

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

DEPT: Public Works

*SE*

BOARD AGENDA # \*C-4

Urgent

Routine

AGENDA DATE February 6, 2007

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 Ronald J. Malik, et ux, APN: 078-013-006, 10-Sta-219-KP 2.5, Parcel 15795-1,-2

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 Ronald J. Malik, et ux, for APN: 078-013-006, and make the findings contained therein.

FISCAL IMPACT:

The cost associated with conducting the Resolution of Necessity hearings are the responsibility of Stanislaus County. Although the costs have not been identified, it is anticipated that they will be minimal and will be absorbed within the Public Works Road and Bridge Budget.

BOARD ACTION AS FOLLOWS:

No. 2007-87

On motion of Supervisor Grover, Seconded by Supervisor Mayfield  
and approved by the following vote,  
Ayes: Supervisors: Mayfield, Grover, Monteith, DeMartini, and Chairman O'Brien  
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 Ronald J. Malik, et ux, APN: 078-013-006, 10-Sta-219-KP 2.5, Parcel 15795-1,-2

## DISCUSSION:

The State Route 219 (Kiernan Avenue) widening from State Route 99 to east of Dale Road is the first phase of an overall project that will eventually widen the highway to its end at State Route 108 (McHenry Avenue). The first phase is further divided into two segments managed by two agencies; the road improvement from State Route 99 to west of Dale Road is a Caltrans project, and from that project to east of Dale Road is a City of Modesto project. Caltrans is purchasing the right-of-way for both projects.

The County of Stanislaus, City of Modesto, Stanislaus Council of Governments (StanCOG), and Caltrans have been working together to accelerate these transportation improvements 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. On October 10, 2006, the Board of Supervisors approved the Memorandum of Understanding with Caltrans, which outlined the various roles and responsibilities necessary to conduct the hearings. 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 items;

- 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 15795-1,-2, has an Assessor's Parcel number of 078-013-006 and is located at 3136 Kiernan Avenue. This property is not in a Williamson Act contract. The property owners are Ronald J. Malik, et ux. The property owners are not contesting the items in the Resolution of Necessity, the only issue with the property owners are 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 it's been confirmed that the value conclusions are valid and the appraisal represents current market value. The owners have been offered the full amount of the approved appraisal.

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 Ronald J. Malik, et ux, APN: 078-013-006, 10-Sta-219-KP 2.5, Parcel 15795-1,-2

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).

Staff recommends that the Board of Supervisors adopt the proposed Resolution of Necessity to acquire real property or interest in real property by Eminent Domain for the State Route 219 Widening Project, Parcel Owner Ronald J. Malik, et ux., and make the findings contained therein.

**POLICY ISSUES:**

This action is consistent with the Board's priority of a well-planned infrastructure.

**STAFFING IMPACT:**

There is no staffing impact associated with this item. 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.

DM/RC/TB:lc

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

Date: February 6, 2007

No. 2007-87

On motion of Supervisor Grover Seconded by Supervisor Mayfield  
and approved by the following vote,  
Ayes: Supervisors: Mayfield, Grover, Monteith, DeMartini, and Chairman O'Brien  
Noes: Supervisors: None  
Excused or Absent: Supervisors: None  
Abstaining: Supervisor: None

THE FOLLOWING RESOLUTION WAS ADOPTED:

Item # \*C-4

**RESOLUTION OF NECESSITY  
TO ACQUIRE CERTAIN REAL PROPERTY OR INTEREST IN REAL PROPERTY  
BY EMINENT DOMAIN HIGHWAY 10-Sta-219-KP 2.5, PARCEL 15795-1,-2  
APN: 078-013-006, OWNER: Ronald J. Malik, et ux.**

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 October 10, 2006, 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:

(CONTINUED ON NEXT PAGE)

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



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" and "B" 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" and "B" 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" and "B" attached hereto.

