Tab 2

M e m o r a n d u m

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: May 18-19, 2016

Reference No: 2.4a.(1)
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Jennifer S. Lowden, Chief
Division of Right of Way
and Land Surveys

Subject: **RESOLUTION OF NECESSITY - APPEARANCE**

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-21450 summarized on the following page. This Resolution is for a transportation project on Highway 50 in District 3 in El Dorado County.

ISSUE:

Prior to initiating Eminent Domain proceedings to acquire needed right of way for a programmed project, the Commission must first adopt a Resolution, stipulating specific findings identified under Section 1245.230 of the Code of Civil Procedure, which are:

1. The public interest and necessity require the proposed project.
2. 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. The property is necessary for the proposed project.
4. An offer to acquire the property in accordance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property owners and lessee are contesting the Resolution and have requested an appearance before the Commission. The primary concerns and objections expressed by the property owners and lessee are that the proposed project is not planned or located in a manner that will be most compatible with greatest public good and least private injury, that the property sought to be acquired is not necessary for the project, and that a valid offer has not been made pursuant to Government Code 7267.2. The objections of the property owners and lessee, and the Department's corresponding responses, are contained in Attachment B.

BACKGROUND:

Discussions have taken place with the property owners and lessee, who have been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which they may subsequently be entitled. Adoption of the Resolution will not interrupt the Department's efforts to secure an equitable settlement. In accordance with statutory requirements, the owners and lessee have been advised that the Department is requesting the Resolution at this time. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

Extensive discussions have been ongoing between the property owners, lessee, and the Department to address and resolve all issues. Progress has been made, but based on an inability to reach an amicacle negotiated settlement on all outstanding issues, and given the Department's need to meet project schedule, the Department is requesting that this appearance proceed to the May 18-19, 2016 Commission meeting. Legal possession will allow the construction activities on the identified parcel to commence, thereby avoiding and/or mitigating considerable right of way delay costs that will accrue if efforts to initiate the condemnation process are not taken immediately to secure legal possession of the subject property.

C-21450 - Knox Van Dyke Johnson, et al.
03-ED-50-PM 76.2 - Parcel 035823-1, 3, 10 - EA 3C3809.
Right of Way Certification Date: 06/01/16; Ready to List Date: 06/01/16.
Conventional highway - storm water drainage improvements. Authorizes condemnation of a permanent easement for highway purposes, a permanent easement for utility purposes, and a temporary easement for construction purposes. Located in the City of South Lake Tahoe at 2375 Lake Tahoe Boulevard. APN 031-290-39.

Attachments:
- Attachment A - Project Information
- Exhibit A1 and A2 - Project Maps
- Attachment B - Parcel Panel Report
- Exhibit B1 and B2- Parcel Maps
- Attachment C - Letters of Objection from property owners and lessee dated October 28, 2015, October 30, 2015, and December 2, 2015
- Attachment D - Resolution of Necessity

