

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

DEPT: Public Works *AM*

BOARD AGENDA # \*C-2

Urgent  Routine

AGENDA DATE March 30, 2010

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 Joseph K. Fluence, Trustees, et ux., APN: 004-057-004, 10-Sta-219-KP 6.90, Parcel 15338

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 Joseph K. Fluence, Trustees, et ux., for APN: 004-057-004, 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. 2010-165

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

and approved by the following vote,

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

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 Joseph K. Fluence, Trustees, et ux., APN: 004-057-004, 10-Sta-219-KP 6.90, Parcel 15338

## **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 15338, has an Assessor's Parcel Number of 004-057-004 and is located at 907 Kiernan Avenue. This property is not in a Williamson Act contract. The property owner is Joseph K. Fluence, Trustees, 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 Joseph K. Fluence, Trustees, et ux., APN: 004-057-004, 10-Sta-219-KP 6.90, Parcel 15338

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.

**CONTACT PERSON:**

Matt Machado, Director of Public Works. Telephone: (209) 525-6550.

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

Date: March 30, 2010

No. 2010-165

On motion of Supervisor O'Brien and approved by the following vote,  
Seconded by Supervisor Chiesa

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

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 6.90, PARCEL 15338,  
APN: 004-057-004, OWNER: Joseph K. Fluence, Trustees, 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 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" 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 15338**

2 For State highway purposes, a portion of that certain parcel of land  
3 described in the Grant Deed recorded October 8, 1998 as Document No. 98-  
4 0093075-00, Official Records Stanislaus County, being a portion of the Southwest  
5 quarter of Section 32, Township 2 South, Range 9 East, Mount Diablo Meridian,  
6 lying southerly of courses (8) through (11), inclusive, of the following described  
7 courses:

8 BEGINNING at the Southwest corner of said Section 32, said corner being  
9 marked by a 2 1/2" brass cap in monument well, as shown in Record of Survey,  
10 recorded in Book 20 of Surveys at Page 40, Stanislaus County Records;  
11 THENCE (1) North 00°42'58" West, along the West line of said Southwest quarter  
12 of Section 32, a distance of 338.907 meters, the West quarter corner of said  
13 Section 32 being marked by a 2" iron pipe with aluminum cap in a Stanislaus  
14 County monument well, as described in Corner Record No. 01399, on file with  
15 Stanislaus County Surveyor; THENCE (2) South 88°59'09" East, a distance of  
16 16.147 meters; THENCE (3) South 00°42'58" East, parallel with the West line of  
17 said Southwest quarter of Section 32, a distance of 253.354 meters; THENCE (4)  
18 South 14°41'15" East, a distance of 33.294 meters; THENCE (5) South 89°39'54"  
19 East, a distance of 575.587 meters; THENCE (6) North 00°27'56" West, a distance  
20 of 28.452 meters; THENCE (7) North 89°32'04" East, a distance of 9.263 meters;  
21 THENCE (8) South 15°39'37" East, a distance of 37.733 meters; THENCE (9)  
22 South 89°30'52" East, a distance of 41.800 meters; THENCE (10) South 00°27'56"  
23 East, a distance of 6.877 meters; THENCE (11) South 87°08'57" East, a distance  
24 of 140.942 meters to the East line of said Southwest quarter of Section 32;  
25 THENCE (12) South 00°34'56" East, along said East line, a distance of 42.053  
26 meters to the South Quarter Corner of said Section 32, said corner being marked  
27

