

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

DEPT: Public Works *Phugh*

BOARD AGENDA # C-2

Urgent Routine

AGENDA DATE May 1, 2012

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 Road Right of Way by Eminent Domain for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project, Parcel Owners John R. & Carol L. Regusci, APN: 136-033-029

STAFF RECOMMENDATIONS:

1. Find that the public interest and necessity require the proposed project.
2. Find that the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. Find that the subject property described in the attached Resolution is necessary for the proposed project.

(Continued on Page 2)

FISCAL IMPACT:

The cost is estimated to be less than a thousand dollars to conduct a meeting for the Resolution of Necessity. This cost will be absorbed within the Regional Transportation Impact Fee program.

BOARD ACTION AS FOLLOWS:

No. 2012-209

THIS ITEM WAS REMOVED FROM THE AGENDA.
NO ACTION WAS TAKEN.

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4. Find that the offer required by Section 7267.2 of the Government Code has been made to the owners of record of the property to be acquired.
5. Adopt a Resolution of Necessity in the form attached hereto.
6. Authorize County Counsel to initiate eminent domain proceedings to acquire the subject property.

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 and State Route 99 Proposition 1B Bond Savings funds. The Bond Savings funds will provide up to \$34 million toward the construction phase of the project. To date, there has been a total savings of approximately \$50 million in SR 99 Proposition 1B Bond monies. Caltrans expects additional savings to be realized on other SR 99 corridor projects, thus providing the necessary funding for this project. To qualify to receive construction funding, this project must go before the California Transportation Commission (CTC) in June of 2012 and be awarded to a contractor by December of 2012. To meet these schedule requirements, the proposed interchange project must have a Right of Way Certification by May 8, 2012.

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.

In February of 2009, the Board of Supervisors awarded a contract to Rajappan & Meyer Consulting Engineers, Inc. for environmental services for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project.

In December of 2010, the Board of Supervisors awarded a contract to Rajappan & Meyer Consulting Engineers, Inc. for design services for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project.

At the current time, Public Works staff is working diligently to complete the design phase of the project by May of 2012 in order to qualify for the State Route 99 Proposition 1B Bond Savings funds. Included in the design phase is right of way acquisition of lands required to construct the proposed project. To meet the timing requirements for the Bond Savings funding, a right of way

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certification must be completed by May 8th. To complete the certification, all necessary properties shall be acquired, or at a minimum, a Resolution of Necessity must be approved on all parcels not yet acquired by the time of project advertisement. An offer was made on this property on March 3, 2012, but negotiations are still ongoing. In order to assure that the project stays on schedule for a right of way certification by May 8, 2012, it is imperative that the Resolution of Necessity is approved prior to that date. In the meantime, staff will continue to negotiate the acquisition in hopes of coming to an agreement with the landowner in a timely manner, making the resolution unnecessary.

To accomplish the right of way certification and maintain qualification status for the Bond Savings funds, the County needs to acquire 8,594 square feet of road right of way from the parcel on the northeast corner of Sisk Road and State Route 219 (Kiernan Avenue). The owners of the subject property are John R. Regusci and Carol L. Regusci.

The County has offered the owners of the subject property the sum of \$14,200 for roadway right of way, which an appraiser hired by the County determined to be the fair market value for the subject property, as it is required to do pursuant to section 7267.2 of the Government Code.

John and Carol Regusci have not yet accepted the County's offer. Public Works staff recommends beginning the process of acquiring the right of way from the Regusci family through the eminent domain process.

To authorize the use of the power of eminent domain, the Board must first adopt a Resolution of Necessity required by Section 1245.220 of the Code of Civil Procedure. Prior to adopting the Resolution of Necessity, the landowners will have the opportunity to be heard by the Board of Supervisors at the scheduled Board meeting on May 1, 2012.

The owners were given written notice on Friday, March 30, 2012 of the meeting as required by Section 245.235 of the Code of Civil Procedure. The purpose of the meeting is to provide the owners of the property the opportunity to be heard on the matters referred to in Section 1240.030 of the Civil Code as follows:

1. Whether the public interest and necessity require the project;
2. Whether the project is planned or located in the manner that will be most compatible with the greatest public good and least private harm; and,
3. Whether the property sought to be acquired is necessary for the project.