ATTACHMENT A

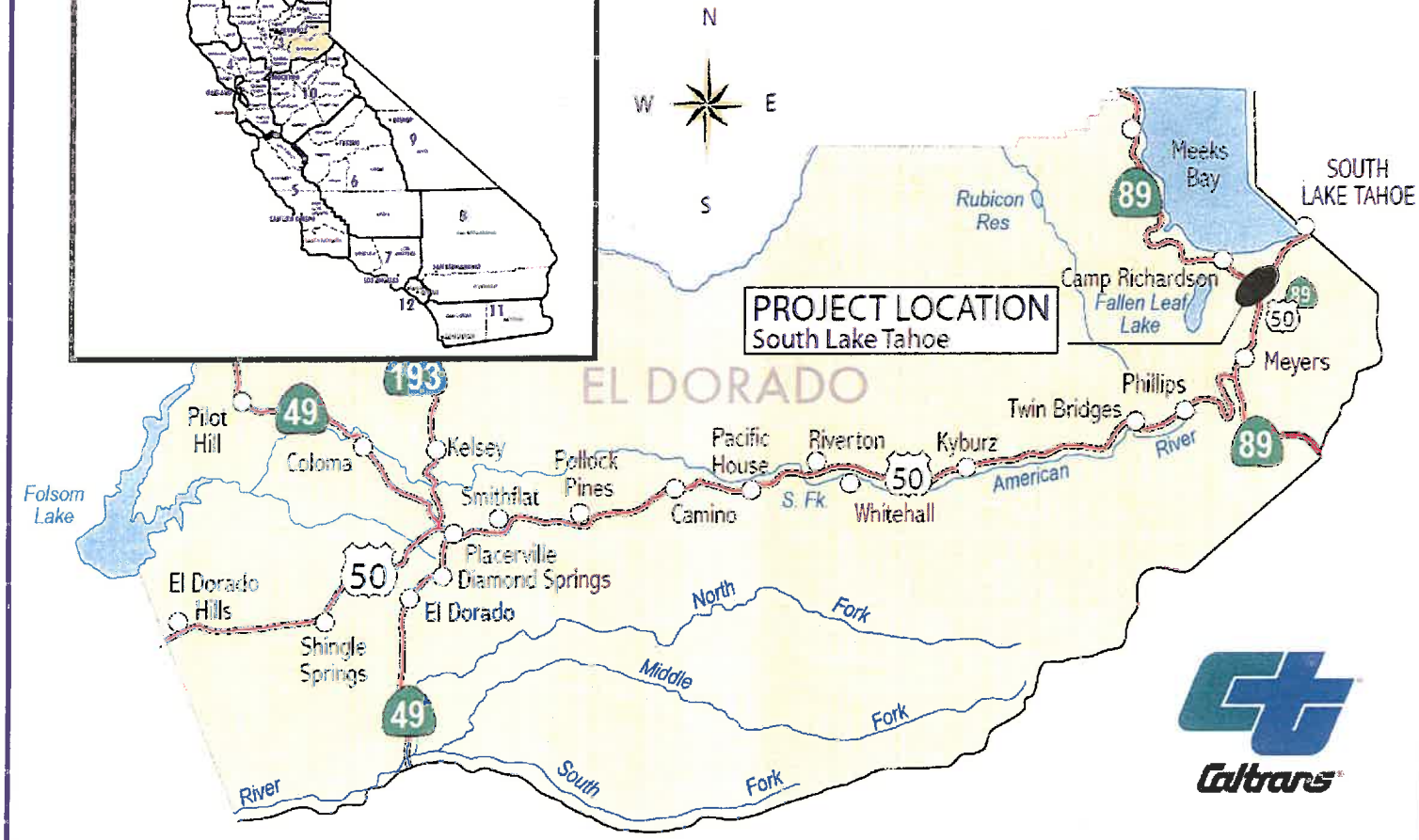
PROJECT INFORMATION

PROJECT DATA	03-ED-50 PM 75.4/77.3 Expenditure Authorization: 3C3809
Location:	On Highway 50 in El Dorado County in the City of South Lake Tahoe.
Limits:	From Highway 50/State Route 89 Junction to Trout Creek Bridge
Cost:	Programmed Construction Cost: $35,800,000 Current Right of Way Cost Estimate: $3,000,000
Funding Source:	State Highway Operations Protection Program (SHOPP)
Number of Lanes:	Existing: Four lane divided highway with continuous two way left turn lanes. Proposed: Four lane divided highway with continuous two way left turn lanes.
Proposed Major Features:	Along Highway 50, in the City of South Lake Tahoe, this project specifically proposes to collect and treat storm water runoff and install water treatment Best Management Practices. The primary objective of this project is to collect and treat highway storm water runoff in order to comply with a National Pollution Discharge Elimination System Permit (Board Order Number 99-06-DWQA). Additionally, this project will improve the roadway pavement structural section and cross slope of Highway 50, widen existing shoulders to six feet to accommodate Class II bike lanes, improve curbs, gutters, sidewalks, and curb ramps in publically-owned right of way areas to comply with ADA standards, improve bus pullouts, improve traffic signals at four intersections (Third Street, Tahoe Keys Boulevard, Sierra Boulevard, and Rubicon/Carson intersection), add a new traffic signal at the Lodi Avenue intersection, add empty conduits for future street lighting, add a new right turn lane onto Tahoe Keys Boulevard, add dual left turn lanes at Sierra Boulevard, and install street lights.
Traffic:	Existing (2011): 33,000 Annual Daily Traffic (ADT) Proposed (2038): 46,400 ADT

EXHIBIT A1, A2

Dist	County	Route	Post Miles Total	Project
03	ED	50	75.4	77.3

PROJECT LOCATION



Caltrans

Exhibit A1

Project Location

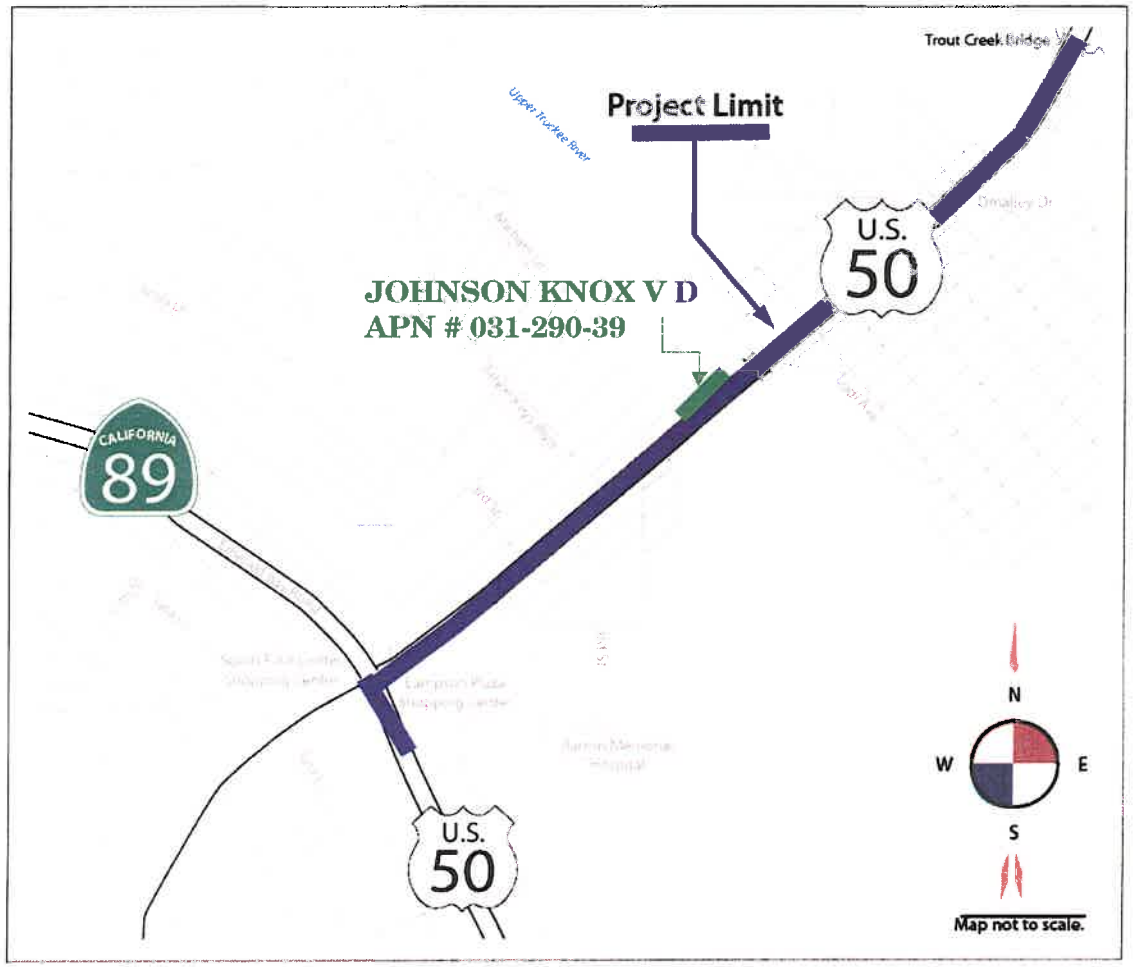


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Exhibit A2

ATTACHMENT B

PARCEL PANEL REPORT

PARCEL DATA

Property Owner: Knox Van Dyke Johnson, et al. (Land Owners)

Lessee: G6 Hospitality Property LLC (Motel 6 & Restaurant Building Owner)

Parcel Location: 2375 Lake Tahoe Boulevard, South Lake Tahoe
Assessor Parcel Number 031-290-39

Present Use: Tourist Accommodations - Operating Motel & Vacant Restaurant

Zoning: Tahoe Valley Area Plan

Area of Property: 176,184 Square Feet (SF)

Areas Required: Parcel 35823-1: 4,792 SF Temporary Construction Easement (TCE)
Parcel 35823-3: 1,323 SF Permanent Highway Easement
Parcel 35823-10: 15 SF Permanent Utility Easement

PARCEL DESCRIPTION

The property is generally rectangular in shape and is 176,184 SF (approximately 4.04 acres) in size, and has 743 feet of frontage on existing Highway 50. The property's topography is flat and level, and is generally at-grade with Highway 50. The subject property is an interior lot, and is served by all public utilities. The property is currently improved with an operating Motel 6, which includes two (2), two-story buildings measuring 15,400 SF and 12,600 SF respectively, a 5,000 SF vacant restaurant building, a swimming pool, a parking lot with 170 existing parking spaces, privately-owned sidewalks & walkways, and two business signs. The aforementioned Motel 6 improvements were constructed by the current lessee in the 1970s.

