

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

DEPT: Public Works *MM*

BOARD AGENDA # *C-9

Urgent Routine

AGENDA DATE May 22, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of Purchase Agreement to Acquire Road Right-of-Way for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project, Parcel Owners John R. and Carol L. Regusci, APN: 136-033-029

STAFF RECOMMENDATIONS:

1. Approve the purchase agreement for the subject acquisition.
2. Authorize the Chairman of the Board to execute the agreement.
3. Authorize the Director of Public Works to sign the Certificate of Acceptance and cause to record the Grant Deed on behalf of Stanislaus County as authorized by Board Resolution dated March 8, 2011 and Government Code 27281.

(Continued on Page 2)

FISCAL IMPACT:

The total estimated construction cost for the SR 99/SR 219 (Kiernan Avenue) Interchange project is approximately \$34,000,000. The \$26,144 for the purchase of this right-of-way is funded by the Regional Transportation Impact Fee Program (RTIF) and consists of \$24,144 for the purchase of the right-of-way, and \$2,000 for estimated escrow and title insurance fees, available in the current fiscal year Road Projects' budget.

BOARD ACTION AS FOLLOWS:

No. 2012-255

On motion of Supervisor Monteith, Seconded by Supervisor Withrow
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, 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 of Purchase Agreement to Acquire Road Right-of-Way for the State Route 99/State Route 219 (Kiernan Avenue) Interchange Project, Parcel Owners John R. and Carol L. Regusci, APN: 136-033-029

4. Direct the Auditor-Controller to issue a warrant in the total amount of \$26,144 payable to First American Title Company, for the purchase amount of \$24,144 and \$2,000 for estimated escrow fees and title insurance.

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, environmental mitigation fees, and the State Route 99 Bond Savings funds. The Bond Savings funds will provide up to \$35 million toward the construction phase of the project.

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.

The interchange is located in the north part of Stanislaus County and on the northern edge of the City of Modesto, providing access to commercial and residential properties in the community of Salida.

Stanislaus County Public Works has completed the planning and environmental phases of the project, which were funded with contributions from developers in conjunction with the Salida Community Plan and the voluntary regional transportation contribution received from Kaiser Permanente.

To accomplish the SR 99/SR 219 (Kiernan Avenue) Interchange project, the County will need to acquire a portion of the Regusci parcel on the northeastern corner of the SR 219 (Kiernan Avenue) and Sisk Road intersection. The property owner has agreed to accept the following compensation:

Property Owner:	John R. & Carol L. Regusci
Amount of Compensation:	\$24,144
Assessor's Parcel Number:	136-033-029
Right-of-Way Area:	0.19 acres+/- (8,395 +/- SF)

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The amount of compensation has been determined to be within the range of just compensation by an independent appraiser hired by the County.

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, Construction Manager

CB:la L:\ROADS\9207 - Hwy 99 @ Kiernan Interchange\PS&E\Right of Way\Regusci\Board Report - Final

District	County	Route	P.M.	E. A.	Caltrans Parcel No.	Federal Reference No.	Name	APN
10	STAN	Kiernan Ave. SR219	0.0/0.3	10-OL3309 BRI 10118	16525		John and Carol Regusci	136-033-029

Salida _____, California

April _____, 2012

John R. and Carol L. Regusci

Grantors

**COUNTY OF STANISLAUS
RIGHT OF WAY CONTRACT**

Document number 10-16525, in the form of a Grant Deed with attached Legal Description Granting to the County of Stanislaus (County) covering the property as delineated on the Appraisal Map, and particularly described in the above referenced Instrument and Plat Map labeled "Exhibit A" attached hereto and made a part hereof, has been executed and delivered to, Tom Ganyon, Senior Right of Way Agent, acting as Agent for the County of Stanislaus California, by John and Carol Regusci (Grantors).

