

2019-005743

Klamath County, Oregon



05/22/2019 01:36:41 PM

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BOARD OF COUNTY COMMISSIONERS
KLAMATH COUNTY, OREGON

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by Board of Commissioners

IN THE MATTER OF THE PETITION OF) REPORT OF CITIZEN COMMISSION
NED FRIEDMAN TO COUNTY COURT)
FOR AUTHORITY TO BUILD FACILITY)
REQUIRED TO REMOVE STANDING)
DRAINAGE WATER)

Pursuant to the Order of the Board of County Commissioners of Klamath County, Oregon No. OR2019-045, Pete Pate, Charles Case, and William Ganong provide the following report and recommendations.

This matter came before the BOCC on the Application of Ned Friedman pursuant to Oregon Revised Statutes 549.110 - 549.190 for a right of way or privilege to install a culvert through a raised roadway located on adjoining land owned by the Nature Conservancy to drain standing water from the Applicant's land. By Order dated February 5, 2019, the BOCC appointed a Commission of three disinterested householders of the County; Charles Case, Pete Pate, and William Ganong; to meet, consider the application, and, if appropriate, to designate the locations, character and extent of work to be done to alleviate the standing drain water described in the Application, and to assess damages to be paid to the lands that must accept the water. The BOCC set February 13, 2019 at 9:00 am for the meeting. The meeting was then continued to February 22, 2019, at 9:00 am, due to severe weather that prevented some people from attending the initial meeting.

On February 22, 2019, BOCC Chairperson Donnie Boyd administered the oath to the Commission members to faithfully and impartially accept the duties that come with the appointment to the commission. The Commission then began the meeting at 9:00 am. Present in addition to the Commission members were Klamath County legal counsel, Mika Blain, Klamath County Public Works Director Jeremy Morris, and the applicant, Ned Friedman. Ms. Blain advised that the Nature Conservancy was provided with a copy of the Application and the date and time of the Commission meeting. However, no representative of the Nature Conservancy attended the meeting.

The Commission reviewed the Application and other information provided by Mr. Friedman, Mr. Friedman's response to questions posed by the Commission, and considered comments and suggestions from Mr. Morris and the Commission members' personal knowledge of the area. Additionally, Commissioner William Ganong made a site visit to the area.

Thereafter, the Nature Conservancy advised the County that it did not receive Notice of the first meeting in time to attend the meeting and requested that the Citizen Commission meet with Nature Conservancy representatives. That request was granted and the Citizen

Committee met with Nature Conservancy representatives Janet Neuman, Mark Stem, Lori Nussbaum and Dan Raney at 9 am on April 10, 2019. That meeting was also attended by Jacqueline Friedman and her daughter, Nature Conservancy farm tenant Jim Gallagher and another neighbor. Ms. Neuman distributed several documents and each of the representatives provided other information for consideration by the Citizen Commission. Those documents included a lidar survey of the subject area showing the relative elevations of the Applicant's land and the surrounding area. The survey indicated that the Applicant's land is at a lower elevation than the neighboring Nature Conservancy land. A copy of the map, with an addition described below added by the Citizen Committee, is attached as Exhibit A. Jim Gallagher, the tenant who farms the Nature Conservancy land advised that the Nature Conservancy land has been higher in elevation than the Applicant's land for the many years he has been familiar with the area.

Both before and following the meetings, the parties submitted written material which were reviewed and considered by the Citizen Committee. Those materials included a 2008 aerial photograph of the area provided by Ms. Neuman. That photo shows significant flooding of the Applicant's land, particularly the east side of the property adjacent to the Modoc Point Irrigation District Canal. That photo is attached as Exhibit B. At the meeting with the Nature Conservancy representatives, some suggested that the Applicant's flooding issue may have been caused in part by poor maintenance of the Modoc Point Irrigation District canal, and that the recent cleaning and improvement of that canal may alleviate some of the flooding problem.

Following the April 10 meeting, Citizen Commissioners Pete Pate and Charles Case visited the property and, based on their observations, requested that County Public Works Director Jeremy Morris and Citizen Commissioner William Ganong meet with them at the property. That meeting occurred on April 17, 2019.

Based on the information provided to the Commission and the Commissioners' personal knowledge and investigation of the situation, the Commissioners make the following findings of fact:

1. Nedwyn A. Friedman ("Ned Friedman") and Jacqueline L. Friedman, Trustees of the Friedman Revocable Trust own approximately 184 acres of land located in the East ½ East ½ of Section 31, and the Northwest¼ Southwest¼ and the Southwest¼ Southwest¼ of Section 32, Twp. 35 S., Range 7 E., W.M., Klamath County. The Friedman property is generally located at 2625 Toqua Road, Chiloquin, Oregon, and is Klamath County tax lots R-3507-03100-01600, 03200-01900 & 01800.