NEED FOR THE SUBJECT PROPERTY

The overall project will improve water quality, provide improved multi-modal mobility, include pavement rehabilitation, and improve traffic operations in El Dorado County on Highway 50 in South Lake Tahoe from Post Miles 75.4 to 77.3.

The primary objective of this project is to collect and treat highway storm water runoff in order to comply with a National Pollution Discharge Elimination System Permit (Board Order Number 99-06-DWQA). In addition, the project will achieve water quality, air

quality, and community design goals as described in the Lake Tahoe Basin Environmental Improvement Program adopted by the Tahoe Regional Planning Agency.

This project will also improve the roadway pavement structural section and cross slope of Highway 50, widen existing shoulders to six feet to accommodate Class II bike lanes, improve curbs, gutters, sidewalks, and curb ramps in publically-owned right of way areas to comply with ADA standards, improve bus pullouts, improve traffic signals at four intersections (Third Street, Tahoe Keys Boulevard, Sierra Boulevard, and Rubicon/Carson intersection), add a new traffic signal at the Lodi Avenue intersection, add empty conduits for future street lighting, add a new right turn lane onto Tahoe Keys Boulevard, add dual left turn lanes at Sierra Boulevard, and install street lights.

The Department has cooperatively worked with the Property Owners, Lessee, and their respective attorneys over the last several months in attempting to reduce right of way impacts on the subject property, and to negotiate amicable solutions to many other topics of importance to the Property Owners and Lessee.

Reductions in right of way areas have resulted from numerous suggestions and recommendations provided by the Property Owners and Lessee, while a recent reduction in the size of the TCE (35823-1) is a direct result of the Department lacking statutory authority to seek a Resolution of Necessity (Resolution) in this situation to condemn right of way areas beyond what is necessary to construct project facilities. Such issues are complicated by the fact that the Property Owners and Lessee have not consented to the voluntary conveyance of a larger TCE area to remove and reinstall privately-owned improvements, including an existing sidewalk and adjacent landscaping, located on the Property Owner's remainder parcel.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) first met in South Lake Tahoe on March 11, 2016 with Property Owner representatives, Helen Johnson and Mary McCall. The Panel then convened a second Panel Review Meeting on March 30, 2016 (via teleconference) with G6 Hospitality Property LLC representatives Randy Lee and attorney Jennifer Dienhart. Based on the Department's inability to coordinate one date/time that was convenient for all interests, separate Condemnation Panel Review Meetings were convened with the above parties.

Panel members included René Fletcher, Panel Chair, Department of Transportation, Headquarters Division of Right of Way and Land Surveys; Linda Fong, Department of Transportation, Headquarters Division of Design, Joann Georgallis, Department of Transportation, Headquarters Legal Division, Robert W. Dauffenbach, Department of Transportation, Headquarters Division of Right of Way and Land Surveys, Panel Secretary, and Michael Whiteside, Assistant Chief Engineer.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution and makes a recommendation to the Department's Chief Engineer. The primary concerns and objections expressed by the Property Owners and Lessee have consistently related to their contentions that the proposed project is not planned or located in a manner that will be most compatible with the greatest public good and the least private injury.

However, the Department has undertaken extensive negotiations with the Property Owners, the Lessee, and their respective attorneys over the last several months in the hopes of successfully addressing all their questions, concerns, objections, and recommendations related to the project and how best to minimize and mitigate impacts on the subject parcel. Below is a brief outline of all the issues that have been successfully resolved to the satisfaction of all involved parties up to this point in time:

- Construction activities on subject parcel will be completed in one season.
- Construction activities in TCE will only occur between the hours of 8 a.m. to 8 p.m.
- Continuous vehicle and pedestrian access will be perpetuated at all times.
- No driveway will be closed for more than 48 hours.
- No equipment or material storage in TCE.
- No blockage of on-site business sign(s).
- No disruption of on-site drainage and/or related drainage facilities.
- State's highway contractor will relocate one privately-owned fire hydrant impacted by the project.
- Confirmation regarding paving materials to be used in constructing new bus pad, and that Property Owners/Lessee will not be responsible for any maintenance activities associated with such facilities.
- New utility easements on subject property eliminated, while others reduced in size.
- Mid-block lighting and installation of pedestrian cross walk in front of subject parcel removed from current project.
- All requested design and drainage plans provided for review/analysis.
- Project construction activities will include re-conforming all existing driveways abutting improved Highway 50.

The following is a current description of remaining concerns and objections expressed by the Property Owners, Lessee, and/or their respective attorneys, followed by the Department's responses:

Owner/Lessee:
Property Owners and Lessee continue to question and challenge the necessity of all right of way requirements on the subject parcel, including the size and necessity of a TCE to facilitate construction activities, requesting that all such right of way requirements on the subject property be dropped, should this be possible.

Department Response:
The Department has engaged the Property Owners, the Lessee, and their respective attorneys in extensive negotiations and discussions regarding the necessity for all currently identified right of way requirements on the subject property, and in an effort to reduce all such right of way requirements to the maximum extent possible. These right of way areas have been reduced to minimum sizes necessary to construct project-related facilities. Two Permanent Utility Easements have been totally eliminated by relocating impacted utility facilities into the existing Highway 50 operating right of way corridor. A third Permanent Utility Easement has now been reduced to an area measuring approximately 2' x 7' in size (15 SF) to facilitate the installation of utility conduits between the existing Highway 50 Easement Corridor and an existing Sierra Pacific Utility Easement, which now runs along the subject property's frontage with Highway 50. A required Permanent Highway Easement has been reduced from 2,301 SF to 1,323 SF. The TCE area has also been reduced in size based on Property Owner and Lessee requests, in addition to a reduction in size recently initiated by the Department, as a basis for proceeding to condemnation. All current right of way requirements have been minimized to the maximum extent possible, and cannot be reduced further or completely eliminated.

Owner/Lessee:
The Property Owners and Lessee have requested that all construction activities on the subject parcel (and within the existing, operating Highway 50 right of way corridor in front to the subject parcel) be specifically limited to the hours of 8 a.m. to 8 p.m. only.

Department Response:
The Department has agreed to limit construction-related activities in the TCE area on the subject property to the hours of 8 a.m. to 8 p.m. only. However, the Department cannot limit construction activities within the existing Highway 50 operating right of way in a similar manner, based on a need for nighttime work and traffic control requirements to facilitate project construction activities.

Owner/Lessee:
Property Owners and Lessee challenged the necessity for installing a pedestrian cross walk and/or street lighting in front of the subject property as part of the current project.