The Department of Public Works offers the following in support of each of the above-mentioned matters:

1. The Public Interest and Necessity Require the Project.

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This interchange 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. Caltrans will soon be starting on the second phase of widening on State Route 219 (Kiernan Avenue) from McHenry Avenue to Dale Road. The initial phase of widening of SR 219 took place from Dale Road to State Route 99. This project will help leverage additional benefits from the State's investment in the current widening projects on State Route 219. These two State projects were also funded by Proposition 1B money, using the Corridor Mobility Improvement Account (CMIA) funds.

2. The project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.

Public Works took into consideration the configuration of the existing intersection of Sisk Road and SR 219 (Kiernan Avenue), alignment of existing roads, and traffic data, and average daily traffic (ADT) volumes in the development of the plans for this project. The project design was actually modified from the originally planned project to reduce the right of way impacts to the Regusci parcel along State Route 219.

3. The property sought to be acquired is necessary for the project.

The existing county right-of-way at the intersection of Sisk Road and SR 219 (Kiernan Avenue) does not provide the necessary area for the installation of new signals, designated right hand turn lane on Kiernan Avenue, and the widening of Sisk Road for the purposes of receiving traffic from the left turn movements on Kiernan Avenue and the thru traffic coming from northbound Sisk Road. An additional 15 feet near the intersection is needed for these improvements. The necessary right of way decreases as you go north from the intersection.

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

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

Date:

No.

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 0.4, PARCEL 16525
OWNER: John R. & Carol L. Regusci**

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, the real property to be taken is described in Exhibits "A and B" attached hereto and made a part hereof; and

WHEREAS, the County proposes to reconstruct the interchange overcrossing bridge structure, widen the existing off/on ramps from State Route 99, widen State Route 219, widen Salida Boulevard, Sisk Road, and perform modifications to the existing traffic signal systems within the project area.

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 meeting 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

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.
5. The County Counsel is hereby authorized to institute eminent domain proceedings in the Superior Court of the State of California for the County of Stanislaus, for the purpose of acquiring the property described herein above, and is further authorized to institute proceedings for taking pre-judgment possession of said property and to deposit the probable amount of compensation therefore, in accordance with California Code of Civil Procedure Section 1255.010, as directed by the Superior Court as security for said possession. Counsel is further authorized to associate with, at its election, a private law firm for the prosecution of said proceedings.
6. That the Auditor/Controller of Stanislaus County is directed to draw all necessary warrants payable to the State Treasurer or County Clerk in the amount specified in the Written Summary of Just Compensation prepared in accordance with the Code of Civil Procedure sections 1255.010, et seq. All warrants shall be drawn from the County Treasury. No warrant shall be drawn on that account for purposes of furthering the eminent domain action unless sufficient funds have been deposited to fund any such warrant.

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

Exhibit A Legal Description

Being a portion of the lands described in the deed to Regusci filed on September 15, 1994 at Document No. 94-0089852 situate in the County of Stanislaus and State of California and being located in the southeast quarter of Section 34, Township 2 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 South Quarter corner of said Section 34, from which the Center $\frac{1}{4}$ bears corner of said Section 34 bears North $00^{\circ}31'54''$ West, a distance of 2,652.32 feet and is marked by a 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 along the $\frac{1}{4}$ section line North $00^{\circ}31'54''$ West, 148.98 feet to a point on the westerly prolongation of the northerly line of the land described in the Final Order of Condemnation, recorded September 4, 2008, as Instrument No. 2008-0097222;

Thence along said westerly prolongation North $89^{\circ}45'30''$ East, 61.96 feet to an angle point in said northerly line and to the Point of Beginning;

Thence from said Point of Beginning, along the easterly line of said Final Order of Condemnation North $26^{\circ}22'47''$ West, 30.39 feet;

Thence North $00^{\circ}33'48''$ West, 593.26 feet;

Thence leaving said easterly line South $04^{\circ}09'42''$ East, 126.20 feet;

Thence South $02^{\circ}44'16''$ East, 320.53 feet;

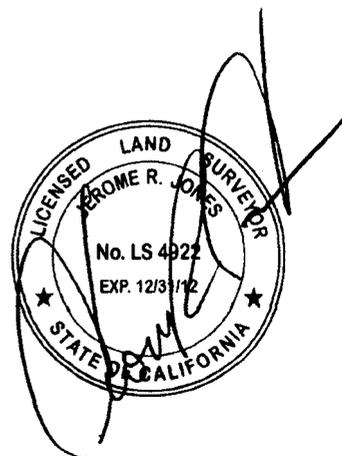
Thence South $00^{\circ}35'28''$ East, 144.14 feet;

