

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

DEPT: Public Works *mm*

BOARD AGENDA # \*C-4

Urgent  Routine

AGENDA DATE December 15, 2015

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of an Agreement for Acquisition of Property to Acquire Road Right of Way for the Hatch Road Channelization Phase II Project, Grantor: Roger H. Berner and Nancy Elaine Berner

STAFF RECOMMENDATIONS:

1. Approve the acquisition of the parcel identified as: Assessor's Parcel Number (APN) 018-065-003 (portion), parcel owner: Roger H. Berner and Nancy Elaine Berner, husband and wife as joint tenants.
2. Authorize the Chairman of the Board to execute the Agreement for Acquisition of Property.
3. Authorize the Director of Public Works to take any appropriate action necessary to carry out the purpose and intent of these recommendations.

FISCAL IMPACT:

The \$14,030 for the purchase of this Right of Way (ROW) is funded by City/County Public Facilities Fees and is included in the Fiscal Year 2015-2016 Public Works Roads project budget. This purchase is a component of the total Hatch Channelization Phase II Project cost of \$1,200,000.

BOARD ACTION AS FOLLOWS:

No. 2015-638

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

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Withrow

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:

ATTEST: *Christine Ferraro*  
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of an Agreement for Acquisition of Property to Acquire Road Right of Way for the Hatch Road Channelization Phase II Project, Grantor: Roger H. Berner and Nancy Elaine Berner

**DISCUSSION:**

Hatch Road is one of the County's most congested roadways and carries significant volumes of traffic. The Road Congestion Relief Program identified that Hatch Road should have left turn lanes installed to relieve congestion and increase capacity to ensure a minimum level of service in the future.

The Hatch Road Channelization Phase II Project will widen Hatch Road between Clinton Road and Baldwin Road to add a center left-turn lane and widen existing shoulders for the purpose of improving safety and provide continuity between the previously improved project to the west and the future signalization project at Santa Fe Avenue. Hatch Road will be widened from about 32 feet to 48 feet to provide for the additional lane width and shoulder.

On March 3, 2015, the Board of Supervisors adopted the Mitigated Negative Declaration for the project.

On July 14, 2015, the Board of Supervisors awarded a contract to George Reed, Inc. for the construction of the Hatch Road Channelization Phase II Project.

On November 17, 2015, the Board approved the Hatch Road Channelization Phase II Project Relocation plan and authorized the Public Works Director to compensate tenants for relocation benefits. Public Works staff is currently in the process of acquiring the ROW necessary to complete the project.

Because the project was needed and it was desired to give property owners and tenants a reasonable amount of time to relocate and negotiate the purchase of ROW, the County approached this project with an alternative delivery process. The roadway improvements could be constructed within the existing ROW and the necessary shoulder and drainage improvements could be completed after all structures within the acquisition area are vacated and purchased.

Accordingly, the notice to proceed for construction was issued on October 26, 2015 and the project is scheduled to be completed on December 3, 2015 subject to weather. The County now needs to acquire ROW from the property owner to complete the shoulder and drainage improvements.

The property is located on the northern side of Hatch Road approximately 1,200 feet west of the intersection of Hatch Road and Santa Fe Avenue and extending approximately 220 feet west. The property owner has agreed to accept the following as outlined in the Agreement for Acquisition of Property in Attachment 1:

- Property Owner: Roger H. Berner and Nancy Elaine Berner, husband and wife as joint tenants
- Amount of Compensation: \$14,030
- APN: 018-065-003, ROW: 0.1717 Acres

Approval of an Agreement for Acquisition of Property to Acquire Road Right of Way for the Hatch Road Channelization Phase II Project, Grantor: Roger H. Berner and Nancy Elaine Berner

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

ROW acquisition is required from four parcels in order to construct the project. ROW is still being negotiated with the owner of one parcel.