Department Response:
The Department has now eliminated the installation of street lighting and a pedestrian cross walk in front of the subject property as part of the current project. The necessity and location of such facilities will be studied further in a separate project.

However, street lighting on the opposite side of Highway 50 across from the subject property will continue to be installed as part of the current project. Electrical service for this street lighting will traverse the existing operating Highway 50 easement corridor and then run through a new Permanent Utility Easement measuring approximately 2' x 7' located along the subject parcel's frontage with Highway 50, in order to connect into an existing Sierra Pacific Power Company Easement located along the subject property's Highway 50 frontage. The size of this new Permanent Utility Easement has been minimized to the maximum extent possible.

Owner/Lessee:
A valid offer of just compensation, as required by Government Code Section 7267.2, has not been provided to the Property Owners, Lessee, etc.

Department Response:
The Department has engaged in extensive negotiations with the Property Owners and Lessee to address all questions, concerns, and objections related to the Department's offer(s) of just compensation as required under Government Code Section 7267.2. The Department has provided copies of all of the Department's fair market value appraisals, memorandums of adjustment, and any appraisal revisions to the Property Owners and Lessee for their review and analysis. The Department understands that the Property Owners and/or Lessee have contracted for their own appraisal related to current project impacts, but information related to this completed appraisal has not yet been provided to the Department to facilitate specific discussions aimed at identifying, understanding, and working through any valuation differences in the hopes of reaching an amicable negotiated settlement.

Even while attempting to pursue a needed Resolution at this time, the Department's negotiations with the Property Owners and Lessee will continue in the hopes of reaching an amicable negotiated settlement. Such settlement discussions are now based on two different settlement scenarios, including a "primary offer" that includes a smaller temporary construction easement for only those areas required to construct project-related facilities.

The second settlement scenario, an "alternate offer", now includes a larger temporary construction easement area (and the payment of just compensation for same) contingent on the Property Owners' and Lessee's voluntary consent/written agreement related to conveying use of an enlarged TCE area to facilitate the removal and replacement of privately-owned sidewalk facilities and adjacent landscaping located on the subject parcel remainder. However, absent this voluntary consent and written agreement from the Property Owner and Lessee, the Department must now proceed with requesting the current Resolution based on the smaller TCE required for construction of project-related facilities only (identified as the "primary offer" above).

At this point in time, there is no pending settlement with the Property Owners or Lessee regarding either of the above unsegregated settlement offers, and as such, the Department is now pursuing a Resolution (based on the "primary offer") covering only those specific right of way requirements minimally necessary to construct project facilities.

Issues related to compensation do not fall under the purview of the Commission, and it is assumed that all such compensation-related matters will be appropriately addressed and resolved through continuing negotiations, or ensuing condemnation proceedings.

DEPARTMENT CONTACTS

The following is a summary of contacts made with the Property Owners and Lessee:

Type of Contact	Number of Contacts
Mailing of information	31
E-Mail of information	80
Telephone contacts	55
Personal Meeting contacts	5

STATUTORY OFFER TO PURCHASE

As addressed above, the Department has appraised the subject property and offered the full amount of the appraisal(s) to the Property Owners/Lessee of record as required by Government Code Section 7267.2. The Property Owners/Lessee have been notified that issues related to compensation are outside the purview of the Commission.

PANEL RECOMMENDATION

The Panel concludes that the Department's project 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 rights to be condemned are 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 this Resolution of Necessity to the Commission.

_____
RENÈ FLETCHER
Assistant Division Chief
Office of Project Delivery
Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

_____
KARLA SUTLIFF
Chief Engineer

PERSONS ATTENDING THE CONDEMNATION PANEL REVIEW MEETING (WITH PROPERTY OWNERS) ON MARCH 11, 2016

René Fletcher, Headquarters Division of Right of Way and Land Surveys, Panel Chair
Joann Georgallis, Headquarters Legal, Panel Member
Linda Fong, Headquarters Division of Design, Panel Member
Michael Whiteside, Assistant Chief Engineer
Robert W. Dauffenbach, Headquarters Division of Right of Way and Land Surveys, Panel Secretary

Helen Johnson, Property Owner Representative
Mary McCall, Property Owner Representative

Amarjeet Benipal, District Director, District 3
John Ballantyne, Chief, North Region Right of Way
Tarey Townsend, District 3 Right of Way
Tsegereda Tefara, District 3 Design
W. Keith Mack, District 3 Design
Lynette Spadorcio, North Region Construction
Clark Peri, District 3 Program Project Management
Tom Brannon, District 3 Program Project Management

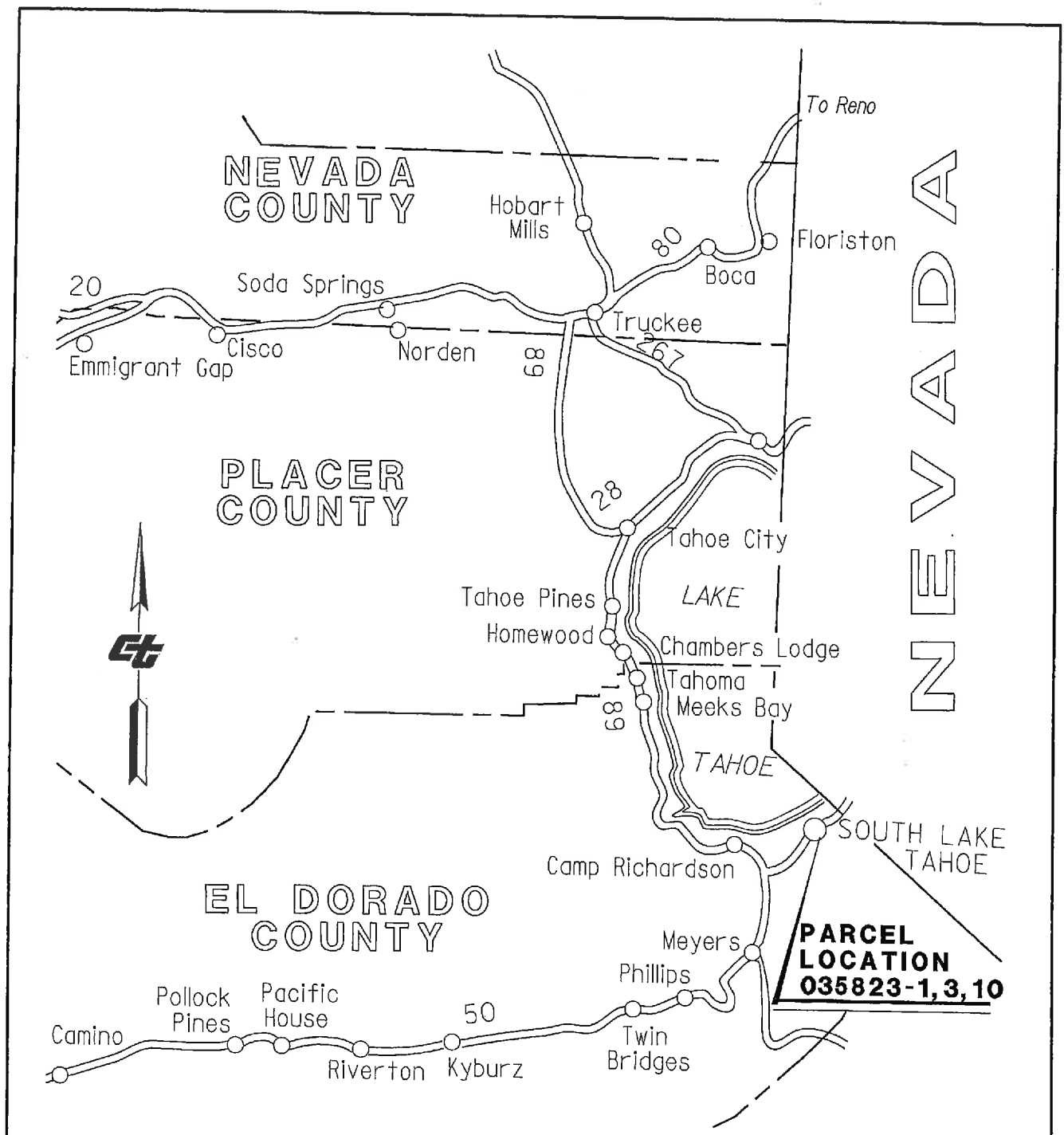
PERSONS ATTENDING THE CONDEMNATION PANEL REVIEW MEETING (WITH LESSEE REPRESENTATIVES) ON MARCH 30, 2016