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. (A) The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve County of all further obligations or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
 - (B) County requires said property described in Exhibit "A" for roadway purposes, a public use for which the County has the authority to exercise the power of eminent domain. Grantors are compelled to sell, and County is compelled to acquire the property.
 - (C) Grantors acknowledge that this transaction is a negotiated settlement in lieu of condemnation and agree that the Purchase Price to be paid herein is in full settlement of any claims for compensation or damages that may have arisen, including, but not limited to, attorney fees, pre-condemnation damages, severance damages, business goodwill, or any other claim regarding the acquisition of the Property or construction of improvements thereon. Both Grantors and County recognize the expense, time, effort, and risk to both parties in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is in compromise and settlement, in lieu of such litigation.
2. County of Stanislaus shall:
 - A. Pay the undersigned Grantors the sum of **\$24,144.00** for the property or interests therein conveyed by the above document number 10-16525, when title to said property vests in County free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes, except:
 - a. Prorated taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.
 - b. Covenants, conditions, restrictions and reservations of record, or contained in the above-referenced document.
 - c. Easements or rights of way over said land for public or quasi-public utility or public street purposes, if any.
 - B. Pay all escrow and recording fees for this transaction, and if title insurance in the amount of **\$5,000.00** is desired by County, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer tax. This transaction will be handled through an escrow with First American Title Company located at 1506 H Street, Modesto CA 95354, Escrow No. 5005-3918851.

----- **No Obligation Other Than Those Set Forth Herein Will Be Recognized** -----

- C. Have the authority to deduct and pay from the amount shown on Clause 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow.
 - E. Grantor agrees that if claims are submitted by lien-holders, the County is hereby authorized to honor such claims and deduct the amount of said claims from the amount to be paid to the property owner. The County will notify the Grantor of any such claims prior to payment.
3. It is agreed and understood that County's valuation of the subject property located at 4337 Kiernan Avenue, situated within the limits of the Town of Salida, Stanislaus County, California further identified as APN 136-033-029 is based on a Market Approach to Value. The valuation including land and improvements is segregated as follows:

\$ 5,000.00	Fee Simple Land = 8,594 ± square feet (0.20± acres)
\$ 10,000.00	Administrative increase in Just Compensation
<u>\$ 9,144.00</u>	Improvements (relocate farm road out of acquisition area to remainder area)
\$ 24,144.00	Total

- 4. Any monies payable under this contract up to and including any prorated amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with terms and conditions of said trust deed(s) or mortgage(s), shall upon demand(s) be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder; said mortgagee(s) or beneficiary(ies) to furnish grantor with good and sufficient receipt showing said monies credited against indebtedness secured by said mortgage(s) or deed(s) of trust.
- 5. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by County, including the right to remove and dispose of improvements, shall commence on the date of the close of the escrow controlling this transaction or April 30, 2012, whichever event occurs first. It is further agreed and confirmed by the parties that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including payment for relocation of interior farm road by Grantor as described in the fair market value appraisal of the property estimated at \$9,144.00.
- 6. Grantors warrant that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the grantors agree to hold County harmless and reimburse County for any and all of its losses and expenses occasioned by reason of any lease of said property held by any Tenant of Grantors for a period exceeding one month. Grantors acknowledge that a quitclaim deed will be required from any lessee that has a lease term exceeding one month. Said quitclaim deeds are to be provided to Title Company's Escrow Agent by Grantors, prior to the close of escrow.
- 7. County agrees to indemnify and hold harmless the undersigned Grantors from any liability arising out of County's operations under this agreement. County further agrees to assume responsibility for any damages proximately caused by reason of County's operations under this agreement and County will, at its option, either repair or pay for such damage.
- 8. County agrees that Grantor's will have access to their remainder property during construction with said access maintained in such a way so that it does not impact or interfere with normal business operations. County will notify Grantor at least 30-days prior to start of construction. County agrees with Grantor that the existing telephone service to the Grantor's alarm system will be kept in service during periods of alarm system operation.
- 9. Grantor's hereby represent and warrant that during the period of Grantor's ownership of the Property, there have been no disposals or releases of hazardous substances on, from, or under the Property. Grantors further represent and warrant that Grantor's have no knowledge of any disposal or release of hazardous substances, on, from, or under the Property which may have occurred prior to Grantor's taking title to the Property.
- 10. Purchase Price of the Property reflects the fair market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous substances which require mitigation under Federal or County law, County reserves the right to recover its clean-up costs from those who caused or contributed to the contamination.

