

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

DEPT: Public Works *akm*

BOARD AGENDA # *C-4

Urgent Routine

AGENDA DATE April 24, 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 John R. Regusci, et ux, APN: 136-033-029, 10-Sta-219-KP 0.8, Parcel 15292

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 John R. Regusci, et ux, for APN: 136-033-029, 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. 2007-295

On motion of Supervisor Mayfield, Seconded by Supervisor Grover

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:

ATTEST:

Christine Ferraro
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 John R. Regusci, et ux, APN: 136-033-029, 10-Sta-219-KP 0.8, Parcel 15292

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 15292, has an Assessor's Parcel number of 136-033-029 and is located at 4337 Kiernan Avenue. This property is in a Williamson Act Contract (No. 75-1969). The property owner is John R. Regusci, et ux. 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 are valid and the appraisal represents current market value. The owner has 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 John R. Regusci, et ux, APN: 136-033-029, 10-Sta-219-KP 0.8, Parcel 15292

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 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 John R. Regusci, 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.

TM/RC/TB:lc

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

Date: April 24, 2007

No. 2007-295

On motion of Supervisor Mayfield Seconded by Supervisor Grover

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 0.8, PARCEL 15292
OWNER: John R. Regusci, 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: 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" 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.

Parcel 15292

2 **For State highway purposes, that portion of the West half of the Southeast**
3 **quarter of Section 34, Township 2 South, Range 8 East, Mount Diablo Meridian**
4 **and Base Line, lying southerly and westerly of LINE "A", and southerly of LINE**
5 **"B", described as follows:**

6 **DESCRIPTION OF LINE "A":**

7 **COMMENCING at a 2" iron pipe with brass cap, in monument well, marking**
8 **the South quarter corner of said Section 34, from which the Southeast corner of**
9 **said Section 34 bears North 89°34'55" East, a distance of 805.144 meters and is**
10 **marked by concrete monument with copper plate set by A.L. Finney in 1905, as**
11 **both corners are shown on Record of Survey filed in Book 27 of Surveys at Page**
12 **50, Stanislaus County Records; THENCE (1) North 89°34'55" East, along the**
13 **South line of the Southeast quarter of said Section 34, a distance of 227.529**
14 **meters; THENCE (2) North 00°25'05" West, a distance of 41.107 meters to the**
15 **TRUE POINT OF BEGINNING of LINE "A"; THENCE (3) North 00°14'25" West, a**
16 **distance of 3.600 meters; THENCE (4) South 89°45'30" West, a distance of**
17 **208.747 meters; THENCE (5) North 26°22'47" West, a distance of 9.264 meters;**
18 **THENCE (6) North 00°33'48" West, a distance of 188.551 meters; THENCE (7)**
19 **North 03°13'50" West, a distance of 109.356 meters; THENCE (8) South 89°28'06"**
20 **West, a distance of 3.496 meters to the easterly right of way line of Sisk Road, a**
21 **county road, and the TERMINUS of LINE "A".**

22 **DESCRIPTION OF LINE "B":**

23 **BEGINNING at the TRUE POINT OF BEGINNING of above described LINE**
24 **"A"; THENCE (9) North 89°45'30" East, a distance of 174.969 meters to the East**
25 **line of the West half of the Southeast quarter of said Section 34, and the**
26 **TERMINUS of LINE "B".**

27

Parcel 15292 (continued)

2 **EXCEPTING THEREFROM** that portion lying within State Route 219, also
3 known as Kiernan Avenue, and said Sisk Road.

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

7 **TOGETHER WITH** all of the existing improvements which are located
8 partially within and partially outside the boundaries of the above-described
9 parcel, together with the right and easement to enter upon the owner's remaining
10 land outside the boundaries of said parcel at any time within 120 days after the
11 date possession is authorized as indicated in the order for possession, or within
12 120 days after **FINAL JUDGEMENT IN CONDEMNATION**, for the purpose of
13 removing all of the said existing improvements.

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

Section 34

EXHIBIT A



NO SCALE

15294

TO HWY 99

TO ROUTE 108

PROPOSED STATE HWY 219

SE 1/4 COR SEC 34, T2S, R8E

ALTERNAN AVE. SE COR SEC 34, T2S, R8E

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

CONVERSION FACTOR: This survey is in meters.
Multiply by 3937/1000 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
1.00006272 to convert to ground distances.