René Fletcher, Headquarters Division of Right of Way and Land Surveys, Panel Chair
Joann Georgallis, Headquarters Legal, Panel Member
Linda Fong, Headquarters Division of Design, Panel Member
Michael Whiteside, Assistant Chief Engineer
Robert W. Dauffenbach, Headquarters Division of Right of Way and Land Surveys, Panel Secretary

Randy Lee, Principal, G6 Hospitality Property LLC, Lessee Representative
Jennifer Dienhart, Murphy & Evertz, Attorney/Lessee Representative

John Ballantyne, Chief, North Region Right of Way
Tsegereda Tefara, District 3 Design
W. Keith Mack, District 3 Design
John Rodrigues, District 3 Construction
Clark Peri, District 3 Program Project Management
Tom Brannon, District 3 Program Project Management
Karl Dreher, North Region Design Deputy

EXHIBIT B1 and B2



STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY
RESOLUTION OF NECESSITY

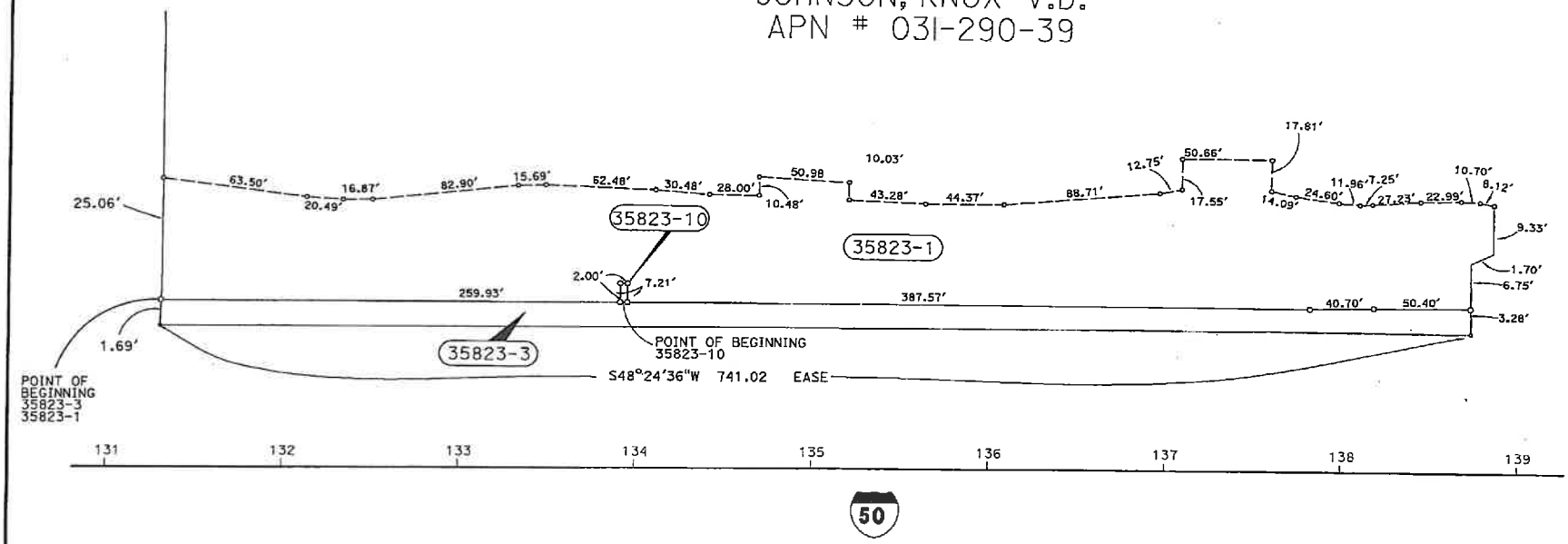
NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
03	ED	50	76.2	1	2

Exhibit B1

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.

JOHNSON, KNOX V.D.
APN # 031-290-39



T 12 N, R 18 E, M.D.M.
SECTION 4

STATE OF CALIFORNIA
CALIFORNIA STATE TRANSPORTATION AGENCY
DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY
RESOLUTION OF NECESSITY

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
03	ED	50	76.2	2	2

Exhibit B2

ATTACHMENT C

RECD BY CTC
NOV 03 2015

October 28, 2015

Certified Mail/Return Receipt Requested

11/3/15
Forwarded To:
Right of way

Copied to:
Stephen Maikel

Executor Director
California Transportation Commission
P. O. Box 942873
Mail Station 52
Sacramento, CA 94273-0001

Re: Project ID 03000004589
Parcel 035823-1,3,4,5,9
KNOX VAN DYKE JOHNSON

Dear Sir or Madam:

With reference to the above Project and Parcel, I, KNOX VAN DYKE JOHNSON, owner, by and through my representative by Power of Attorney Helen E. Johnson hereby request an appearance to voice my objection to the necessity of said Project as it affects my Parcel at the meeting of the California Transportation Commission January 20 and 21, 2015, in Sacramento, California.

