

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: March 23-24, 2011

Reference No.: 2.4a.(4)
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Brent Green
Chief
Division of Right of Way and
Land Surveys

Subject: **RESOLUTIONS OF NECESSITY - APPEARANCE**

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-20475 summarized on the following page. This Resolution is for operational improvements in District 10 on State Route 12 in San Joaquin 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 and located in a manner that will be most compatible with the greatest public good and the least private injury.
3. This property is necessary for the proposed project.
4. An offer to acquire the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property owner is contesting the Resolution and has requested an appearance before the Commission. The property owner believes that the project, as proposed, is not compatible with the greatest public good and the least private injury and that the damage to his property could be minimized by redesigning the project. The owner's objections and the Department's responses are contained in Attachment B.

BACKGROUND:

Discussions have taken place with the owner, who has been offered the full amount of the Department's appraisal and, where applicable, advised of any relocation assistance benefits to which he 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 owner has 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 owner and the Department to address and resolve the issues, but these efforts have proven unsuccessful. Based on this impasse, the Department is requesting that this appearance proceed to the March 23-24, 2011 Commission meeting. Legal possession will allow construction activities on the parcels 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 timely legal possession of the subject property.

C-20475 - Paul Donald Johnson, Trustee

10-SJ-12-PM 5.1 - Parcel 16121-1 - EA 0A8409.

Right of Way Certification Date: 03/25/11; Ready to List Date: 04/14/11. Freeway - operational improvements. Authorizes condemnation of land in fee for a State highway. Located in the unincorporated area of Lodi at 14595 West Terminous Drive.

Assessor's Parcel Number 025-030-08.

Attachments:

Attachment A- Project Information

Exhibit A1 and A2 - Project Maps

Attachment B - Parcel Panel Report

Exhibit B1 and B2 - Photo of Existing and Proposed Facility and Mr. Johnson's Alternative

PROJECT INFORMATION

PROJECT DATA

10-SJ-12-PM 5.0/10.8
Expenditure Authorization: 10-0A8409

Location: State Route (SR) 12, in San Joaquin County

Limits: From Potato Slough Bridge at the Tower Park Marina to Flag City at the intersection of Interstate (I) 5 and SR 12

Cost: Construction Cost: \$11,213,000
Right of Way Cost: \$1,100,000

Funding Source: State Transportation Improvement Program and San Joaquin County Council of Governments (SJCOG) administered measure and local sales tax

Number of Lanes: Existing: two-lane mixed flow
Proposed: two-lane mixed flow

Proposed Major Features: Addition of warning and guide signs at various locations and the installation of Intelligent Transportation System (ITS) elements in Solano, Sacramento, and San Joaquin Counties. The location of soil disturbance within San Joaquin County is as follows:

- Realigning Tower Park Way under the Potato Slough Bridge to connect with Glasscock Road, adding east bound and west bound acceleration and deceleration lanes at Tower Park Way and Glasscock Road
- Adding a west bound left turn lane at Corriea Road
- Extending the left and right turn lanes at Guard Road
- Extending the west bound SR 12 lane drop west of the junction of I-5
- Expansion of the Park and Ride area located east of the SR 12 /I-5 Interchange.

Traffic: Existing (year 2009): 19,200 Average Daily Traffic (ADT)
Existing (year 2011): 20,400 ADT - 11 percent Trucks
Existing (year 2031): 37,000 ADT

NEED FOR THE PROJECT

The purpose of the proposed project is to improve traffic operations, circulation, and safety within the project limits. At the intersection of SR 12 and Tower Park Way/Glasscock Road (Intersection) traffic experiences significant delays for all left-turn movements. This is a result of the high volume of traffic on SR 12 in peak hours and the location of the Intersection at the toe of the slope, east of the Potato Slough Bridge approach. During peak traffic times, motorists do not have adequate gaps in traffic to turn left and accelerate onto SR 12, thus creating an unsafe maneuver into high speed traffic. In addition, motorists do not have adequate gaps in traffic to turn left on to the local road, potentially causing an obstruction to through traffic. At the PM Peak Hour, 78 vehicles from westbound SR 12 turned left onto Tower Park Way. Constructing an access road from Tower Park Way to Glasscock Road would allow this intersection to operate more efficiently by restricting traffic to right-in/right-out movements in both the east and westbound directions. Not constructing this access road would not allow local traffic to access the planned right-in/right-out to SR 12, thus perpetuating the unsafe maneuvers at this intersection.