1 **PARCEL 15795-1**

2 For State highway purposes, that portion of Lot 18 of The Map of the Eden  
3 Colony, recorded in Volume 4 of Maps at Page 32, Stanislaus County Records, in  
4 the Northeast quarter of Section 2, Township 3 South, Range 8 East, Mount  
5 Diablo Meridian and Base Line, more particularly described as follows:

6 COMMENCING at a 3"x3" copper plate marking the Northeast corner of  
7 said Section 2, from which the North quarter corner of said Section 2 bears South  
8 89°33'30" West, a distance of 806.198 meters and is marked by a 3" California  
9 Department of Transportation brass disk in monument well, as both corners are  
10 shown on Record of Survey filed in Book 27 of Surveys at Page 50, Stanislaus  
11 County Records; THENCE (1) South 89°33'30" West, along the North line of the  
12 Northeast quarter of said Section 2, a distance of 252.060 meters; THENCE (2)  
13 South 00°26'30" East, a distance of 18.738 meters; THENCE (3) North 84°34'44"  
14 West, a distance of 35.569 meters; THENCE (4) North 87°42'12" West, a distance  
15 of 74.268 meters; THENCE (5) South 89°32'54" West, a distance of 77.066 meters  
16 to the West line of Parcel A of the Parcel Map recorded in Book 6 of Parcel Maps  
17 at Page 22, Stanislaus County Records, and the TRUE POINT OF BEGINNING;  
18 THENCE (6) continuing South 89°32'54" West, a distance of 69.661 meters to the  
19 East line of Parcel B of the Parcel Map recorded in Book 29 of Parcel Maps at  
20 Page 127, Stanislaus County Records; THENCE (7) North 00°13'53" West, along  
21 said East line, a distance of 3.962 meters to the southerly right of way line of  
22 State Route 219; THENCE (8) North 89°33'30" East, along said right of way line, a  
23 distance of 69.661 meters to the West line of said Parcel A; THENCE (9) South  
24 00°13'53" East, along said West line, a distance of 3.950 meters to the TRUE  
25 POINT OF BEGINNING.  
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27

1 **Parcel 15795-1(continued)**

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

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1 **PARCEL 15795-2**

2 For State highway purposes, that portion of Lot 17 of The Map of the Eden  
3 Colony, recorded in Volume 4 of Maps at Page 32, Stanislaus County Records, in  
4 the Northeast quarter of Section 2, Township 3 South, Range 8 East, Mount  
5 Diablo Meridian and Base Line, more particularly described as follows:

6 COMMENCING at a 3"x3" copper plate marking the Northeast corner of  
7 said Section 2, from which the North quarter corner of said Section 2 bears South  
8 89°33'30" West, a distance of 806.198 meters and is marked by a 3" California  
9 Department of Transportation brass disk in monument well, as both corners are  
10 shown on Record of Survey filed in Book 27 of Surveys at Page 50, Stanislaus  
11 County Records; THENCE (10) South 89°33'30" West, along the North line of the  
12 Northeast quarter of said Section 2, a distance of 252.060 meters; THENCE (11)  
13 South 00°26'30" East, a distance of 18.738 meters to the TRUE POINT OF  
14 BEGINNING; THENCE (12) North 84°34'44" West, a distance of 35.569 meters;  
15 THENCE (13) North 87°42'12" West, a distance of 74.268 meters; THENCE (14)  
16 South 89°32'54" West, a distance of 37.323 meters to the West line of said Lot 17;  
17 THENCE (15) North 00°13'53" West, along said West line, a distance of 3.944  
18 meters to the southerly right of way line of State Route 219; THENCE (16) North  
19 89°33'30" East, along said right of way which runs parallel with and 9.144 meters  
20 (30 feet) South of the North line of the Northeast quarter of said Section 2, a  
21 distance of 183.020 meters to the East line of said Lot 17; THENCE (17) South  
22 00°14'18" East, along said East line, a distance of 11.112 meters; THENCE (18)  
23 South 89°32'54" West, a distance of 36.107 meters to the TRUE POINT OF  
24 BEGINNING.

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



EXHIBIT A

T.2 S., R.8 E., M.D.B.& M.  
Section 35



← TO HWY 99

TO ROUTE 108 →

Proposed RW

PROPOSED

ROUTE

HWY

219

22+00

23+00

24+00

25+00

26+00

27+00

28+00

29+00

Existing RW

NE 1/4 COR SEC 2, 1/8

N 1/2 SEC 02, 3/8

Kiernan Ave.