Staff recommends that the Board approve the ROW acquisition and authorize the Chairman of the Board to execute the Agreement for Acquisition of Property.

**POLICY ISSUES:**

The Hatch Road Channelization Project will meet the Board's Priorities of providing A Safe Community and A Well Planned Infrastructure System by improving traffic safety on the County road system.

**STAFFING IMPACT:**

Public Works staff is overseeing this project.

**CONTACT PERSON:**

Matt Machado, Public Works Director. Telephone: (209) 525-4153  
Colt Esenwein, Public Works Deputy Director. Telephone: (209) 525-4184

**ATTACHMENT:**

1. Agreement for Acquisition of Property
2. Road Deed

CE:djd  
H:\CLERICAL\Board Items\2015\12-8-15\ROW Berner\Hatch Channelization Phase II Project Berner Purchase Agreement.pdf

Project: Hatch Road Channelization  
Phase II Project  
Grantor: Roger H. Berner and Nancy  
Elaine Berner  
APN: 018-065-003

**AGREEMENT FOR ACQUISITION OF PROPERTY**

This Agreement for Acquisition of Property is between the **County of Stanislaus** (County) and **Roger H. Berner and Nancy Elaine Berner, husband and wife as joint tenants** (Grantor). This Agreement is expressly subject to approval by the County Board of Supervisors.

**1. PROPERTY.**

Grantor agrees to sell to County, and County agrees to purchase from Grantor, on the terms and conditions set forth in this Agreement, the real property interest described in the Exhibits, attached hereto which are incorporated herein by this reference (the "Property").

**2. DELIVERY OF DOCUMENTS/ESCROW.**

All documents necessary for the transfer of the Property shall be executed and delivered by Grantor to the County's designated Acquisition Agent.

This transaction shall be handled through an escrow with Chicago Title Company, 1700 Standiford Avenue, Suite 110, Modesto, CA 95350, at (209) 571-6300.

**3. PURCHASE PRICE AND TITLE.**

The consideration to be paid by the County for the Property is as follows:

Road Deed: 0.1717 Acres x \$35,000/Acre	\$ 6,010.00
Cost to Cure (palm trees, gravel driveway, lawn area, PVC fencing, and relocation of mailbox and tractor)	\$ 8,020.00
Severance Damages	\$ 0.00
Benefits	\$ 0.00
Total	\$ 14,030.00

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. Grantor shall convey good, marketable and insurable title to the Property free and clear of all liens, encumbrances, taxes, assessments and leases recorded and/or unrecorded.

Good, marketable and insurable title to the Property interest shall be evidenced by a CLTA owner's policy of title insurance ("Title Policy"). The Title Policy shall be in the amount of the Purchase Price, showing title to the Property interest vested in County. It shall be a condition precedent to County's obligations under this Agreement that escrow holder is able to issue the Title Policy to County.

County shall pay all costs of any escrow, title insurance, and recording fees incurred in this transaction.

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.

Grantor acknowledges that the acquisition of the Property by the County is for a public purpose, and therefore, the Property is otherwise subject to taking by the power of eminent domain. Grantor acknowledges that this transaction is a negotiated settlement in lieu of condemnation and agrees that the Purchase Price to be paid herein shall constitute full and fair compensation and consideration for any and all claims that Grantor may have against the County by reason of the acquisition, improvement, possession, use and/or occupancy of the Property, and Grantor waives any and all claims, including, but not limited to, claims for attorney fees, pre-condemnation damages, severance damages, business goodwill, relocation assistance, or any other claim.

If any eminent domain action that includes the Property, or any portion thereof, has been filed by the County, Grantor hereby agrees and consents to dismissal of said action. Grantor waives any and all claims to any money that may have been deposited with the State Treasurer in such action and further waives any and all claims for damages, costs, or litigation expenses, including attorney's fees, arising by virtue of the abandonment of the action pursuant to Section 1268.510 of the California Code of Civil Procedure.