Similar traffic delays are experienced at Correia Road, where commercial trucks have to wait for adequate gaps in the traffic to turn left. Left-turn lanes will provide refuge for those vehicles while waiting to turn left on to Correia Road.

Other proposed improvements include lengthening the left-turn storage at Guard Road, lengthening of the westbound lane drop west of I-5, the enlargement of the park and ride located at the intersection of I-5 and SR 12, and the installation of ITS elements along SR 12 and I-5.

Existing Condition

Currently, the Correia Road intersection does not have a left-turn lane pocket. This location has trucks entering and exiting the Delta Blue Grass facility, which causes slow downs and backups in the westbound direction due to stopped trucks in the westbound lane waiting for gaps in the eastbound direction. When this occurs, motorists have been observed passing on the shoulder. A left-turn lane pocket will allow the westbound traffic to move freely.

The existing left-turn lane at the Guard Road intersection does not meet design standards for storage, which causes slow downs and back ups in the westbound direction. Standardizing this intersection will involve adding acceleration and deceleration lanes as well as lengthening the left-turn pockets. These improvements will provide adequate space for vehicles to exit the mainline while allowing the through traffic to move freely.

The westbound lane drop on SR 12 from the intersection of the southbound I-5 off ramp is currently insufficient for allowing traffic to merge in to the westbound lane. An extension of the lane drop from this intersection will allow trucks to accelerate up to the posted speed prior to merging.

The reported accident rates within the project limits for the most recent three-year period from October 1, 2003 to September 30, 2006 included 83 collisions; four fatal, 29 injuries and 50 property damage only. Most of the rear end collisions were caused by speeding; 12 hit object collisions involved two hit traffic sign/sign post, two went over the embankment, two hit the Reclamation District Ditch (Ditch), one hit another object on the road, and five hit other vehicles. Forty-six percent of the collisions occurred during the hours of darkness and about 10 percent occurred under wet pavement conditions

Four fatal collisions were reported on this segment. Two of the collisions were due to drivers operating the vehicle while under the influence of alcohol and the other two involved drivers failing to drive on the right side of the roadway. The movements preceding the four fatal collisions included two vehicles crossing into the opposing lane while passing another vehicle and traveling the wrong way. Three of the four fatal collisions occurred during the hours of darkness and the other occurred during the dusk/dawn hours.

PROJECT PLANNING AND LOCATION

The proposed build alternative includes:

- Realign Tower Park Way under the Potato Slough Bridge to connect with Glasscock Road to the north of SR 12
- Eliminate left-turn movements from the SR 12/Glasscock Road /Tower Park Way intersection
- Improve the intersection of Glasscock and SR 12 to provide acceleration lanes in both the east and westbound directions
- Rebuild Glasscock Road from SR 12 to the new realigned Tower Park Way loop road segment north of SR 12
- Rebuild the existing section of Tower Park Way south of SR 12 from the Glasscock intersection to the new intersection under Potato Slough Bridge
- Add a westbound left-turn lane pocket at Correia Road and bring the intersection up to current standards
- Extend existing left-turn and right-turn lane pockets at Guard Road
- Add eastbound acceleration lanes at the Guard Road/SR 12 intersection
- Bring the Guard Road/SR 12 intersection up to current standards

Drainage improvements for this project will include replacement of the culverts at the Correia and Guard Road intersection improvements. The replacement of the double corrugated metal pipe (CMP) culvert at Glasscock and SR 12 will be needed to make the planned improvements to the intersection. New 36 inch CMP drainage facilities will be installed on the new access road at Glasscock and Tower Park Way to span the existing Reclamation District ditches at two locations. A 140 foot box culvert will be placed on the new access road where it crosses the Reclamation District's ditch on the Johnson property.

