course above having a length of 326.78 feet and the above curve having a length of 15.97 feet.

16521-1
10/6/2011

All bearings and distances used in this description are on the California Coordinate System of 1983, Zone 3. Multiply distances by 1.00006860 to convert to ground distances.





NOLTE

BEYOND ENGINEERING

2405 HATFIELD PARK DRIVE, 4TH FLOOR SACRAMENTO, CA 95833
916.641.9007 TEL. 916.641.9222 FAX WWW.NOLTE.COM

DATE: _____ TIME: _____
 NETWORK: _____
 PATH: _____
 DWG NAME: _____
 PLOT VIEW: _____
 DESIGNER: _____ MGR: _____

"EXHIBIT B"-PARCEL 16521-1
RIGHT OF WAY TAKE
COUNTY OF STANISLAUS, STATE OF CALIFORNIA

SHEET NUMBER
1
 OF 1 SHEETS

PREPARED FOR: COUNTY OF STANISLAUS

DATE SUBMITTED: 09/2011

JOB NUMBER
8A8041001