Existing RW

Proposed RW

NO SCALE

Quinturn Lane

Dale Road

15795-1

15795-2

Section 2

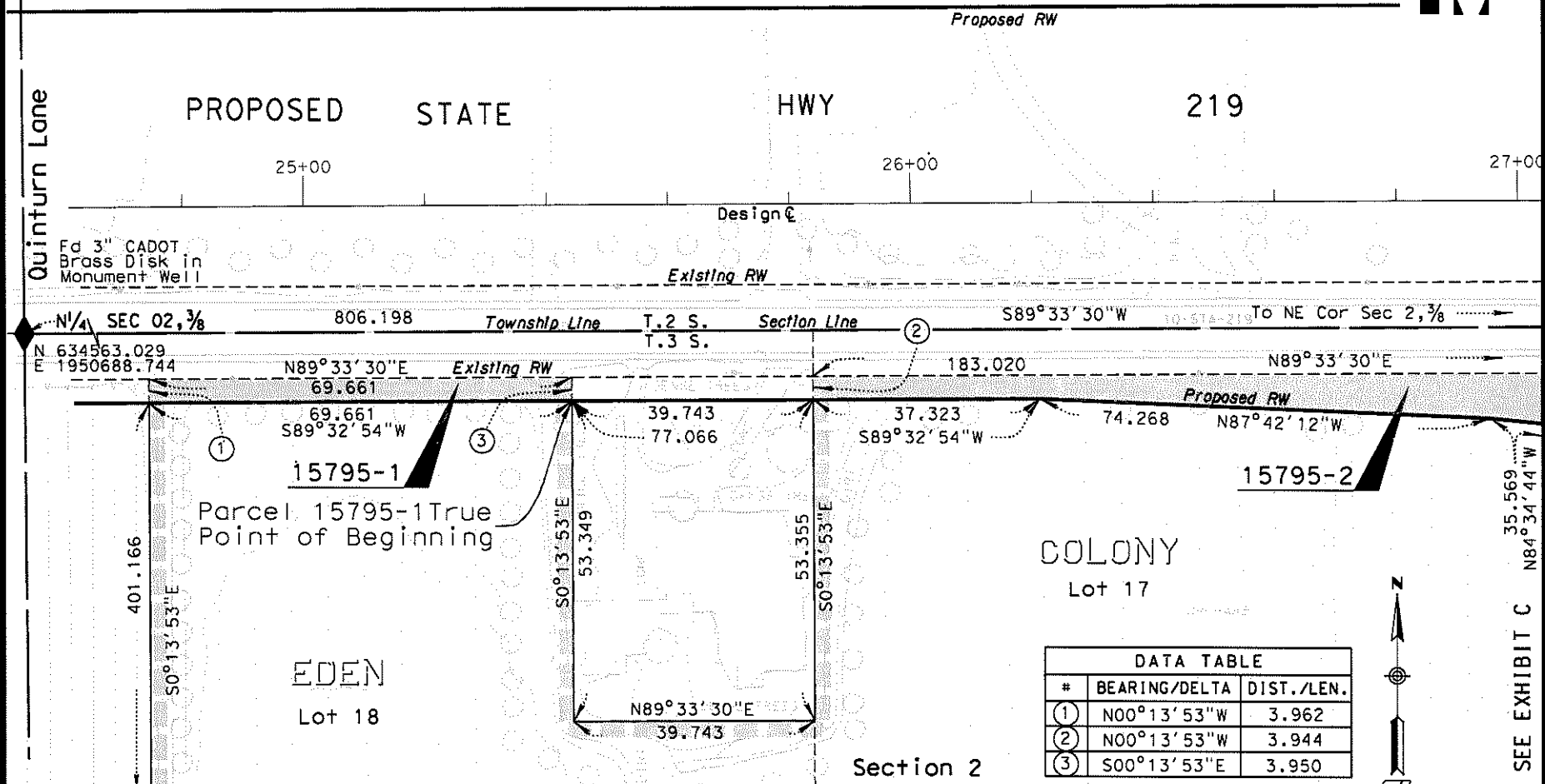
T.3 S., R.8 E., M.D.B.& M.

RESOLUTION OF NECESSITY  
AREA MAP

10-Sta-219 K.P. 2.5

T.2 S., R.8 E., M.D.B.& M.  
Section 35

EXHIBIT B



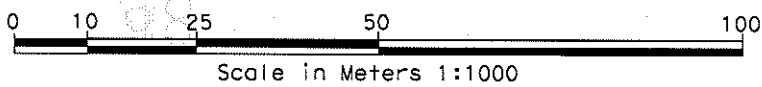
| DATA TABLE |               |            |
|------------|---------------|------------|
| #          | BEARING/DELTA | DIST./LEN. |
| ①          | N00°13'53"W   | 3.962      |
| ②          | N00°13'53"W   | 3.944      |
| ③          | S00°13'53"E   | 3.950      |