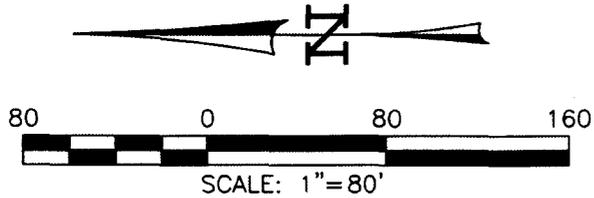
Thence South $32^{\circ}12'56''$ East, 35.68 feet to a point on said northerly line of said Final Order of Condemnation;

Thence along said northerly line South $89^{\circ}45'30''$ West, 25.64 feet to the Point of Beginning.

Said Parcel contains 8,594± square feet or 0.20 acres of land, more or less.

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.



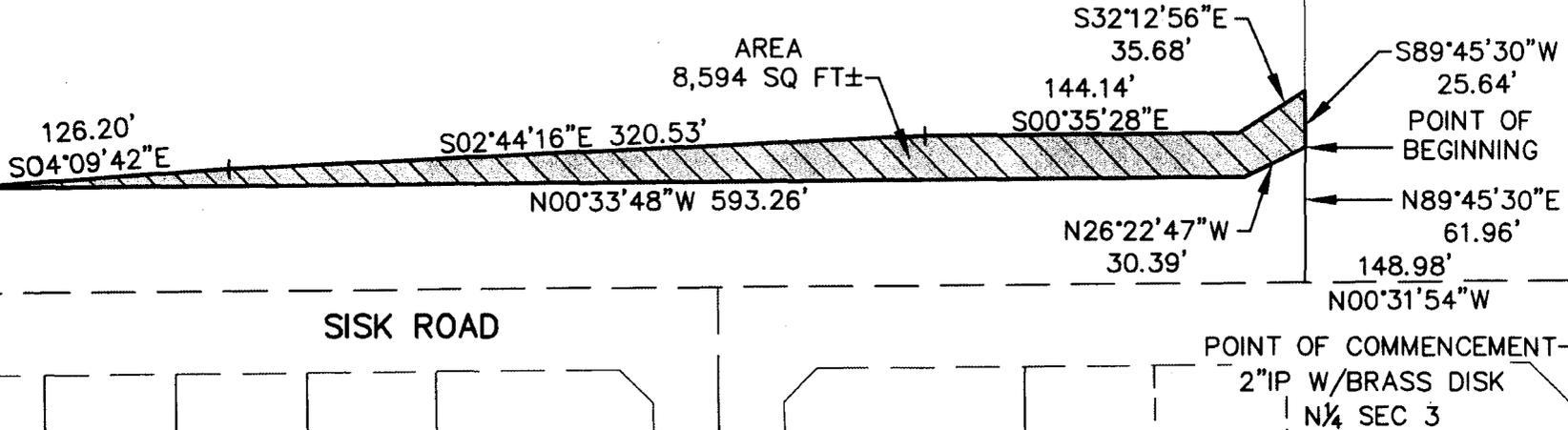


T. 2S., R. 8E., M.D.B.&M.
SECTION 34

JOHN R & CAROL L.
REGUSCI

KIERNAN AVENUE

AREA
8,594 SQ FT±



SISK ROAD

POINT OF COMMENCEMENT
2"IP W/BRASS DISK
N¼ SEC 3

NOLTE
BEYOND ENGINEERING

3406 HATCHMAN PARK DRIVE, 4TH FLOOR, SACRAMENTO, CA 95833
916.641.9078 TEL. 916.641.9222 FAX WWW.NOLTE.COM

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

"EXHIBIT B"-PARCEL 16525
RIGHT OF WAY ACQUISITION
COUNTY OF STANISLAUS, STATE OF CALIFORNIA

PREPARED FOR: STATE OF CALIFORNIA

DATE SUBMITTED: 01/2012

SHEET NUMBER
1
OF 1 SHEETS
JOB NUMBER
SAB041001

XREFS: