

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: June 25-26, 2003

Reference No.: 2.4a.(2)  
Action Item

From: ROBERT L. GARCIA  
Chief Financial Officer

Prepared by: Brice D. Paris  
Division Chief  
Right of Way

Ref: APPEARANCE

## RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission adopt Resolution of Necessity C-18795, which is the subject of this Appearance. The summary below identifies the location of and designates the nature of the property rights covered by the Resolution of Necessity. In accordance with statutory requirements, the owners have been advised that the Department of Transportation is requesting a resolution at this time. Adoption of Resolution of Necessity C-18795 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

### C-18795 - Dennis Zsigo

02-Tri-299-PM 29.8-Parcel 12886; 12887-C1, C2, C3 - EA 288209 - Certification Date: 06/26/03 - RTL Date: 06/26/03 - (Conventional highway - construct a passing lane). Authorizes condemnation of a portion of possessory interest in an unpatented mining claim, an easement for highway construction, and a temporary construction easement with exclusive use provisions. Located near the unincorporated area of Big Bar, west of Weaverville.

Attachments

## SUMMARY OF ISSUES

1. The mining claim owner contends that the State's acquisition by condemnation is illegal, in that the State has no jurisdiction over any interest on federally owned land.

The State has the right to condemn property interests under Article 19, Section 1, of the California Constitution and the Streets and Highways Code, Section 102. The subject interest in US Forest Service (USFS) land is an unpatented mining claim near Big Bar, California. Mr. Zsigo operates a gold dredging unit in the Trinity River there. Mr. Zsigo holds a possessory interest in the mining claim that is recorded by Trinity County. Highway title is being acquired through a pending US Department of Transportation easement deed.

2. The mining claim owner has no objection to the highway improvement project and welcomes the improvements but wants the current access from the highway shoulder to a gold dredging spot in the river to be perpetuated.

The non-permitted access from the current highway shoulder cannot be perpetuated for safety reasons. Currently Mr. Zsigo has no developed legal right to access to the riverbank from the highway. He parks his vehicle at the edge of the existing shoulder and carries his dredging gear down an unimproved footpath to the river's edge. A roadway widening and a proposed guardrail will take up the future highway shoulder at this location. Mr. Zsigo may continue to park in public areas after construction. A pullout area will be provided near the east end of Mr. Zsigo's claim where he may park on the shoulder and access the river via a public trail. Parking facilities near the west end of his claim are available in a public campground.

3. The mining claim owner contends that temporary exclusive safety easements during construction of a retaining wall near the river and during blasting operations would prevent the owner from mining while the easements are in effect.

The Department has rewritten the descriptions and the length of the easements to minimize both their term and the number of blasting days, and to confine hours of blasting to specific portions of blasting days. Additionally, a period of retaining wall work above the riverbank will be scheduled to minimize the workdays when Mr. Zsigo will be restricted from the safety zone. In this way the claim owner can access the property and perform mining during most of the construction period.

4. In the mining claim owner's opinion, the offer of compensation is inadequate and therefore does not meet the statutory requirement in Government Code Section 7267.2. The mining claim owner further states that the Department is not negotiating in good faith by refusing to meet his compensation demand.

The Department's appraisal was made based on a mining claim sale in the vicinity. The offer of compensation is the full amount of the approved appraisal in compliance with Government Code Section 7267.2.

Additionally, material from a cut slope above the existing highway will be excavated and deposited at a disposal site on USFS land. The Department has offered to segregate the soil from the mining claim from other soil at the disposal site so that the mining claimant can search the soil for minerals. This proposal is subject to Mr. Zsigo acquiring the necessary permits for such activities.

6. The owner stated that he would attempt to block the project if his demand for payment is not met.

The California Transportation Commission will not hear the issue of compensation.

**Resolution of Necessity Appearance Fact Sheet**

**PROJECT DATA**                      02- TRI-299-KP 47.3/48.6 (PM 29.4/30.2)

Location:                              State Route 299 in Trinity County

Limits:                                 Between the communities of Big Flat and Big Bar

Cost:                                    Right of Way = \$ 25,000 and Construction =\$2,920,000

Funding Source:                      2002 STIP Program/Interregional program share, (NH) eligible for Federal Aid

Number of Lanes:                      Existing:        2 – lane conventional highway  
   Proposed:        3-lanes

Proposed Major Features:

   Other: Adding a ½ mile passing lane and turnout

Traffic:                                    Existing (2000):        1650 ADT  
   Proposed (2003):        1850 ADT

**PARCEL DATA**

Property Owner:                      Dennis Zsigo (placer mining claim)

Parcel Location:                      North & South of Highway, East of Skunk Point Forest Service Campground

Present Use:                              Placer mining claim on U.S. Forest Service Land

Area of Property:                      Approximately 15 acres

Area Required:                              1.2 acres

## **RESOLUTION OF NECESSITY REVIEW PANEL REPORT**

The Resolution of Necessity Review Panel met at 1:00 PM, May 2, 2003 at the USFS Station at Big Bar in Trinity County. The property owner, Mr. Dennis Zsigo and his advocate, Mr. Edwin R. Hazelton, were present. Panel Members were Linda Fong, HQ Design; Brice Paris, Right of Way Division Chief; and Richard B. Williams, HQ Legal Division.

### **NEED FOR THE PROJECT**

This project is a highway widening and passing lane construction on a portion of State route 299. This route is a major connector between California's North Pacific coast and central valley. The route connects the coastal community of Arcata with Redding in the interior. It is part of the National Highway system and supports seasonal recreation, commercial transport including agricultural, fishery and forestry products, and is a primary fire suppression route in summer and fall seasons.

Typical highway cross-section in the portion of the route between Eureka and Redding is 14.02 meters (46 feet) paved lanes with .061 meter (2 feet) unpaved shoulders. This route has a winding alignment along the Trinity River and involves steep mountain grades in some portions. Opportunities for traffic to pass are restricted by the narrow profile of this route between mountain slopes and the riverbank. Traffic volume in 2000 was 1,650 AADT. The projected increase by 2013 is 2,450 AADT. The present speed limit is 55 MPH.

This route is part of the 1990 Interregional Road System Plan (IRRSP). A project study report (PSR) was approved June 30, 1993 incorporating a special corridor study. Humboldt, Trinity and Shasta Counties joined in the corridor study of the portion of the route between Arcata and Redding. A community meeting was held at Big Bar on March 5, 2001. Local communities and USFS gave support for the project. Environmental approval was obtained January 29, 2003. The project is categorically exempt under the California Environmental Quality Act (CEQA) and categorically excluded under the National Environmental Protection Act (NEPA).

### **PROJECT DESIGN**

The project will improve passing opportunities in a portion of Route 299 about 21 miles west of Weaverville. Components of the project include widening the right of way to add shoulders, constructing a 100-meter long turnout and adding a 3.6-meter (12 feet) wide eastbound passing lane along approximately 0.8-mile of highway near Big Bar in Trinity County.

About 28,000 cubic meters of soil will be excavated from the project area, mostly from the foot of steep slopes along the route. Widening will occur mostly on the northerly side of the existing highway to avoid the river channel on the opposite side. Existing pavement will be widened 2.4 meters (8 feet) on the southerly side and 4.8 meters (16 feet) to 7.2 meters (24 feet) on the northerly side. Paved shoulders will be 1.2 meters (4 feet) wide on the southerly side and 2.4 meters (8

feet) on the northerly side. AC overlay will provide adequate cross-section and correct superelevation. A guardrail will be installed along the apex of a large curve near the mid-point of the project.

West of the subject property, at Skunk Point Group Camp, a road connection will be replaced to provide standard sight distance, additional parking space, turnaround and highway access. Five existing cross culverts will be replaced and extended.

### **NEED FOR THE PARCEL**

The subject property is a 15-acre mining claim on USFS property. The claim is divided by the existing highway and is unavoidable if the highway is to be widened. A portion of the mining claim, subparcel 12887-C1 (4.21 acres), comprises 3.01 acres of existing roadway which will be permanently incorporated into the right of way and 1.2 acres of new right of way. Temporary easements are needed for construction and are identified as subparcel 12887-C2 (1.04 acres) and subparcel 12887-C3 (9.75 acres). Subparcel C-3 is a temporary construction easement to restrict access for safety during work on the southerly edge of the new roadway and during blasting operations.

### **STATUTORY OFFER TO PURCHASE**

The Department has appraised the possessory mining claim interest and offered the full amount of the appraisal to the owners of record in compliance with Government Code Section 7267.2

### **PANEL RECOMMENDATION**

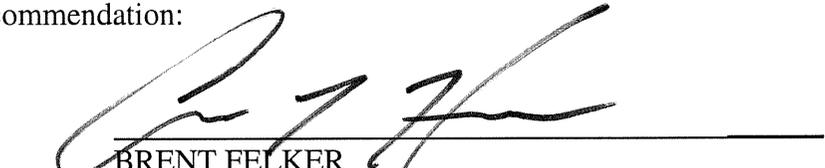
The attached Summary of Issues addresses the issues presented to the review panel by the mining claim owner, together with their disposition. The Panel concludes that the District's design complies with Section 1245.230 of the Code of Civil Procedure in that:

- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property to be condemned is necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the California Transportation Commission.

  
BRICE PARIS, Chief  
Right of Way Division

I concur with the Panel's recommendation:

  
BRENT FELKER  
Chief Engineer

**PERSONS ATTENDING SECOND LEVEL REVIEW PANEL HEARING ON**  
**May 2, 2003**

Mr. Dennis Zsigo, Owner  
Mr. Edwin R. Hazelton, Owner's advocate

Department of Transportation:  
Brice Paris, Chief, Division of Right of Way  
Richard B. Williams, HQ Legal  
Linda Fong, HQ Design  
Chris Cummings, Project Manager  
Shirley Choate, Program/Project Mgt., District 2  
Robert Burnett, Design, District 2  
Russ Robinson, Project Engineer  
Jim Hall, Right of Way, North Region  
Lisa Spellenberg, Right of Way, District 1  
Chuck Carrillo, HQ Right of Way, Facilitator

**Chronology of Contacts with property owner and other Project Events**

1/16/01 – Public open house Project Information Meeting held at the U.S. Forest Service Big Bar Ranger Station. (Dennis Zsigo, mining claim owner was in attendance)

4/30/01 - sent letter to Dennis Zsigo requesting information about his claim. (Kerry Sapinsky)

8/29/01 – Received Dennis Zsigo's email address and sent him a note requesting a meeting. (Kerry Sapinsky)

9/25/01 – Meeting on project site with Forest Service representatives, Dennis Zsigo and Caltrans staff, to discuss mining claim boundaries and issues. Dennis stated that if he could receive approximately 1000 cubic yards of select material out of the cut located to the north of the existing entrance to the Skunk Point camp area he would release his rights to Caltrans R/W needs outside of the current highway special use permit line.

2/08/02 – Project Development Meeting (Caltrans staff), Kerry Sapinsky (District 2 R/W) reported that she had a verbal agreement with Dennis Zsigo (mining claim owner), that in exchange for a quick claim of his rights in that portion of the mining claim in the area needed for the project, Caltrans would deposit 1000 cubic meters of excess excavation from the cemented cobble area of his existing mining claim to a disposal site where Dennis could file a new mining claim on it.

3/13/02 - Steve Pendergast (District 2, R/W) assigned parcel.

3/14/02 - Called Dennis Zsigo. Presented option of bore sampling from hillside to determine mineral content as a basis for value. Dennis did not approve. Dennis suggested separating material in excavation area (on his claim) by size, to be placed in separate areas for him to sift through. (Steve Pendergast)

4/30/02 - Called Dennis Zsigo, he has seen Old Mill site, and feels this should work out. Dennis states he will be out of town for 2 weeks beginning June 13th. (Steve Pendergast)

5/01/02 - Email to Dennis Zsigo requesting a meeting on 5/22/02 to discuss alternatives. (Steve Pendergast)

5/02/02 - Dennis Zsigo emailed back accepting 5/22/02 meeting date. (Steve Pendergast)

5/22/02 – Met at Dennis Zsigo's home to discuss alternatives. Visited Old Mill site disposal area, and smaller site. Present at Dennis' home and field review meeting were Dennis Zsigo, Kerry Sapinsky, Karen Hawkins, and Steve Pendergast.

7/24/02 - Attempted call to Dennis Zsigo. No answer, and no message machine. Sent email to Dennis requesting that he mark out the "lens" of material he is interested in. (Steve Pendergast)

8/01/02 - Dennis sent email response to 7/24/02 email from Steve Pendergast.

8/05/02 - Steve Pendergast sent clarifying email to Dennis Zsigo in response to 7/24/02.

10/09/02 - Per Karen Hawkins, Steve Pendergast gathered up file information for Karen to take to Lisa Spellenberg (Caltrans R/W District 1) in Eureka.

10/09/02 - District 2 Right of Way turned R/W acquisitions over to District 1 (Lisa Spellenberg) to be completed, because of workload.

Lisa Spellenberg's chronology of contacts with Dennis Zsigo follows:

1/17/03 Called and scheduled appt for first written offer.

1/22/03 Met and made first written offer of \$500.00 to Dennis and Mr. Ed Hazelton

1/24/03 Met and spoke with Dennis and Mr. Ed Hazelton regarding questions regarding area north of highway brought up in first meeting.

2/7/03 Called and scheduled appt

2/11/03 Met with Dennis and Ed and presented revised written offer of \$900.00. Notified them of need to proceed with condemnation in order to keep on schedule.

2/18/03 Called and scheduled appt. to continue negotiating. Mailed NOI

2/21/03 Met with Dennis and Ed and proposed settlement of \$4,500, offer rejected and withdrawn from table.

2/26/03 Received call from Dennis re questions on NOI and statutes, sent him copy of statutes.

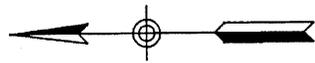
3/19/03 Called to schedule first level review

3/24/03 Dennis called to ask to move meeting location

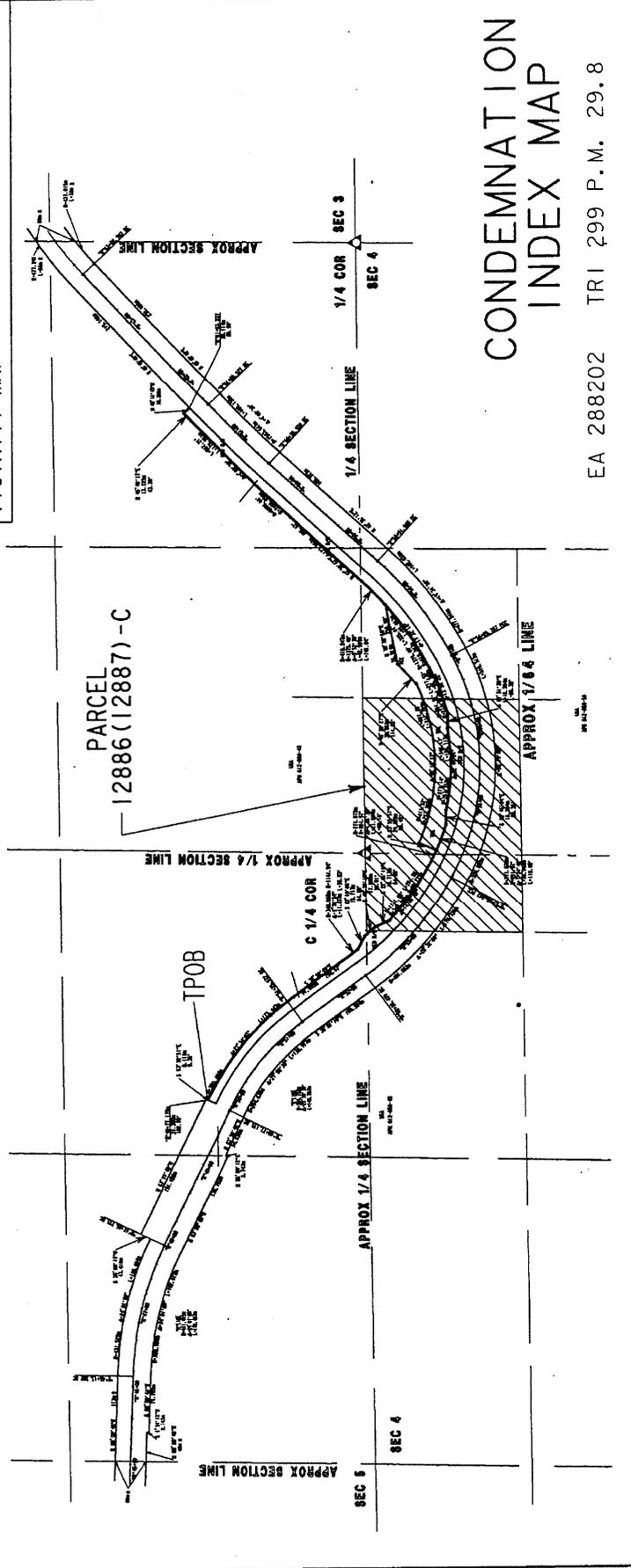
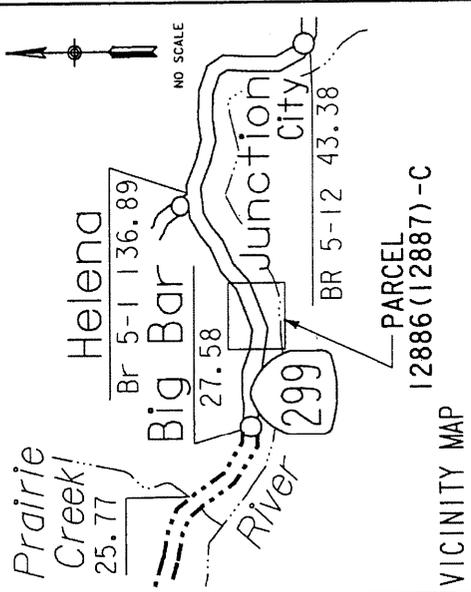
3/26/03 1st level review held with Dennis and Ed and CT reps.