2. The Applicant has experienced a significant flooding problem from surface drainage water on his land. The land did not flood this year, notwithstanding the above average precipitation that occurred the past winter and this spring. The Applicant suggests that flooding was not a problem this year because his land did not freeze during the winter and the water was absorbed by the ground.

3. The surface elevation of the Applicant's land, for the most part, is below that of the Nature Conservancy land lying to the west. This area is only a few feet higher in elevation than the surface of Upper Klamath Lake at full pool. It is reasonable that the area would be impacted by surface drainage.

4. The Nature Conservancy land is separated from the Applicant's land by an open drain canal and an elevated road along the canal owned by the Nature Conservancy. The Applicant believes that the improvement of the road and deepening of the drain resulted in blocking surface drainage water on Applicant's land from flowing westerly toward Upper Klamath Lake and caused the intermittent and temporary flooding of Applicant's land. Ned Friedman seeks a right of way to place a 16-inch diameter pipe, approximately 70 feet long, through and under the surface of the Drain road to allow the drainage from his land to gravity flow from his land and into the Drain. The pipe would be located in the Southwest corner of the Friedmans' existing pasture, approximately 160 feet North of the Southwest corner of the Friedman's land. Mr. Friedman estimates that drainage would flow through the pipe only in wetter than normal winters and would flow no later than April of those years. Mr. Friedman states that the Drain is deep and has significant capacity to accept his water in addition to the drainage from The Nature Conservancy Land that is served by the Drain. Further, a headgate could be installed on the Easterly end of the pipe to control or stop the flow of water into the Drain if there are times when the capacity of the Drain is not sufficient to accept the Friedman drainage without impacting the use of the Drain for Nature Conservancy drainage. Further, Mr. Friedman offers to pay one-half of the cost of operating and maintaining the pump located at the Northwest end of the Drain used to remove water from the Drain into Upper Klamath Lake.

5. Nature Conservancy denies that the road caused the Applicant's flooding. Nature Conservancy and its tenant, Jim Gallagher, advise that the road has been in place for many years and improvements to the drain and the road have not changed the flow of the Applicant's surface drainage water.

6. Visible on Exhibits A and B, and on the land, is a shallow drainage ditch that flows from North to South across a portion of the Applicants land, parallel with the MPID canal. It appears that the drainage ditch continues in a southerly direction across the land lying south of Toqua Road. It is likely the drain ditch on the Applicant's land is connected to the drain ditch south of Toqua Road by a culvert under Toqua Road. Public Works Director Morris offered to have a County road crew locate and clear that culvert before next winter.

7. Visible on the Applicant's land are several other shallow ditches that appear to connect to the said drainage ditch or could connect with it if cleaned.

8. The County Road Department also cleaned the culvert through which the MPID canal flows under Toqua Road. The work done by MPID on its canal and the work done by the County should significantly improve the flow of water through the canal. To the extent that canal was overflowing in the winter/spring months and contributing to the flooding of the Applicant's land, as

suggested by Exhibit B, that problem has likely been cured as the water level in the canal at the time of the Citizen Commission members visits to the area was significantly below the top of the canal bank.

9. The Nature Conservancy suggested that in lieu of installing a drain pipe from Applicant's land to the Nature Conservancy drain, the Applicant could collect and pump the drainage water into the MPID canal. No information was provided demonstrating that MPID would agree to the pumping of drain water into its canal. However, there is a shallow toe drain along the north side of Toqua Road. There is a culvert through the bank of the MPID canal which allows water in the toe drain to flow into the canal. The toe drain lies immediately south of the Applicant's south property line. If there is no culvert under Toqua Road at the location of the drain ditch describe in paragraph 3, above, the Applicant could connect the existing drainage ditches on his land to the culvert into the canal by digging a new drainage ditch along his south property line.

10. There is no indication that the Applicant has attempted to address the infrequent surface drainage flooding of his land by cleaning and improving the existing drainage ditches or by installing additional drains to intercept and convey the drainage water to the culvert under Toqua Road or the culvert from the toe drain along Toqua Road into the MPID canal. The Applicant has not demonstrated that the installation of a drain pipe to the Nature Conservancy drain canal is either necessary or the most reasonable way of addressing his surface drainage problem.

11. At the meeting on April 10, 2019, and in the letter from Janet Neuman dated April 18, 2019, Nature Conservancy offered to allow the Applicant to use a pump and temporary above-ground piping to remove water from his land in years of extreme flooding that threatens the Applicant's residence.