RESOLUTION OF NECESSITY
AREA MAP

10-Sta-219 K.P. 0.8

SEE EXHIBIT C

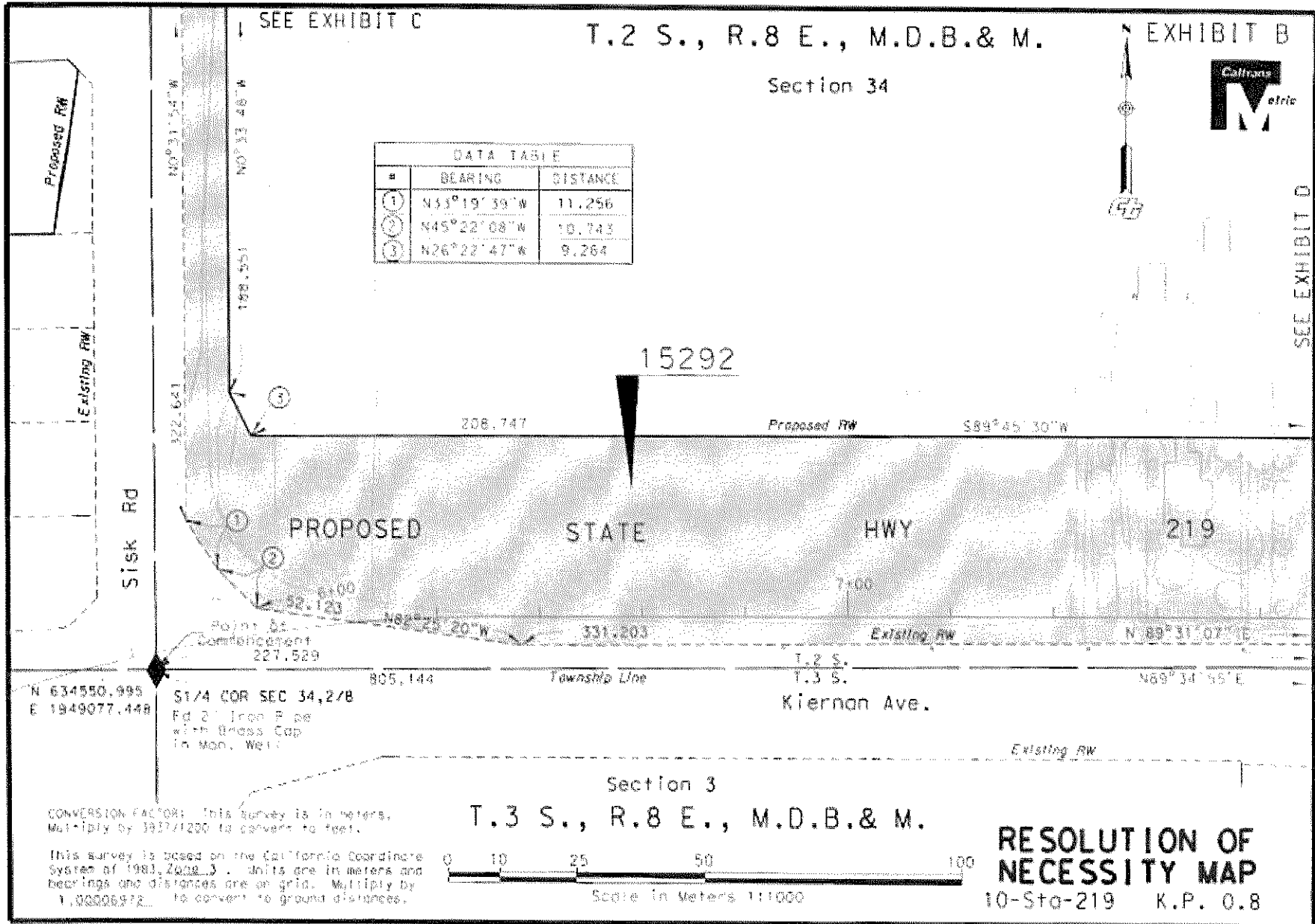
T.2 S., R.8 E., M.D.B.& M.

EXHIBIT B

Section 34



DATA TABLE		
#	BEARING	DISTANCE
①	N53°19'39"W	11.256
②	N45°22'08"W	10.743
③	N26°22'47"W	9.264



SEE EXHIBIT D

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 13. Units are in meters and bearings and distances are on grid. Multiply by 1.000006972 to convert to ground distances.