Other improvements under consideration in the “smart corridor” project include:

- Extend the existing westbound SR 12 lane drop farther west of I-5 southbound off ramp
- Add ITS elements along various areas throughout the project limits on SR 12 and at spot locations on I-5

These combined improvements for the “smart corridor” require new Right of Way.

Project Location Map

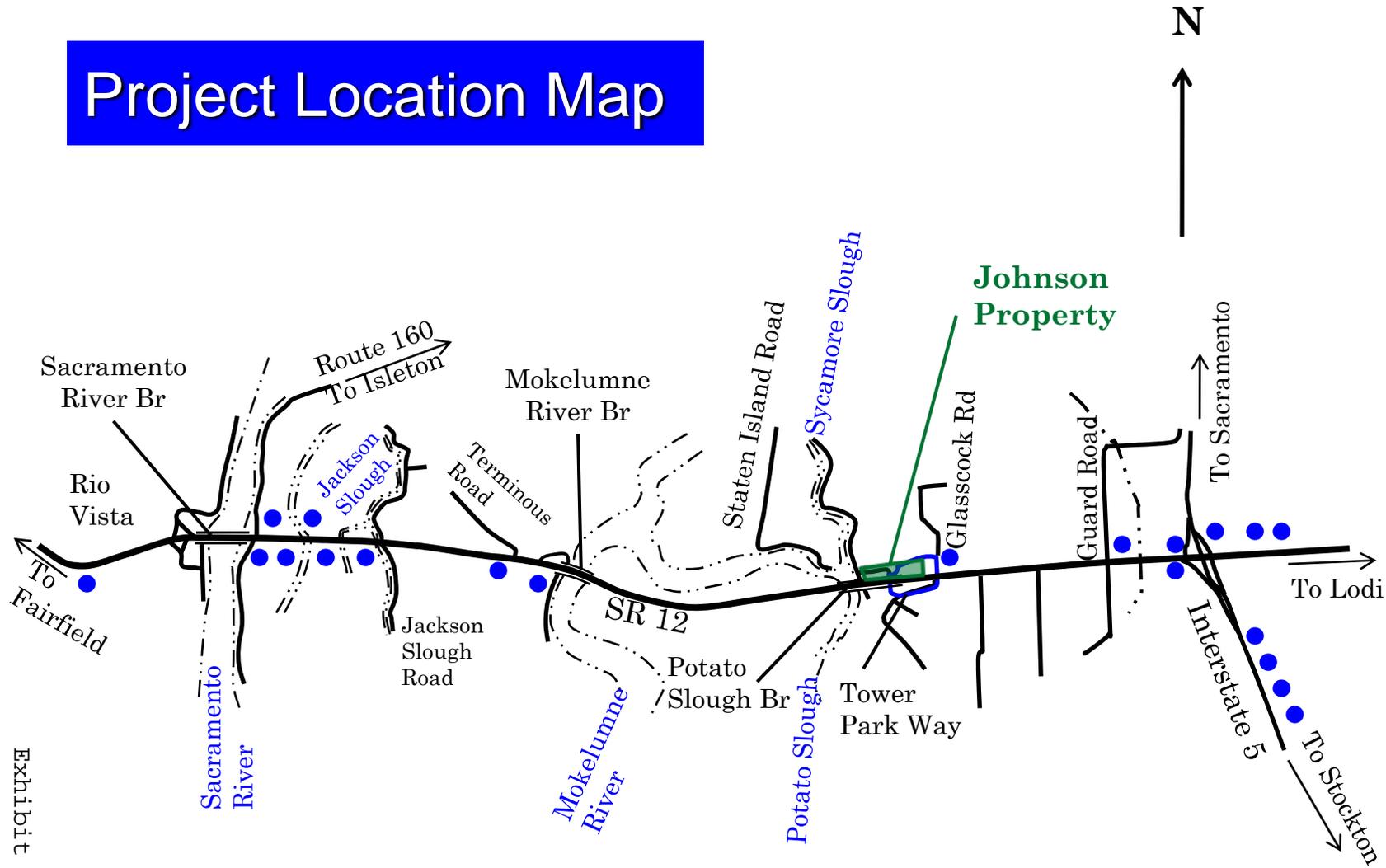
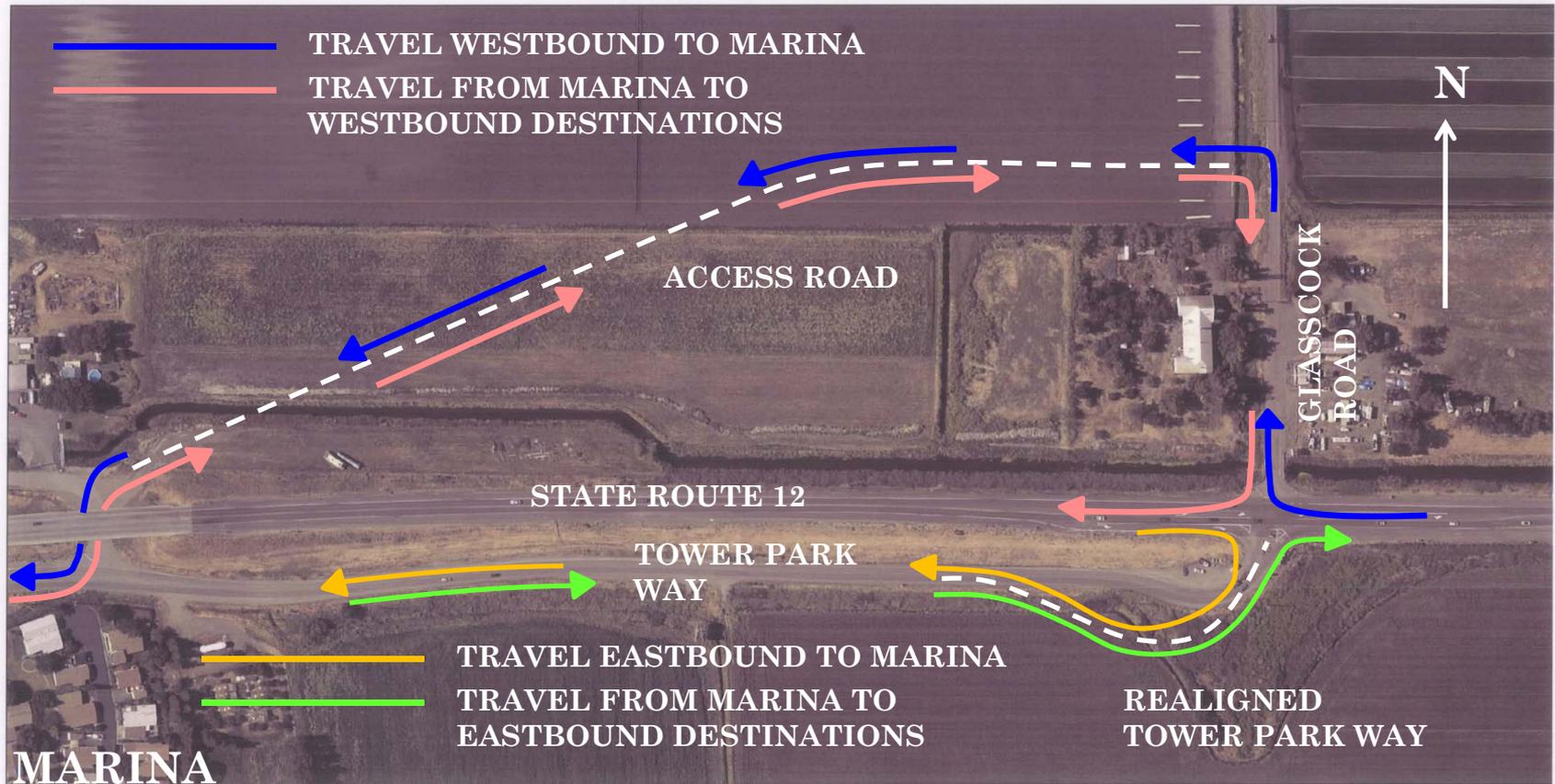