12. The Nature Conservancy raised several legal issues. Consideration of those issues is beyond the charge of the Citizens Committee and are not addressed in this report.

RECOMMENDATION:

Based on the information submitted by the parties, the meetings with the parties, and the Citizen Commissioners' investigation, the Citizen Commissioners recommend that the Board of County Commissioners deny Mr. Friedman's Application. The Citizen Committee believes there are several alternative means of addressing this surface drainage issue by cleaning and improving the existing surface drains on the Friedmans' land. The County will assist by locating, opening and cleaning the culvert under Toqua Road. By managing the drainage water in the manner recommended by the Citizen Commission, the Applicant can resolve the drainage problem in a relatively simple and inexpensive manner.

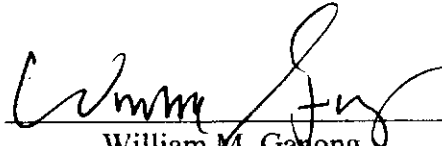
Dated this 6 day of May, 2019.

 5/1/19

Pete Pate



Charles Case



William M. Garong

Goose Bay, WRDP

● Culverts Cleaned by County

dblbnd.adf

2010 LIDAR

4,136 ft - 4,140 ft
4,140 ft - 4,141 ft
4,141 ft - 4,142 ft
4,142 ft - 4,143 ft
4,143 ft - 4,144 ft
4,144 ft - 4,145 ft
4,145 ft - 4,146 ft
4,146 ft - 4,147 ft
4,147 ft - 4,148 ft
4,148 ft - 4,149 ft
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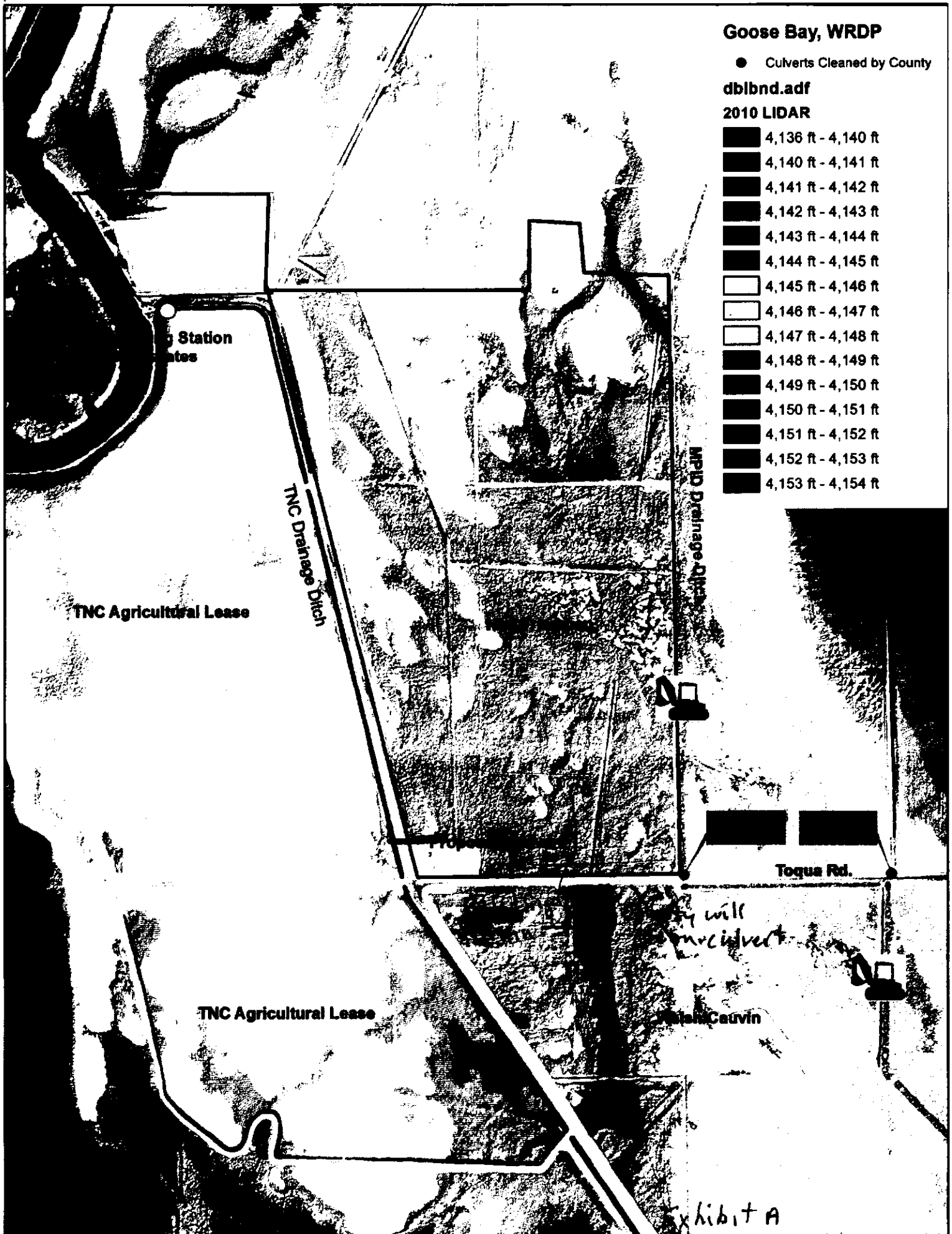


