

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

DEPT: Public Works *mlad*

BOARD AGENDA # *C-6

Urgent Routine

AGENDA DATE November 24, 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 Brian J. Fosnaugh, APN: 004-069-016, 10-Sta-219-KP 6.10, Parcel 15332

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 Brian J. Fosnaugh, for APN: 004-069-016, 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. 2009-785

On motion of Supervisor Chiesa, Seconded by Supervisor O'Brien

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) 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 Brian J. Fosnaugh, APN: 004-069-016, 10-Sta-219-KP 6.10, Parcel 15332

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 15332, has an Assessor's Parcel Number of 004-069-016 and is located at 1373 Kiernan Avenue. This property is not in Williamson Act contract. The property owner is Brian J. Fosnaugh. 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 Brian J. Fosnaugh, APN: 004-069-016, 10-Sta-219-KP 6.10, Parcel 15332

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.

TB/RC:jg
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THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
STATE OF CALIFORNIA

Date: November 24, 2009

No. 2009-785

On motion of Supervisor Chiesa Seconded by Supervisor O'Brien
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-6

THE FOLLOWING RESOLUTION WAS ADOPTED:

**RESOLUTION OF NECESSITY
TO ACQUIRE CERTAIN REAL PROPERTY OR INTEREST IN REAL PROPERTY
BY EMINENT DOMAIN HIGHWAY 10-Sta-219-KP 6.10, PARCEL 15332
APN: 004-069-016, OWNER: Brian J. Fosnaugh**

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:

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.

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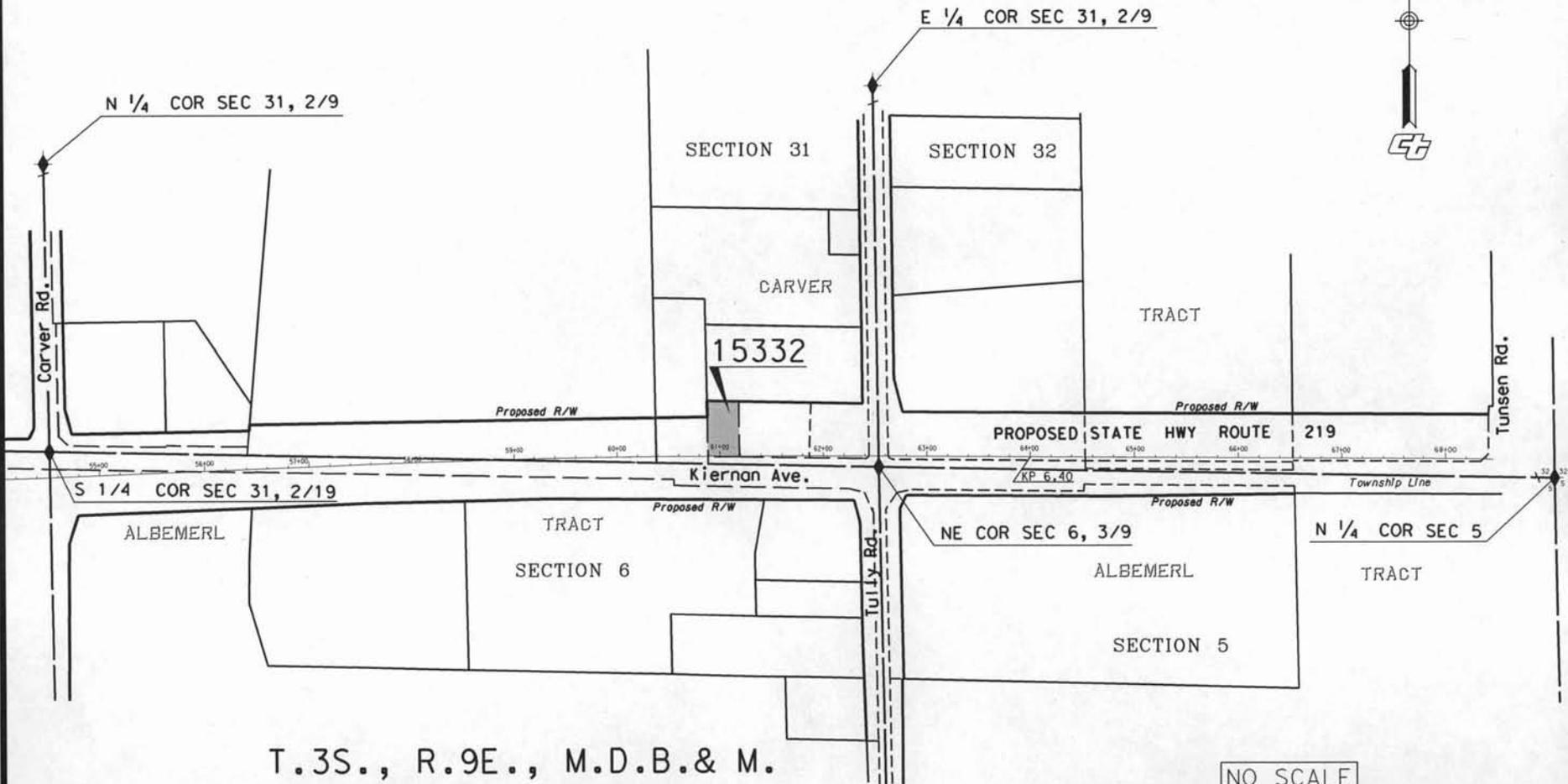
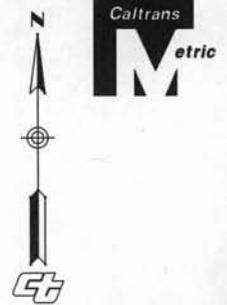
Parcel 15332

For State Highway purposes, the following legal description is verbatim per the Grant Deed recorded September 09, 2003 in Document Number 2003-0155062-00.

The South 200 feet of the East 100 feet of the West 265 feet of Lot 13 as shown upon that certain Map entitled "Carver Tract" filed for records August 13, 1913 in Volume 7 of Maps, at Page 45, Stanislaus County Records.

EXHIBIT A

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



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

NO SCALE

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

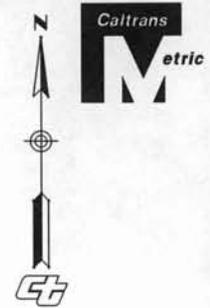
This survey is based on the California Coordinate System of 1983, ZONE 3. Units are in meters and bearings and distances are on grid. Multiply by 1.00006972 to convert to ground distances.

LEGEND
 PARCEL 15332 FEE

**RESOLUTION OF NECESSITY
 AREA MAP**
 10-Sta-219 K.P. 6.10

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

EXHIBIT B



CARVER

Section 31

Section 32

TRACT

15332

S88°49'10"E
30.723

15.648

Proposed R/W

Proposed R/W

Proposed R/W

LOT 13

PROPOSED

STATE HWY 219

60+00

61+00

62+00

63+00

64+00

N0°49'27"W
53.348

Existing R/W

Existing R/W

N88°49'10"W

KP 6.20

Kiernan Avenue

Township Line

Proposed R/W

Existing R/W

Existing R/W

Proposed R/W

Section 6

NE COR SEC 6, 3/9

Fd 2 1/2" Brass Cap
in Monument Well
per 20 S 40
N 634545.407
E 1954762.250

Section 5

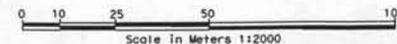
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1.00006972 to convert to ground distances.

LEGEND

PARCEL 15332 FEE



**RESOLUTION OF
NECESSITY MAP**
10-Sta-219 K.P. 6.10