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

RESOLUTION OF NECESSITY MAP

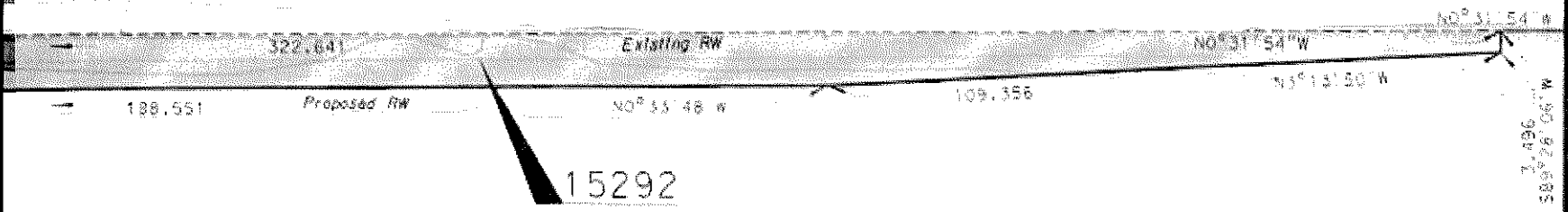
10-Std-219 K.P. 0.8

T.2 S., R.8 E., M.D.B.& M.
Section 34

EXHIBIT C



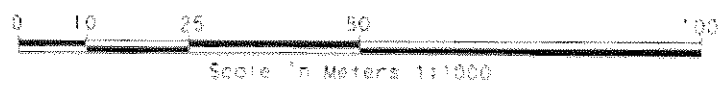
Sisk Rd



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 1.00006922... to convert to ground distances.



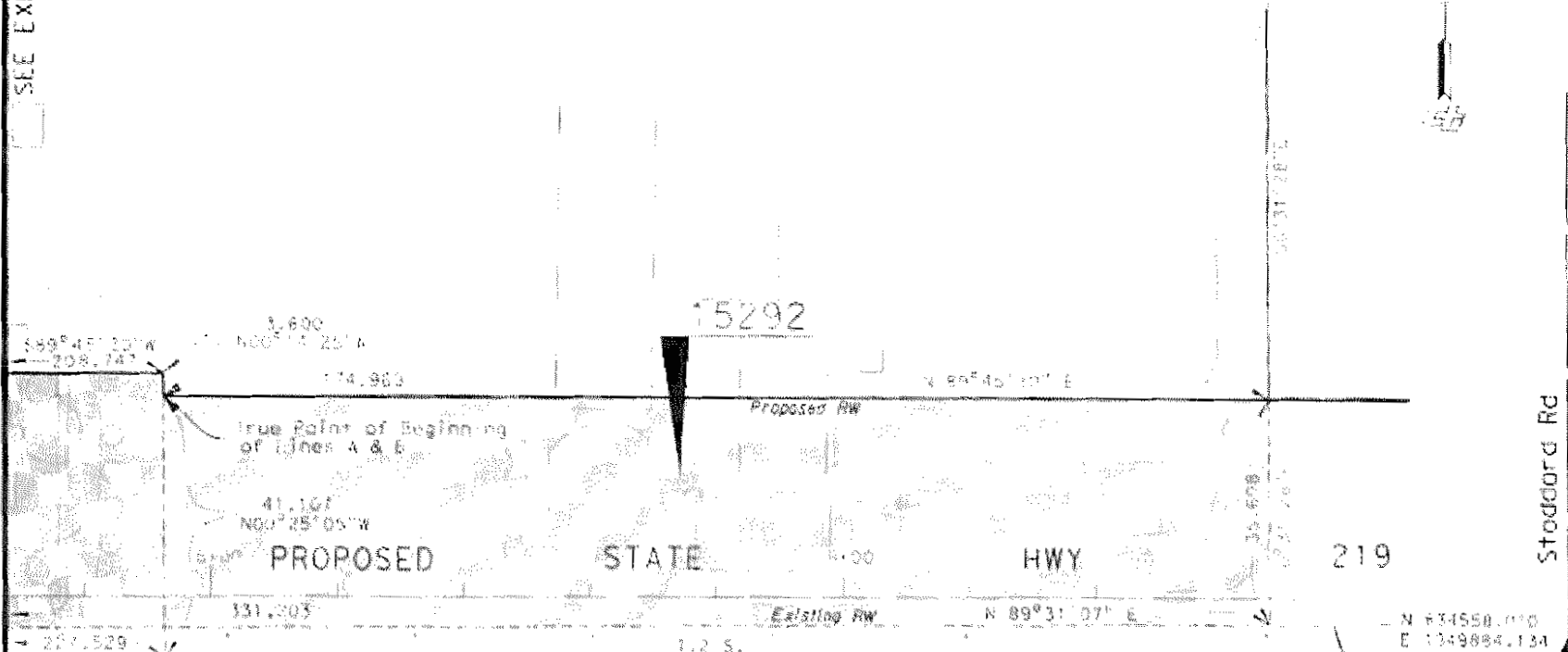
RESOLUTION OF NECESSITY MAP

10-Sta-219 K.P. 0.8

SEE EXHIBIT B

T.2 S., R.8 E., M.D.B.& M.
Section 34

EXHIBIT D



True Point of Beginning
of Lines A & B

PROPOSED STATE HWY 219

Stoddard Rd

Kiernan Ave.

Nutcracker Lane

CONVERSION - All bearings in this survey are in meters.
Multiplied by 3.28084 to convert to feet.
This survey is based on the definition of the
System of 1983, based on the Earth's surface and
Sea Level and distances are in meters. Multiplied by
1.0000032 to convert to ground surface.

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

RESOLUTION OF
NECESSITY MAP

10-Sta-219 K.P. 0.8