Sincerely,

Helen E. Johnson

KNOX VAN DYKE JOHNSON by
Helen E. Johnson, Power of Attorney
498 Mottsville Lane
Gardnerville, NV 89460

DEPARTMENT OF TRANSPORTATION
DISTRICT 3
703 B Street
Marysville, CA 95901
PHONE (530) 741-7106
FAX (530) 741-4490

Flex your power!
Be energy efficient!

October 21, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Knox Van Dyke Johnson, Et al.
C/O Mr. Peter J Smith, Esq.
755 No. Roop Street, #108
Carson City, NV 89701

03-ED-50
E.A. 3C380
Project ID 03000004589
Parcel 035823-1,3,4,5,9

Dear Mr. Smith:

The law provides procedures for public agencies to acquire private property for public use. It requires that every agency which intends to condemn property notify the owners of its intention to condemn. California Code of Civil Procedure (CCP) Section 1240.030 provides that the power of eminent domain may be exercised to acquire property for a proposed project if the following three conditions are established:

(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 and the least private injury.
(C) The property sought to be acquired is necessary for the project.

Also, CCP Section 1245.230 requires that the offer required by Section 7267.2 of the Government Code has been made to the owner of record.

You are hereby notified that the California Transportation Commission (the "Commission") at its meeting to be held on January 20th & 21st, 2016 in Sacramento, California, will be asked to decide if the above conditions have been met concerning your property and, if so, to adopt a Resolution of Necessity ("Resolution"). Questions regarding the amount of compensation to be paid or the value of the property to be acquired are not part of this proceeding and the Commission will not consider such in determining whether a Resolution should be adopted.

The Commission's adoption of the Resolution authorizes the California Department of Transportation (the "Department) to acquire the property by eminent domain. Within six months of the adoption of the Resolution, the Department will prepare and file a complaint in Superior Court commencing the eminent domain proceeding. All issues relating to the compensation to be awarded for the acquisition of your property will be resolved in this court proceeding. A description and map of the required property are attached to this Notice.

The law provides you an opportunity to appear before the Commission and raise questions concerning only the three conditions referred to in CCP 1240.030 as cited above. If you file a written request to appear (within 15 days from the mailing of this Notice), you are entitled to appear and object to the adoption of the Resolution.

Your written request to appear should include a statement indicating which of the three conditions listed in the first paragraph above you contend have not been met. By designating which of the conditions form the basis of your challenge and explaining why you believe they have not been met, you will enable the Commission to authorize a full and expeditious review of the project's effect on your property. The Department will conduct the review on behalf of the Commission and ask for your participation. Based on this review, the Department will then prepare a report to be presented to the Commission at the meeting which you intend to appear.

Your written request to appear must actually be on file with the Commission within the 15-day period set forth above. Failure to file a written request to appear will result in a waiver of your right to appear and be heard.

All requests to appear must be sent for filing to: Executive Director, California Transportation Commission, P.O. Box 942873, Mail Station 52, Sacramento, CA 94273-0001. If you request an appearance, you will be notified of the meeting date, time, and location at a later date.

For your convenience, if you are unable to personally appear or choose to submit written objections in place of a personal appearance, the Commission will consider any written objections so long as they are filed within the 15-day period set forth above. All written objections filed with the Commission within the 15-day period will become part of the official record of the meeting at which the Commission hears the Resolution. We recommend that if you intend to appear, or if you intend to submit written objections in place of an appearance, you mail your correspondence Certified Mail, Return Receipt Requested to confirm that your response was received with the 15-day period.

If you have any questions, please call Associate Right of Way Agent Tarey Townsend at (530) 741-7106.

Sincerely,

TIMOTHY M. WEEKS
Senior Right of Way Agent
Acquisition and Condemnation Branch
Marysville

Enclosures

RECD BY CTC
NOV 0 5 2015

October 30, 2015

11/5/15
Forwarded To:
Right of way
Copied to:
Stephen Walker

Executive Director
California Department of Transportation
PO Box 942873 Mail Station 52
Sacramento, CA 97273-0001

RE: Department of Transportation
Project ID 03000004589
Parcel 035823 - 1,3,4,5,9

Dear Executive Director:

Regarding the above project ID 03000004589 affecting the Motel 6 in South Lake Tahoe, CA we request the opportunity to appear before the commission, on our behalf as the tenant, Motel 6 as lessee of the owner Knox Van Dyke Johnson, Et al.

As requested, herewith is our statement regarding the three conditions as stated in the first paragraph of your letter.

(A) The public interest and necessity require the project. It is our opinion that the Temporary Construction Easement does not serve the public interest and is damaging to the motel's image and business.
(B) The project is planned or located in the manner that will be the most compatible with the greatest public good and the lease private injury. It is our opinion that the Temporary Construction Easement does not create public good as it encumbers the motel business at the location and the damage and private injury to the operation of the business is significant and detrimental to the ongoing operation of the motel.
(C) The property sought to be acquired is necessary for the project. It is our opinion that the Temporary Construction Easement is not necessary for the project further there is property in the area that could be used that would not be to the detriment of a local business.

Please advise and confirm dates and time we can be present for the meeting to be held in Sacramento between the dates of January 20 and 21, 2016.

Sincerely,

Randy Lee
Real Estate Principal
G6 Hospitality.

MURPHY & EVERTZ
Attorneys at Law

650 Town Center Drive, Suite 550
Costa Mesa, CA 92626
714.277.1700
714.277.1777 fax
www.murphyevertz.com

JENNIFER W. DIENHART, PARTNER
DIRECT DIAL NUMBER 714.277.1703
EMAIL ADDRESS jdienhart@murphyevertz.com

December 2, 2015

VIA E-MAIL AND U.S. MAIL

Tarey A. Townsend
Associate Right of Way Agent
Caltrans
703 B Street
Marysville, CA 95901
tarey.townsend@dot.ca.gov

Re: Motel 6 Lake Tahoe/Caltrans US Highway 50 Project

Dear Ms. Townsend:

This firm represents the operator of the Motel 6 and lessee of the property located at 2375 Lake Tahoe Boulevard, South Lake Tahoe, California 96150 ("Property"). We understand that Caltrans intends to acquire a portion of the Property for its U.S. Highway 50 Project. Please direct all future communication and correspondence regarding this matter to this office.

We further understand that a first level hearing has been set for December 11, 2015 at 11:00 a.m., at the Tahoe Regional Planning Agency ("T.R.P.A."), 128 Market Street, Stateline, NV. Please send us written confirmation of this hearing. Also, please treat this letter as a request to be heard at the December 11, 2015, first level hearing, and all subsequent hearings concerning or related to any resolution of necessity considered for acquisition of any portion of this Property.