SEE EXHIBIT C

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

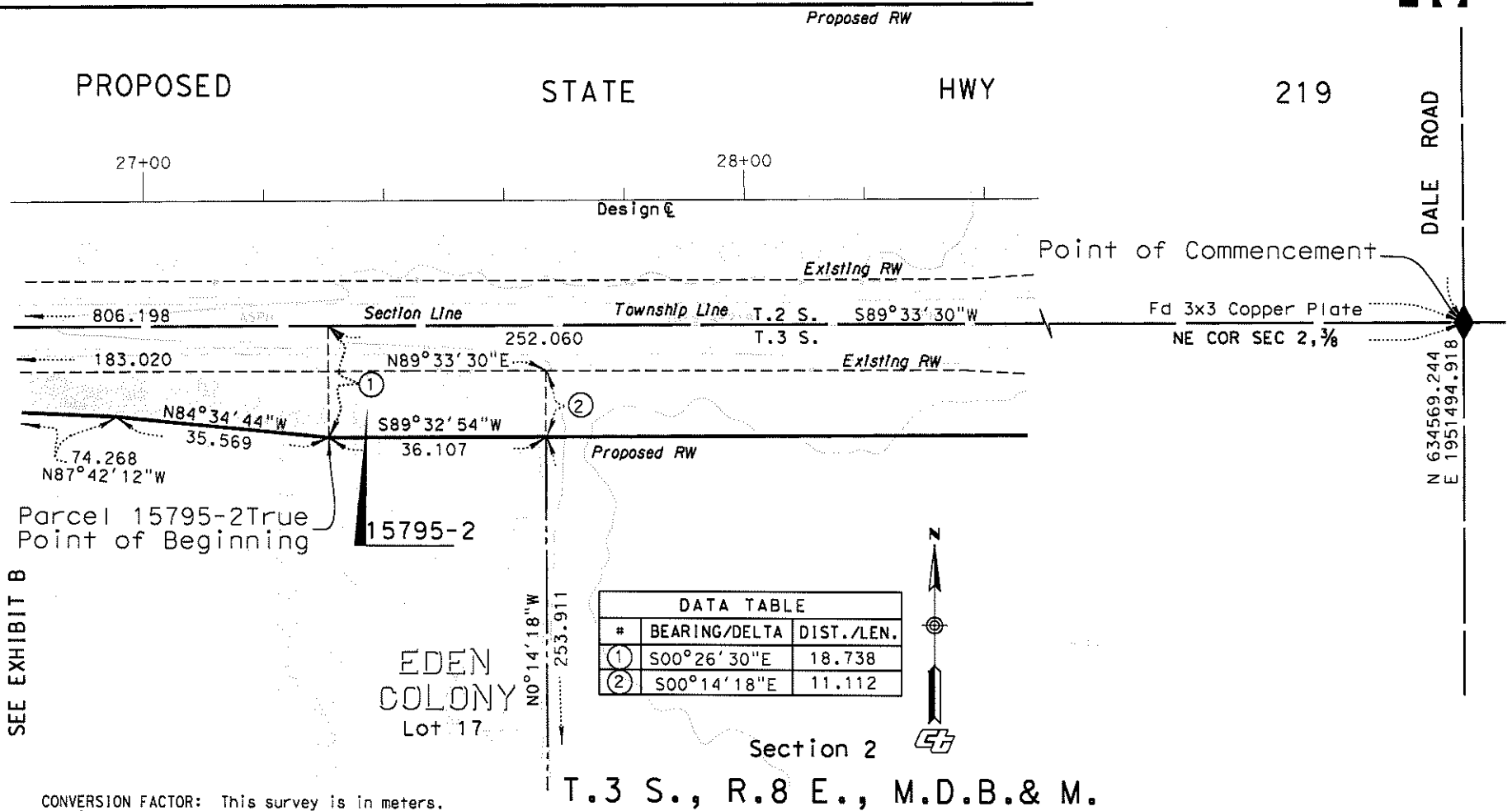
This survey is based on the California Coordinate System of 1983, Zone 3. Units are in meters and bearings and distances are on grid. Multiply by 1.00006972 to convert to ground distances.



**RESOLUTION OF NECESSITY MAP**  
10-Sta-219 K.P. 2.5

T.2 S., R.8 E., M.D.B.& M.  
Section 35

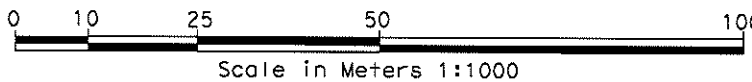
EXHIBIT C



SEE EXHIBIT B

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.



**RESOLUTION OF NECESSITY MAP**  
10-Sta-219 K.P. 2.5