1 **Parcel 15338 (continued)**

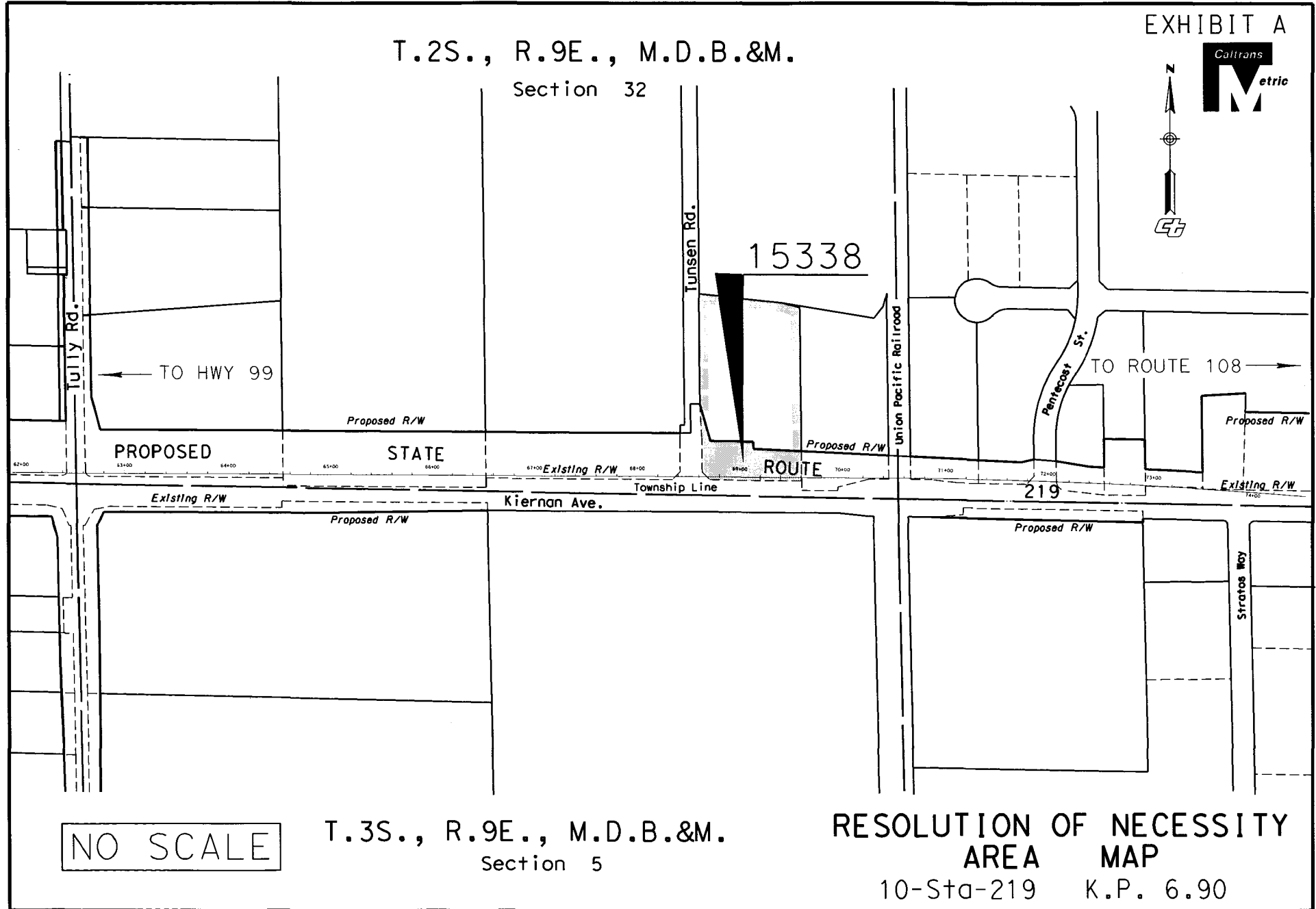
2 by a 3.5" iron pipe with brass cap in monument well, as shown on Record of  
3 Survey filed in Book 20 of Surveys at Page 40, Stanislaus County Records;  
4 **THENCE (13) North 88°58'12" West, along the South line of said Southwest**  
5 **quarter of Section 32, a distance of 801.490 meters to the POINT OF BEGINNING.**

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

9       **TOGETHER WITH all of the existing improvements which are located**  
10 **partially within and partially outside the boundaries of the above-described**  
11 **parcel, together with the right and easement to enter upon the owner's remaining**  
12 **land outside the boundaries of said parcel at any time within 120 days after the**  
13 **date possession is authorized as indicated in the order for possession, or within**  
14 **120 days after FINAL JUDGEMENT IN CONDEMNATION, for the purpose of**  
15 **removing all of the said existing improvements.**

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

EXHIBIT A



15338

JULY Rd.

TO HWY 99

Tunsen Rd.

Union Pacific Railroad

Pentecost St.