Exhibit A1

Exhibit A1

Right-in/right-out intersection



PARCEL PANEL REPORT

PARCEL DATA

- Property Owner:** Paul Donald Johnson, as Trustee of the Paul Donald Johnson Revocable Trust
- Parcel Location:** 14595 West Terminous Drive, in the unincorporated area of Lodi
Assessor Parcel Number (APN): 025-030-08
- Present Use:** Residential/Agriculture
- Zoning:** Open Space/Resource Conservation (OS/RC)
General Agriculture (AG) 40
- Area of Property:** 23.40 acres
- Area Required:** Parcel: 16121-1 -3.13 acres in fee

PARCEL DESCRIPTION

The subject property is located at 14595 West Terminous Drive, in the city of Lodi and is zoned AG-40, 40 acre minimum and OS/RC. It is a rectangular shaped parcel comprised of approximately 23.40 acres, has direct access from West Terminous Drive and State Route (SR) 12 via Tower Parkway crossing under the overhead structure of SR 12 to West Terminous Drive, and is identified as APN 025-030-08. The property is bordered by the Potato Slough waterway on the west side, agricultural land on the north side and residential and commercial properties on the east side. The front or south border of the parcel is partially bordered by West Terminous Drive and the sloped side of SR 12 as it elevates to cross the Potato Slough Bridge.

The rectangular shape of the property is divided into three sections, each improved for different uses:

- The west end of the property, which borders Potato Slough, is improved with various storage type boxcars and buildings. There is an open area used to store and/or park motor homes, boats, cars, tractor/trailer trucks and/or equipment. Wrought iron fencing, with an extra wide rolling gate at the dirt/gravel driveway encloses this end of the property.
- The middle section of the property is improved with a single-family residence. There is a steel walkway crossing the Reclamation District ditch (Ditch), which is also enclosed by wrought iron fencing and secured with a wrought iron type door.
- The east end of the property is agricultural land. It is irrigated by a gravitational flow type system. The rising slope of SR 12 and chain link fencing with a rolling style chain link gate encloses this portion of the property.

The single-family residence and buildings in the middle and western sections are outside of the proposed right of way and will not be affected by the project.

NEED FOR SUBJECT PROPERTY

The proposed right of way acquisition is required to construct the planned access road from Tower Park Way to Glasscock Road which will improve traffic safety and circulation, and reduce traffic congestion. The area of the proposed 3.13 acre acquisition is open level agricultural land, includes a portion of the Ditch and crosses the property on a diagonal. The acquisition and construction of the new roadway will divide the property into two irregular shaped areas. Approximately 70 linear feet of chain link fencing with a 20-foot wide rolling gate are within the area to be acquired.

The existing intersection crossing of SR 12 and Tower Park Way/Glasscock Road (Intersection) traffic experiences significant delays due to left-turn movements. During peak traffic periods, there are insufficient gaps in SR 12 traffic to allow adequate time for motorists to make left turns and accelerate and merge into mainline traffic, creating an unsafe maneuver into high speed traffic. In addition, motorists do not have adequate gaps in traffic to turn left from SR 12 on to the local road, potentially causing obstructions to the through traffic. The proposed access road from Tower Park Way to Glasscock Road will allow this intersection to operate more efficiently by eliminating cross-traffic movements that restricts traffic to right-in/right-out movements in both east and westbound directions. The access road cannot be constructed without the acquisition of the subject property which would result in loss of local circulation from one side of the highway to the other with the proposed right-in/right-out to SR 12.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met in Stockton on October 18, 2010. The Panel members included Donald Grebe, Panel Chair, Department Headquarters (HQ's) Division of Right of Way and Land Surveys; Joann Georgallis, Department Sacramento Legal Division; Linda Fong, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property owner was Paul Johnson, Kay Cecchetti and legal counsel, Joseph Fagundes.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity (Resolution) and makes a recommendation to the Department's Chief Engineer. The owner has expressed support for the project in general but is concerned that the proposed acquisition will bisect his property into two smaller pieces. The following is a description of the concerns expressed by the owner, followed by the Department's response:

Owner:

My position is:

- The public interest and necessity required for the project has not been proven.
- The project is not planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

Department:

Increased commuter, recreational, and local traffic between the Bay Area and the San Joaquin Valley has limited the left-turn opportunities from the intersection of SR 12 and Tower Park

Way/Glasscock Road (Intersection). Currently, traffic experiences significant delays for all left-turn movements at this intersection. This is a result of the high volume of traffic in peak hours at the Intersection beginning at the toe of the slope of the Potato Slough Bridge approach. During peak traffic times, motorists do not have adequate gaps in traffic to turn left or to accelerate onto SR 12, thus creating an unsafe maneuver into high speed traffic. Constructing an access road from Tower Park Way south of SR 12 to loop underneath Potato Slough Bridge and connect to Glasscock Road north of SR 12 would allow this intersection to operate more efficiently by eliminating left turn movements on and off SR 12 and restricting traffic to right-in/right-out movements in both the east and westbound directions. Not constructing this access road would not allow local traffic to access the planned right-in/right-out to SR 12, thus perpetuating the unsafe maneuvers at this intersection.

Owner:

The property sought to be acquired is not necessary for the project.

I have submitted an alternative road that would reduce the damage to my property and be less obtrusive than the Department's proposed design. My proposed design alternative would modify the curves of the access road so the roadway would be located closer to the eastern side of the property, allowing the access road to parallel SR 12 before connecting to Tower Park Way under the Potato Slough Bridge. This will allow the property to remain in one piece instead of being bisected into two smaller pieces.

Department:

The property owner's proposed design alternative was evaluated by the Department with the following findings:

- The Department's designed access road requires the purchase of 3.13 acres in fee of Mr. Johnson's property, while Mr. Johnson's Alternative (Alternative) would require the purchase of 7.15 acres in fee of said property.
- The Department's designed access road would result in a remainder of 20.27 acres of property while the Alternative would result in a remainder of 16.25 acres of property.
- The cost of the Department's designed access road alignment is \$10.72 million, while the approximate cost of the Alternative is \$12.50 million due to the need for additional right of way and the need to relocate the Reclamation District's ditch (Ditch).
- The additional cost for environmental mitigation and work to relocate the Ditch is estimated at \$93,000.

In summary the Department's designed access road crosses the Ditch in one single location. The Alternative would require the relocation of the Ditch. In relocating the Ditch to the north side of the access road, an additional 2.56 acres in easement of Mr. Johnson's property would need to be purchased to meet the Reclamation District's preference to have a fifty foot zone on both sides of the Ditch for annual cleaning. Relocating the Ditch would substantially increase the environmental mitigation costs for the project. The increased cost for the Alternative is approximately \$1.78 million.

Owner:

The Department and the Reclamation District have not agreed on permit issues.

Department:

The Reclamation District 548 (District) informed the Department that the Department would need an encroachment permit in and around the District's canal easement. The Department and the District are currently negotiating a utility agreement to cover the long-term maintenance costs of the planned box culvert and terms of an encroachment permit.

The District's permit requirements are beyond the scope of the Resolution process because the terms and conditions of a permit are irrelevant to a determination of (1) necessity for the project; (2) greatest public good and least private injury; (3) necessity for the parcel; and (4) Government code section 7267.2 offer. The Department will continue negotiating the terms of the encroachment permit in hopes that this matter will be resolved either before or shortly after the eminent domain proceedings are filed.