Motel 6 objects to Caltrans' adoption of a resolution of necessity authorizing Caltrans to condemn a portion the Property. This letter itemizes some of the main legal and factual flaws in Caltrans' plan to condemn.

The Project Is Not Planned In A Manner That Is The Most Compatible With The Greatest Public Good And The Least Private Injury

Motel 6 objects to Caltrans' adoption of a resolution of necessity because Caltrans cannot determine that the Project is "planned or located in the manner that will be most compatible with the greatest public good and the least private injury." (Code Civ. Proc., § 1245.230, subd. (c)(2).)

Caltrans has not engaged in a real fair-minded balancing of the public benefit and private injury from the Project. For this reason, among others, Caltrans cannot determine that the Project is compatible with the "least private injury" to Motel 6.

The Scope Of The Take Exceeds What Is Necessary For The Project

The scope of Caltrans' proposed acquisition is overbroad. Caltrans cannot show that its proposed taking is necessary. Among other things, Caltrans seeks to condemn a 55-month temporary construction easement, but concedes that it only needs this easement for 180 days.

Inadequate Offer

"Prior to adopting a resolution of necessity pursuant to Section 1245.230 of the Code of Civil Procedure," a condemnor is required to make the owner an offer to purchase the property for the full amount of just compensation. (Govt. Code, § 7267.2; see also Code Civ. Proc., § 1245.230, subd. (c)(4).)

Caltrans failed to make an offer of any kind to Motel 6 for its damages.

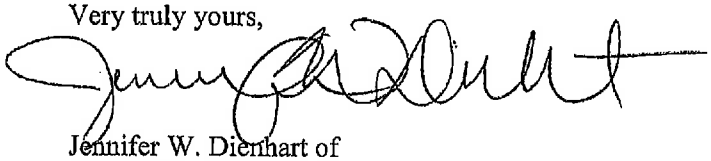
Other Objections

Caltrans has also failed to honor its other obligations under the pertinent state and federal statutes and regulations. (Code Civ. Proc., §§ 1230.010-1273.050; Govt. Code, § 7260 *et seq.*; 42 U.S.C. § 4601 *et seq.*; Cal. Code Regs., tit. 25, § 6000 *et seq.*) These shortcomings include, but are not limited to:

a) Caltrans has failed to engage in good faith negotiations (Govt. Code, § 7267.1, subd. (a); Cal. Code Regs., tit. 25, § 6182(a); 42 U.S.C. § 4651(1); 49 C.F.R. § 24.102(a)); and

b) Caltrans has otherwise ignored its obligations under the pertinent statutes and regulations (Code Civ. Proc., §§ 1230.010-1273.040; Govt. Code, § 7260 *et seq.*; 42 U.S.C. § 4601 *et seq.*; Cal. Code Regs., tit. 25, § 6000 *et seq.*).

Very truly yours,



Jennifer W. Dienhart of
MURPHY & EVERTZ LLP

JWD/jv

{00093425.1 }

ATTACHMENT D

TRANSPORTATION COMMISSION
RESOLUTION NO.

C-21450

CALIFORNIA TRANSPORTATION COMMISSION
RESOLUTION OF NECESSITY
TO ACQUIRE CERTAIN REAL PROPERTY
OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN
HIGHWAY 03-ED-50-PM 76.2 PARCEL 035823-1, 3, 10
OWNER: Knox Van Dyke Johnson, et al.
LESSEE: G6 Hospitality Property LLC, a Delaware Limited Liability Company

Resolved by the California Transportation Commission after notice (and hearing) pursuant to Code of Civil Procedure Section 1245.235 that it finds and determines and hereby declares that:

The hereinafter described real property is necessary for State Highway purposes and is to be acquired by eminent domain pursuant to Streets and Highways Code Section 102 and code of Civil Procedure Section 1240.510 in that property being acquired is for a compatible use;

The public interest and necessity require the proposed public project, namely a State highway;

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;

The property sought to be acquired and described by this resolution is necessary for the public project;

The offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record; and be it further

RESOLVED by this Commission that the Department of

APPROVED AS TO FORM AND PROCEDURE **APPROVAL RECOMMENDED**

Attorney, Department of Transportation **DIVISION OF RIGHT OF WAY**

Transportation be and said Department 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 said hereinafter described real property, or interests in real property, 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 El Dorado, State of California, Highway 03-ED-50 and described as follows:

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

RESOLUTION of NECESSITY

Title Sheet

District	County	Route	Postmile
03	ED	50	76.2

Project ID 03-0300000458

Legal Descriptions for the parcels listed below are attached.

This document consists of a total of 8 pages.

Parcels in Legal Description:					
35823-1					
35823-3					
35823-10					

The attached real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

Signature Jacob Pace
Professional Land Surveyor

Date 3/28/2016

PROFESSIONAL LAND SURVEYOR
Jacob
Pace
Exp: Dec 31 2016
PLS 8492
STATE OF CALIFORNIA

Form RW 6-3(A) (New 07/2010)

PARCEL 35823-1

An easement for temporary construction purposes being all that portion of Section 4, Township 12 North, Range 18 East, M.D.B. & M. and being a portion of the lands described in the Memorandum of Lease recorded March 13, 2003 as Document Number 2003-0024776-00, of Official Records, in the office of the Recorder of El Dorado County, City of South Lake Tahoe, County of El Dorado, State of California, being more particularly described as follows:

Commencing from a Point being a 1" Iron Pipe with a plastic cap stamped "CAL DOT" accepted as marking the Southwesterly terminus of the course described as "S 51°55'26" W, 60.05 feet" in the deed recorded in Book 4122, Page 583 recorded on October 08, 1993, Official Records of said county, said Point also being on the Northwesterly Right of Way of US Highway 50, said point of commencement bears North 31°17'22" East, 371.33 feet from a 1" Iron Pipe with a plastic cap stamped "CAL DOT" accepted as marking the Southeasterly terminus of the course described as "S 40°22'00" E, 27.00 feet" in the deed recorded in Book 4037, Page 724 recorded on June 10, 1993, Official Records of said county, said Point also being on the Southeasterly Right of Way of US Highway 50;

THENCE from said point of commencement, South 48°28'02" West, 1085.00 feet to a point on the southwesterly boundary of said Memorandum of Lease and the POINT OF BEGINNING;

THENCE along said southwesterly boundary, North 25°58'54" West, 25.06 feet;

THENCE leaving said southwesterly boundary, North 55°39'02" East, 63.50 feet;

THENCE North 52°17'48" East, 20.49 feet;

THENCE North 47°57'17" East, 16.87 feet;

THENCE North 42°31'53" East, 82.90 feet;

THENCE North 46°42'16" East, 15.69 feet;