**4. PRORATION OF TAXES.**

- (a) Taxes shall be prorated in accordance with California Revenue and Taxation Code section 5081 et seq., as of the recordation of the Grant Deed conveying title to County, except that where County has taken possession of the Property, taxes shall be prorated as of the date of possession.
- (b) Grantor authorizes County to deduct from the purchase price any amount necessary to satisfy any delinquent taxes, together with penalties and interest thereon, and any delinquent or non-delinquent assessments or bonds, which are to be cleared from the title to the Property.

5. **POSSESSION.**

Grantor agrees that immediately upon approval of this Agreement by County, the County may enter upon and take possession of the Property.

6. **HAZARDOUS WASTE MATERIAL.**

The Grantor hereby represents and warrants 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. Grantor further represents and warrants that Grantor has no knowledge of any disposal or release of hazardous substances, on, from, or under the Property which may have occurred prior to Grantor taking title to the Property.

The 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 requires mitigation under Federal or State law, the County reserves the right to recover its clean-up costs from those who caused or contributed to the contamination, or who may be otherwise deemed responsible parties.

7. **ENTIRE AGREEMENT.**

This Agreement and the attached Exhibits constitute the entire agreement between the parties relating to the sale of the Property. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the County and Grantor.

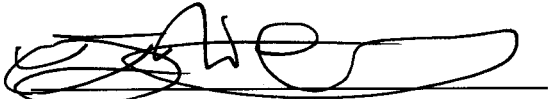
**(INTENTIONALLY LEFT BLANK)**

**Agreement for Purchase  
Roger H. Berner and Nancy Elaine Berner  
Page 4 of 4**

IN WITNESS WHEREOF, the parties have executed this Agreement on 10-29-15 as follows:

**COUNTY OF STANISLAUS**

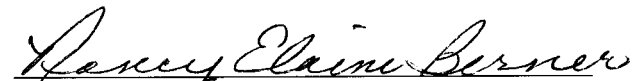
**GRANTOR:**



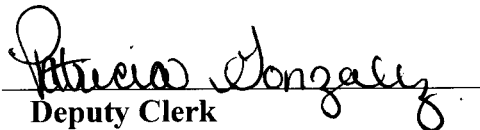
**Terrance Withrow  
Chairman of the Board of Supervisors**



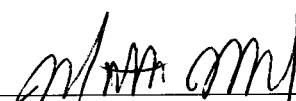
**Roger H. Berner**

  
**Nancy Elaine Berner**


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

By:   
**Deputy Clerk**

**APPROVED AS TO CONTENT:  
Department of Public Works**

  
**Matthew Machado, Director**

**APPROVED AS TO FORM:  
John P. Doering  
County Counsel**

By:   
~~Thomas E. Boze~~ **Amanda M. DeHart**  
**Deputy County Counsel**



Stanislaus, County Recorder  
Lee Lundrigan Co Recorder Office  
**DOC- 2016-0048595-00**

NO FEE  
RECORDING REQUESTED BY:  
BOARD OF SUPERVISORS

Acct 403-Mail Documents  
Wednesday, JUN 29, 2016 10:52:25  
Ttl Pd \$0.00 Rcpt # 0003832305  
JMS/R3/1-4

RETURN TO: STANISLAUS COUNTY  
DEPARTMENT OF PUBLIC WORKS  
1716 MORGAN ROAD  
MODESTO, CA 95358

Road Name: HATCH ROAD

APN: 018-065-003

RAT 11922

# ROAD DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

**Roger H. Berner and Nancy Elaine Berner, husband and wife,**

do hereby grant to the COUNTY OF STANISLAUS, a political subdivision of the State of California an easement for road right-of-way and public utility purposes in the real property in the County of Stanislaus, State of California described as:

**SEE EXHIBITS "A" AND "B"**

Roger H. Berner

Nancy Elaine Berner

Dated: 10-29-2015

APPROVED as to description:

Dated 11/16/2015

### CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDATION

This is to certify that the interest in real property conveyed by the deed or grant dated 10-29-2015 From Roger H. Berner and Nancy Elaine Berner to County of Stanislaus, a political subdivision of the State of California, is hereby accepted by the undersigned officer or agent on behalf of the Board of Supervisors of the County of Stanislaus, pursuant to authority conferred by resolution of the Board of Supervisors of the County of Stanislaus adopted on May 12, 1998 in accordance with the provisions of Government Code Section 27281, and the grantee consents to recordation thereof by its duly authorized officer.

**Matthew Machado, Director of Public Works**  
of Stanislaus County, State of California

By

Dated: 11/20/15

400  
400



ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF STANISLAUS )

On OCT 29, 2015 before me, NICOLE LASS, Notary

Public, personally appeared ROGER H. BERNER

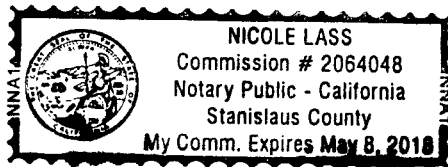
and NANCY ELAINE BERNER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the 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 Nicole Lass

(Seal)



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

RIGHT-OF-WAY

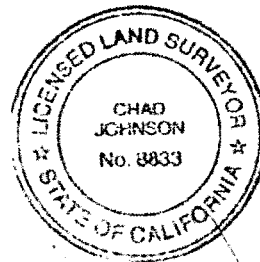
A strip of land, 34.00 feet in width, being a portion of the parcel described in the deed granted to Roger H. Berner, et ux. and recorded in Vol. 1950 of Official Records at Page 248, Stanislaus County Records, situate in the southeast quarter of Section 5, Township 4 South, Range 10 East, Mount Diablo Meridian, County of Stanislaus, State of California, said strip of land being more particularly described as follows:

Commencing at the South 1/4 corner of said Section 5; thence East 885.56 feet along the south line of said Section 5 to the point of intersection with the southerly projection of the west line of said Berner parcel; thence North 33.00 feet along said southerly projection to the intersection with the existing north right-of-way line of 66 foot wide Hatch Road and the **Point of Beginning** of the herein described strip of land; thence along the following four courses:

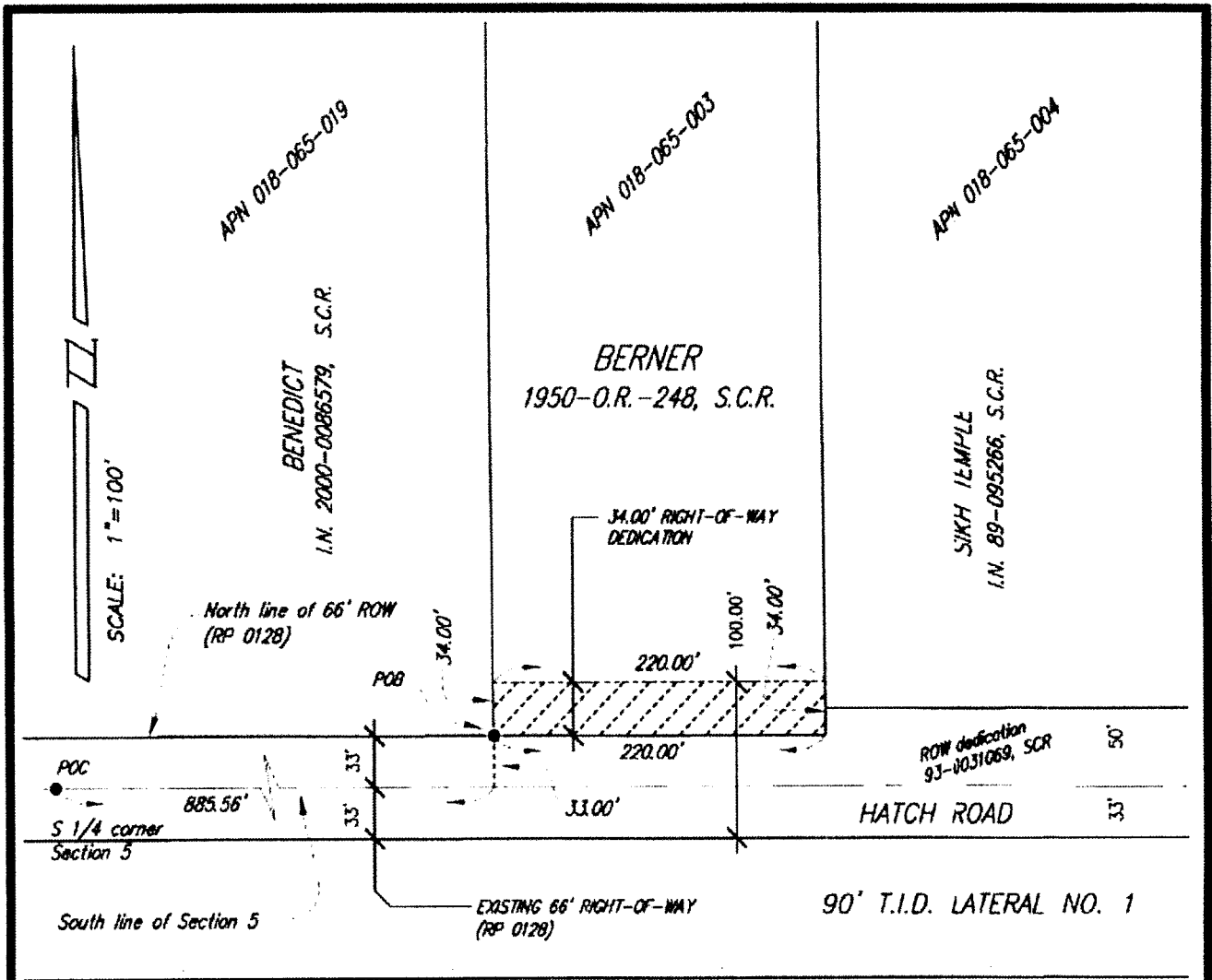
1. North 34.00 feet along the west line of said Berner parcel;
2. Thence East, 67.00 feet north from and parallel with the south line of said section 5, a distance of 220.00 feet to the east line of said Berner parcel;
3. Thence South along the east line of said parcel a distance of 34.00 feet;
4. Thence West, 33.00 feet north from and parallel with said south line of Section 5, along the existing north right-of-way line of Hatch Road, a distance of 220.00 feet to the west line of said Berner parcel and the Point of Beginning.

containing 7,480 square feet, more or less.

END DESCRIPTION



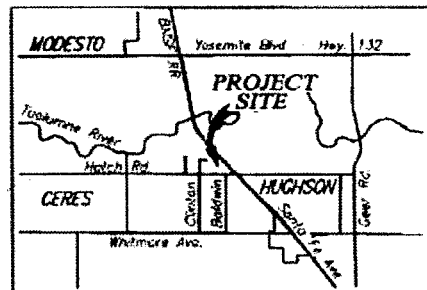
Handwritten signature and date: *Chad Johnson* 2-17-15



**LEGEND**

RP 0128 County Road Petition #0128 Aug. 8, 1872

- I.N. Instrument Number
- O.R. Official Records
- S.C.R. Stanislaus County Records
- A.P.N. Assessors Parcel Number
- POC Point of Commencement
- POB Point of Beginning
- ROW Right-of-Way



**Vicinity Map**

NOT TO SCALE



**EXHIBIT "B"**  
Dedication of Right-of-Way

DR. BY	C. JOHNSON
PROJECT	009735
DATE	02/17/15
SHEET NO.	1 OF 1