Attachment(s): Maps A-D

# EXHIBIT "A"



NO SCALE



## CONDEMNATION INDEX MAP

EA 288202 TRI 299 P.M. 29.8

# EXHIBIT "B"

## SECTION 4

T. 33 N., R. 12 W., M.D.M.



NO SCALE

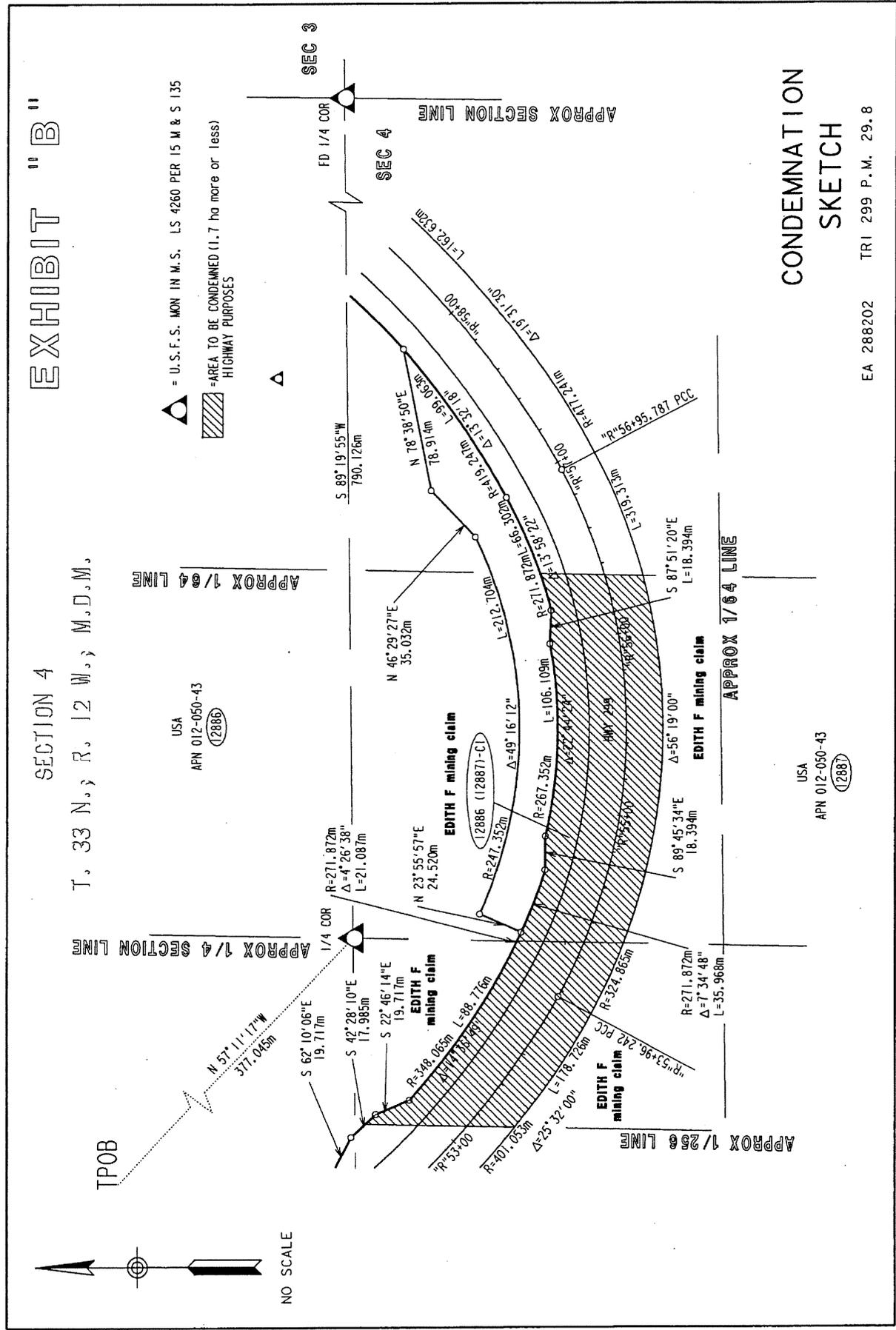
APPROX 1/4 SECTION LINE

APPROX 1/64 LINE

= U.S.F.S. MON IN M.S. LS 4260 PER 15 M & S 135  
 = AREA TO BE CONDEMNED (1.7 ha more or less) HIGHWAY PURPOSES

USA  
APN 012-050-43  
(12886)

USA  
APN 012-050-43  
(12887)



# CONDEMNATION SKETCH

EA 286202 TRI 299 P.M. 29.8