Without acquisition of Mr. Johnson's property, the access road cannot be constructed. This would not improve traffic safety, operation or circulation at the Intersection. The existing traffic flow interruptions from cross-traffic and merging traffic would continue to hamper traffic safety, operations and circulation.

An offer for the full amount of the Department's appraisal has been made to the property owner in compliance with Government Code Section 7267.2.

DEPARTMENT'S CONTACTS

The following contacts have been made with the property owner:

Type of Contact	Number of Contacts
Mailing of information	4
E-Mail of information	1
Telephone contacts	32
Personal / meeting contacts	7

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject property and offered the full amount of the appraisal to the owner of record as required by Government Code Section 7267.2. The property owner has been notified that issues related to compensation are outside the purview of the California Transportation 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 a Resolution of Necessity to the Commission.

DONALD E. GREBE
Chief
Office of Project Delivery
Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

RICHARD D. LAND
Chief Engineer

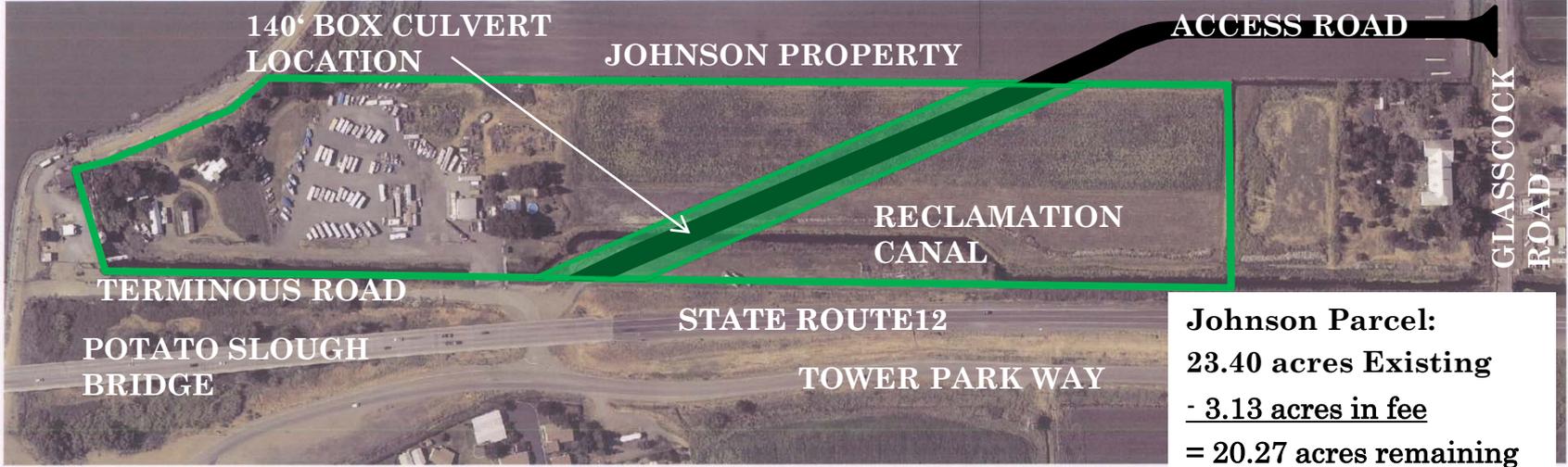
**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING
HEARING ON OCTOBER 18, 2010**

Donald Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair
Joann Georgallis, Sacramento Legal Office Attorney, Panel Member
Linda Fong, HQ's Division of Design, Panel Member
Deborah Gebers, HQ's Division of Right of Way and Land Surveys, Panel Secretary

Paul Johnson, Property Owner
Joseph Fagundes, Attorney for the owner of the Property
Kay Cecchetti, Property Owner's daughter