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11. It is further understood and agreed between the parties to this contract that any work required to restore and/or replace; crops or other agricultural related items removed or otherwise damaged by County's Roadway Contractor during the course of the project will be the responsibility of County, and will be performed under separate contract at County/Project expense with the exception of compensation for relocation of an interior farm road, payment for which is delineated above in Clauses (2) and (5) of this contract.
12. Grantors understand and agree that the compensation in the amount of \$24,144 offered in this Agreement is subject to and contingent upon approval of the Stanislaus County Board of Supervisors by adopting a Resolution authorizing the execution of the Agreement at their May 15, 2012 meeting or sooner. Should Grantor agree to sell to County, and County is unable to approve funding of the purchase of this property by December 31, 2013, this Agreement becomes null and void, and County shall have no further obligation to Grantor. If Grantor agrees to sell, and County approves funding by said date, all terms and condition of this Agreement apply. County shall deliver the Purchase Price no later than 45 days after Board of Supervisors approval and after delivery and execution of all necessary transfer documents.
13. Escrow Agent shall deliver payment under this contract to Grantors when title to the property vests in County's name, free and clear of all liens, encumbrances, assessments, easements, leases (recorded and/or unrecorded), and taxes unless otherwise indicated in Escrow Instructions as executed by the parties and submitted to Escrow Agent.
14. It is understood and agreed by and between the parties hereto that this Agreement inures to the benefit of, and is binding on, the parties, their respective heirs, personal representatives, successors, and or assignees.

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IN WITNESS WHEREOF, the parties have executed this Agreement on _____ as follows:

COUNTY OF STANISLAUS

By: William O'Brien
William O'Brien
Chairman of the Board of Supervisors

GRANTORS

By: John R. Regusci
John R. Regusci

By: Carol L. Regusci
Carol L. Regusci

ATTEST:

Christine Ferraro Tallman
Clerk of the Board of Supervisors of the
County of Stanislaus, State of California

By: Patricia Tallman
Deputy Clerk

APPROVED AS TO CONTENT:

Department of Public Works

By: Matt Machado
Matt Machado
Public Works Director

APPROVED AS TO FORM:

John P. Doering, County Counsel

By: Thomas E. Boze
Thomas E. Boze
Deputy County Counsel

~~RECOMMENDED FOR APPROVAL.~~


By: Not Applicable
~~Tom Ganyon~~
~~Senior Right of Way Agent~~
~~Bender Rosenthal Inc.~~

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CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed to the County of Stanislaus, by the within instrument, the provisions of which are incorporated by this reference as though fully set forth in this Certification, is hereby accepted by the undersigned officer(s) on behalf of the County, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: 5/23/12

By: 
Matt Machado
Director of Public Works
Stanislaus County



Stanislaus, County Recorder
 Lee Lundrigan Co Recorder Office
DOC- 2012-0084910-00

Acct 503-First American Title Co
 Tuesday, SEP 25, 2012 08:00:00
 Ttl Pd \$0.00 Rcpt # 0003271482
 OLD/R3/1-5

RECORDING REQUESTED BY:

First American Title Company

WHEN RECORDED RETURN TO:

County of Stanislaus
 1021 I Street, Suite 100
 Modesto, Ca 95354-0847

Attn: County Clerk Recorder

No Fee Document - per Government code 6103
 No Document Transfer Tax - Per R&T Code 11922

Space above this line for Recorder's Use

GRANT DEED

APN: 136-033-029

Caltrans District	County	Route	Post Mile	Assessors' Parcel Number
10	Stanislaus	Kiernan Avenue SR 219	0.0/0.3	136-033-029

John R. and Carol L. Regusci (Grantors) do hereby GRANT to the County of Stanislaus, a California municipal corporation of the State of California (Grantee) all that real property in the City of Salida County of Stanislaus, State of California, described as:

SEE EXHIBIT "A", LEGAL DESCRIPTION, AND EXHIBIT "A-1", PLAT ACCOMPANYING LEGAL DESCRIPTION, ATTACHED HERETO AND MADE A PART HEREOF.

The grantors further understand that the present intention of the grantee is to construct and maintain public roadway improvements and appurtenances on the lands hereby conveyed in fee and the grantors, for themselves, their successors and assigns, hereby waive any claims for any and all damages to grantor's remaining property (if applicable) contiguous to the property hereby conveyed by reason of the location, construction, landscaping or maintenance of said roadway.

Date: 9-21-12, 2012.