THENCE North 50°51'32" East, 62.48 feet;

THENCE North 52°43'13" East, 30.48 feet;

THENCE North 48°56'21" East, 28.00 feet;

THENCE North 41°35'50" West, 10.48 feet;

THENCE North 51°22'44" East, 50.98 feet;

THENCE South 41°36'18" East, 10.03 feet;

THENCE North 50°47'10" East, 43.28 feet;

THENCE North 48°18'58" East, 44.37 feet;

THENCE North 43°33'57" East, 88.71 feet;

THENCE North 37°49'54" East, 12.75 feet;

THENCE North 41°37'41" West, 17.55 feet;

THENCE North 48°19'14" East, 50.66 feet;

THENCE South 41°36'34" East, 17.81 feet;

THENCE North 60°41'19" East, 14.09 feet;

THENCE North 56°16'16" East, 24.60 feet;

THENCE North 52°34'28" East, 11.96 feet;

THENCE North 46°23'50" East, 7.25 feet;

THENCE North 44°16'16" East, 27.23 feet;

THENCE North 46°54'12" East, 22.99 feet;

THENCE North 51°26'56" East, 10.70 feet;

THENCE North 58°56'29" East, 8.12 feet to a point on the northeasterly boundary of said Memorandum of Lease;

THENCE South 41°35'24" East, 9.33 feet along said northeasterly boundary to a point on that line shown as "N42°43'20"E 166.21' "on the southwesterly boundary of Parcel 30340-1 as shown on that record of survey filed on May 23, 2000 in Book 24 of Record of Survey at Page 48 in the records of the County of El Dorado;

THENCE along said southwesterly boundary, South 42°36'35" West, 1.70 feet to an iron pipe with plastic plug stamped "CA DOT" as shown on said record of survey marking the southeasterly terminus of said line;

THENCE South 41°32'31" East, 6.75 feet

THENCE leaving said southwesterly boundary South 48°23'45" West, 50.40 feet;

THENCE South 46°06'16" West, 40.70 feet;

THENCE South 48°24'36" West, 387.57 feet;

THENCE North 41°35'25" West, 7.21 feet;

THENCE South 48°24'36" West, 2.00 feet;

THENCE South 41°35'56" East, 7.21 feet;

THENCE South 48°24'36" West, 259.93 feet to the Point of Beginning also being on the southwesterly boundary of said Memorandum of Lease.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, Zone 2, as determined by ties to the California High Precision Geodetic Network, Epoch 1991.35. Distances are in feet unless otherwise noted. Divide distances by 0.99962 to obtain ground level distances.

The rights to the above-described temporary easement shall cease and terminate no later than November 30, 2018. Said rights may also be terminated prior to stated date by the STATE upon notice to OWNER.

PARCEL 35823-3

An easement for HIGHWAY PURPOSES being all that portion of Section 4, Township 12 North, Range 18 East, M.D.B. & M. and being a portion of the lands described in the Memorandum of Lease recorded March 13, 2003 as Document Number 2003-0024776-00, of Official Records, in the office of the Recorder of El Dorado County, City of South Lake Tahoe, County of El Dorado, State of California, lying Southeasterly of the following described line:

Commencing from a Point being a 1" Iron Pipe with a plastic cap stamped "CAL DOT" accepted as marking the Southwesterly terminus of the course described as "S 51°55'26" W, 60.05 feet" in the deed recorded in Book 4122, Page 583 recorded on October 08, 1993, Official Records of said county, said Point also being on the Northwesterly Right of Way of US Highway 50, said point of commencement bears North 31°17'22" East, 371.33 feet from a 1" Iron Pipe with a plastic cap stamped "CAL DOT" accepted as marking the Southeasterly terminus of the course described as "S 40°22'00" E, 27.00 feet" in the deed recorded in Book 4037, Page 724 recorded on June 10, 1993, Official Records of said county, said Point also being on the Southeasterly Right of Way of US Highway 50;

THENCE from said point of commencement, South 48°28'02" West, 1085.00 feet to a point on the southwesterly boundary of said Memorandum of Lease and the Point of Beginning;

THENCE from said Point of Beginning and leaving said southwesterly boundary, North 48°24'36" East, 649.50 feet;

THENCE North 46°06'16" East, 40.70 feet;

THENCE North 48°23'45" East, 50.40 feet to a point on that line having a bearing and distance of "N40°22'00"E 10.00' " on the southwesterly boundary of Parcel 30340-1 as shown on that record of survey filed on May 23, 2000 in Book 24 of Record of Survey at Page 48 in the records of the County of El Dorado and being the point of termination.

The bearings and distances used in the above description are based on the California Coordinate System of 1983, Zone 2, as determined by ties to the California High Precision Geodetic Network, Epoch 1991.35. Distances are in feet unless otherwise noted. Divide distances by 0.99962 to obtain ground level distances.

PARCEL 35823-10

An EASEMENT for UTILITY PURPOSES being all that portion of Section 4, Township 12 North, Range 18 East, M.D.B. & M. and being a portion of the lands described in the Memorandum of Lease recorded March 13, 2003 as Document Number 2003-0024776-00, of Official Records, in the office of the Recorder of El Dorado County, City of South Lake Tahoe, County of El Dorado, State of California, more particularly described as a 2.0 foot wide strip of land, being 1.0 feet on each side of the following described centerline:

Commencing from a Point being a 1" Iron Pipe with a plastic cap stamped "CAL DOT" accepted as marking the Southwesterly terminus of the course described as "S 51°55'26" W, 60.05 feet" in the deed recorded in Book 4122, Page 583 recorded on October 08, 1993, Official Records of said county, said Point also being on the Northwesterly Right of Way of US Highway 50, said point of commencement bears North 31°17'22" East, 371.33 feet from a 1" Iron Pipe with a plastic cap stamped "CAL DOT" accepted as marking the Southeasterly terminus of the course described as "S 40°22'00" E, 27.00 feet" in the deed recorded in Book 4037, Page 724 recorded on June 10, 1993, Official Records of said county, said Point also being on the Southeasterly Right of Way of US Highway 50;

THENCE from said point of commencement, South 48°28'02" West, 1085.00 feet to a point on the southwesterly boundary of said Memorandum of Lease;

THENCE leaving said southwesterly boundary, North 48°24'36" East, 260.93 feet to the Point of Beginning of said centerline;

THENCE North 41°35'25" West, 7.21 feet to the existing electrical facility on said property also being the point of terminus for said centerline;

The bearings and distances used in the above description are based on the California Coordinate System of 1983, Zone 2, as determined by ties to the California High Precision Geodetic Network, Epoch 1991.35. Distances are in feet unless otherwise noted. Divide distances by 0.99962 to obtain ground level distances.