TO ROUTE 108

Stratos Way

NO SCALE

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

RESOLUTION OF NECESSITY  
AREA MAP

10-Std-219 K.P. 6.90



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

EXHIBIT B

Section 32



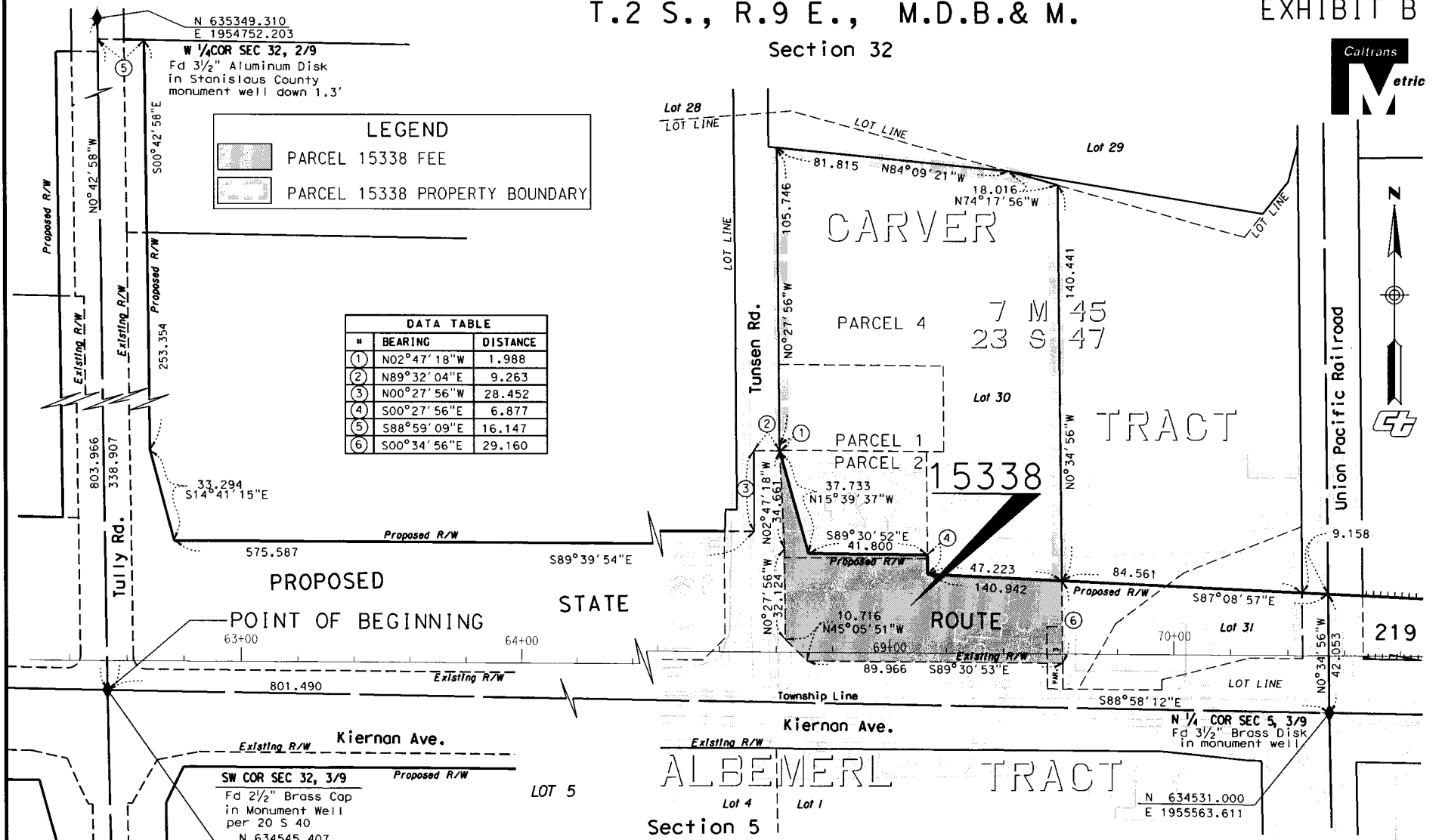
N 635349.310  
E 1954752.203  
W 1/4 COR SEC 32, 2/9  
Fd 3/2" Aluminum Disk  
in Stanislaus County  
monument well down 1.3'

**LEGEND**

- PARCEL 15338 FEE
- PARCEL 15338 PROPERTY BOUNDARY

**DATA TABLE**

#	BEARING	DISTANCE
①	N02°47'18"W	1.988
②	N89°32'04"E	9.263
③	N00°27'56"W	28.452
④	S00°27'56"E	6.877
⑤	S88°59'09"E	16.147
⑥	S00°34'56"E	29.160



SW COR SEC 32, 3/9  
Fd 2 1/2" Brass Cap  
in Monument Well  
per 20 S 40  
N 634545.407  
E 1954762.250

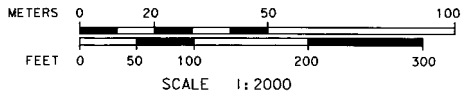
N 1/4 COR SEC 5, 3/9  
Fd 3/2" Brass Disk  
in monument well  
N 634531.000  
E 1955563.611

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

Section 5

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. 6.90