By: *John R. Regusci*
 JOHN R. REGUSCI
 Grantor

By: *Carol L. Regusci*
 CAROL L. REGUSCI
 Grantor

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 NB

ACKNOWLEDGMENT

State of California
County of Stanislaus

On September 21, 2012, before me, Cindy Garcia, Notary Public
(insert name and title of the officer)

personally appeared John R. Regusci & Carol L. Regusci
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Cindy Garcia (Seal)

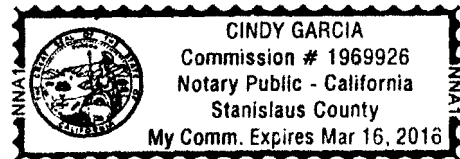


Exhibit A Legal Description

Being a portion of the lands described in the deed to Regusci filed on September 15, 1998 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 comers 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;

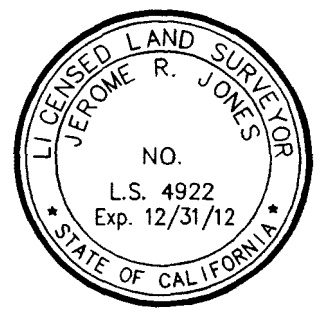
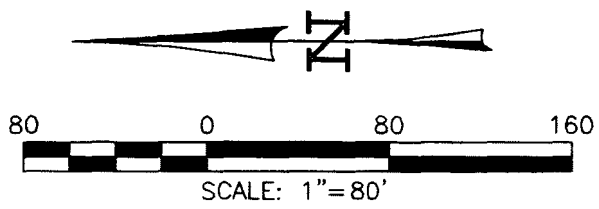
Thence South $32^{\circ}12'56''$ East, 35.68 feet to a point on said northerly line of said Final Order of Condemnation;

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

Said Parcel contains $8,594\pm$ 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.

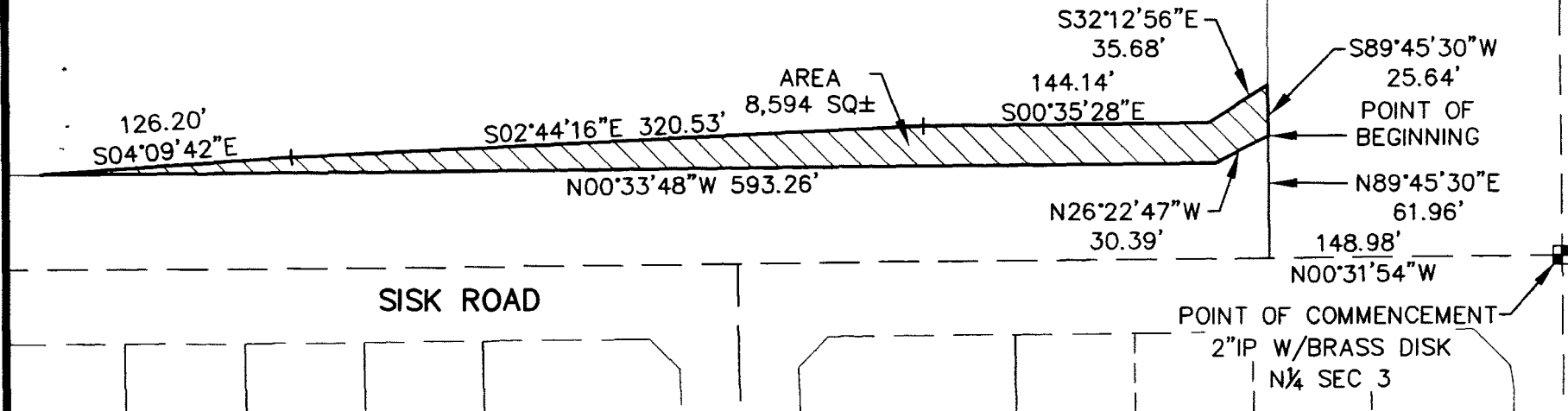




T. 2S., R. 8E., M.D.B.&M.
SECTION 34

JOHN R & CAROL L.
REGUSCI

KIERNAN AVENUE



 <small>2406 NATOMAS PARK DRIVE, 4TH FLOOR, SACRAMENTO, CA 95833 916.641.9000 TEL. 916.641.8222 FAX WWW.NOLTE.COM</small>	DATE: _____ TIME: _____ NETWORK: _____ PATH: _____ DWG NAME: _____ PLOT VIEW: _____ DESIGNER: _____ MGR: _____	"EXHIBIT B"-PARCEL 16525 RIGHT OF WAY ACQUISITION COUNTY OF STANISLAUS, STATE OF CALIFORNIA	SHEET NUMBER 1 OF 1 SHEETS
	PREPARED FOR: STATE OF CALIFORNIA	DATE SUBMITTED: 01/2012	JOB NUMBER SAB041001