Richard Harmon, District 10 Interim Director
Terry Ogle, Central Region Design
C. Scott Guidi, District 10 Program/Project Management
Paul Elliott, Central Region Design
Michael Rodrigues, Central Region Right of Way
Brenda Atler, Central Region Right of Way

Existing and Proposed Facility



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Exhibit B1

Exhibit B1

Mr. Johnson`s Alternative

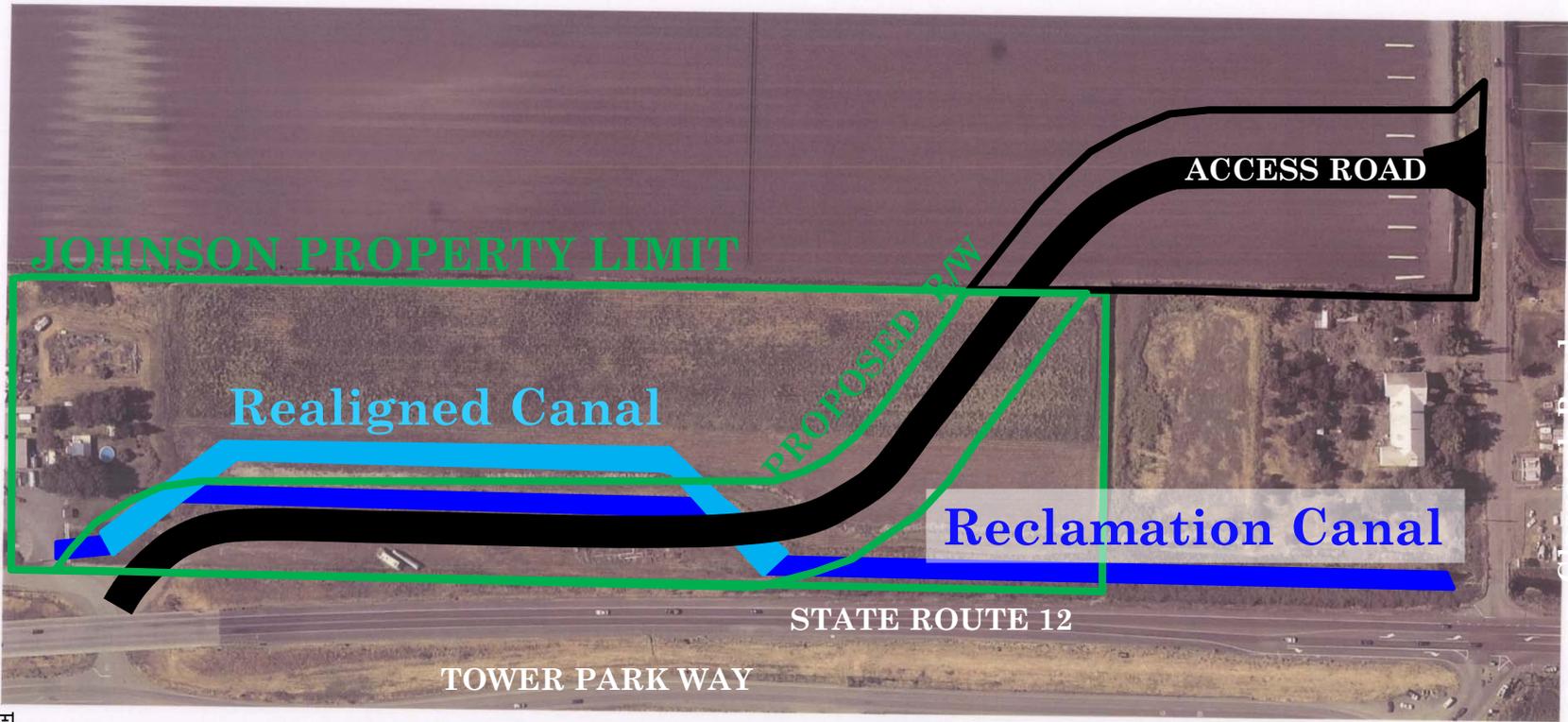


Exhibit B2

Exhibit B2