Exhibit A

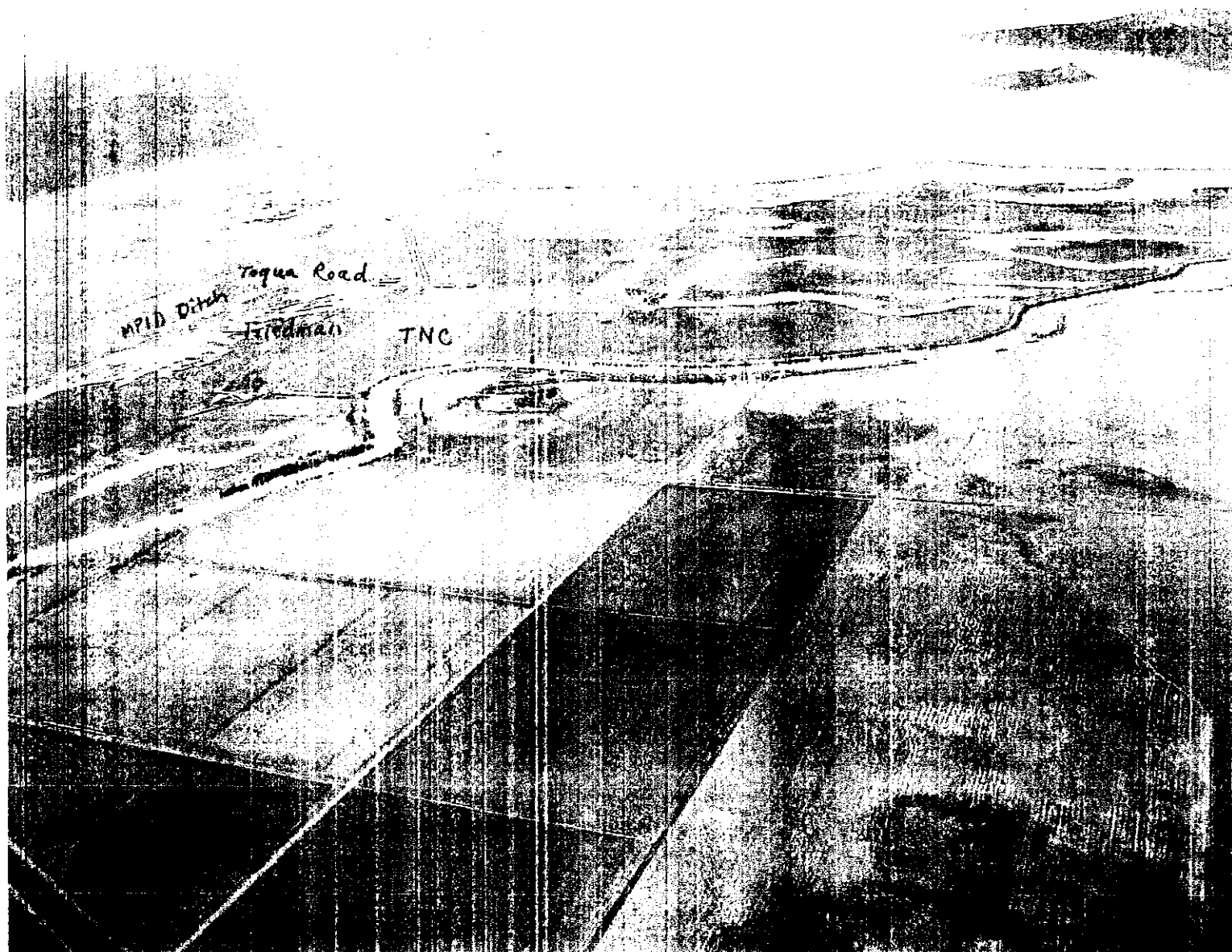


Exhibit B