

MEMORANDUM

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: January 27-28, 2021

From: STEVEN KECK, Chief Financial Officer

Reference Number: 2.4a., Action Item

Prepared By: Kimberly Ellis Erickson, Chief
Division of Right of Way and Land Surveys

Subject: **RESOLUTION OF NECESSITY – APPEARANCE**

ISSUE:

Should the California Transportation Commission (Commission) adopt Resolution of Necessity (Resolution) C-21969, for the parcel whose owners are contesting the declared findings of the California Department of Transportation (Department) under Section 1245.230 of the Code of Civil Procedure?

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

*“Provide a safe, sustainable, integrated and efficient transportation system
to enhance California’s economy and livability”*

RECOMMENDATION:

The Department recommends the Commission adopt Resolution C-21969 summarized on the following page. This Resolution is for a transportation project on State Route 70 in Yuba County.

BACKGROUND:

Discussions have taken place with the owners, 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 this Resolution will not interrupt the Department's efforts to secure an equitable settlement. In accordance with statutory requirements, the owners have been advised that the Department is requesting the Resolution at the Commission's January 2021 meeting. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

Discussions have been ongoing between the property owner and the Department to address and resolve the issues. Progress has been made, but in order to keep the project schedule, the Department is requesting that this appearance proceed to the January 2021 Commission meeting. Legal possession will allow the construction activities on the 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-21969 - Ross A. Patterson and Dianna J. Patterson, husband and wife as joint tenants
03-Yub-70-PM 24.2 - Parcel 37130-1 - EA 4F3809.

Right Way Certification Date: 01/28/21; Ready to List Date: 02/01/21. Conventional highway - widen shoulders and improve recovery zone from Laurellen Road to South Honcut Creek Bridge. Authorizes condemnation of land in fee for a State highway and underlying fee. Located in the unincorporated area of the County of Yuba near the City of Marysville at 11290 State Highway 70. Assessor's Parcel Number 003-080-029.

Attachments and Exhibits:

Attachment A - Project Information

Attachment B - Parcel Panel Report

Attachment C - Property owner's letter to the Commission dated April 10, 2020

Exhibit A - Project Maps

Exhibit B - Parcel Maps

Exhibit C - Resolution of Necessity C-21969

ATTACHMENT A

PROJECT INFORMATION

PROJECT DATA

03-Yub-70 PM 16.2/25.8
Project ID: 0314000153 (EA 03-4F380)

Location: In Yuba County PM 24.2 Route 70, near Marysville

Limits: From 0.2 mile north of Lauerellen Road to South Honcut Creek Bridge

Cost: Capital Outlay Right of Way: \$15,000,000.00
Capital Outlay Construction: \$71,000,000.00

Funding Source: State Highway Operation and Protection Program (SHOPP)
Safety Improvement Program

Number of Lanes: Existing: Two-lane Conventional Highway with variable shoulder width from 2 feet to 8 feet in both northbound (NB) and southbound (SB) directions.

Proposed: Two-lane Conventional Highway with standard shoulder widths. This project will also construct a 14-foot Two Way Left Turn Lane (TWLTL) throughout and establish a Clear Recovery Zone (CRZ), and Slow-Moving Vehicle lane at certain location.

Major Features: Interchanges: *N/A*

Provide Standard Shoulder Widths:

Existing shoulder width does not meet the current standard for this type of facility. Existing shoulders vary in width from 2 to 8 feet wide.

- Standard 8-foot shoulders will be provided adjacent to slow lanes.
- Standard 10-foot shoulders will be provided where a single lane in the direction of travel is constructed in order to accommodate agricultural equipment, garbage pickup, mail or other local delivery.

Providing standard shoulder widths will provide a safer, more traversable and recoverable width for errant drivers and will reduce collisions.

Two-way left turn lane:

This "soft buffer" will allow a refuge for drivers entering and exiting the highway, turning left across traffic.

Right turn pockets:

At county-maintained roads, drivers turning right from SR 70 will have right turn pockets, to assist safer egress from the highway.

Construct slow moving vehicle lanes:

The project will also construct three slow-moving vehicle lanes in each direction of travel to allow slower moving traffic an opportunity to pull over, out of the main traffic flows, relieving vehicle queueing. These lanes will be constructed at various locations within the project.

Provide school bus stops:

14-foot shoulders will be provided where school bus stops are constructed.

Traffic:

Existing (2019): 15,926 Annual Average Daily Traffic
Opening (2023): 16,910 Annual Average Daily Traffic
Horizon (2043): 19,930 Annual Average Daily Traffic

NEED FOR THE PROJECT

Safety and operational concerns along the corridor have necessitated this project. Between August 6, 2010 and August 5, 2013, this segment of SR 70 had 85 reported collisions, and there were 7 fatalities. Although the total collision rate is about 65 percent of the statewide average for similar facilities, the actual fatality collision rate is more than 4.5 times the statewide average. The seven fatal collisions can be summarized as follows: two involved tractor-trailers being struck while making left and right turns, three involved cross-centerline head-on collisions, one involved an unsafe passing movement, and one involved a pedestrian struck by a vehicle. The fatal accident rate for this segment is approximately 450% of the statewide average. The proposed project is intended to address cross-centerline collisions/fatalities and will construct a 14-foot-wide paved strip to separate traffic as the fundamental means of addressing the collisions/fatalities. This paved strip will either be

striped as a Two-Way Left Turn Lane (TWLTL) or constructed with a concrete barrier. However, there are also approximately 200 access points in this segment including private driveways, business driveways, and paved and unpaved agricultural access. Project elements such as widened shoulders (paved and unpaved), CRZ, slow-moving vehicle lanes, rumble strips, right turn pockets at county roads, and new striping and signage, would serve the additional purpose of reducing the injury rate within the project limits.

PROJECT PLANNING AND LOCATION

The project limits include a section of SR 70 north of Marysville with a cross section that does not meet current standards for shoulder width and clear recovery zone. In 2007, between PM 18.9/20.0, the highway was widened and a TWLTL was installed under Contract 03-4A570. In 2009, centerline ground-in rumble strips were also installed through the project limits, but cross-centerline collisions have continued to occur.

On March 30, 2015, a Project Study Report (PSR) was approved for this project. That PSR proposed safety improvements on SR 70 consisting of two standard 12-foot lanes, 8-foot shoulders, a TWLTL where feasible, left-turn pockets at all county-maintained roads, and a 20-foot CRZ. This proposed safety project is consistent with the SR 70 ultimate five-lane concept by building standard 8-foot shoulders and a TWLTL where feasible, as well as providing width for a 20-foot CRZ. This safety project does not conflict with the ultimate project footprint.

ATTACHMENT B

PARCEL PANEL REPORT

<u>Property Owner:</u>	Ross A. Patterson and Dianna J. Patterson, husband and wife as joint tenants
<u>Parcel Location:</u>	11290 State Highway 70 in the unincorporated area of the County of Yuba near the City of Marysville
<u>Present Use:</u>	Single-family residence with remaining land for agricultural. Owners reside at property.
<u>Zoning:</u>	Agricultural Industrial
<u>Area of Property:</u>	4.81 Acres
<u>Area Required:</u>	Parcel 37130-1: 1.00 Acres in Fee and 0.60 Acres in-Underlying Fee

PARCEL DESCRIPTION

The subject property consists of a single Assessor's Parcel Number (APN) 003-080-029, which consists of 4.81 acres. The larger parcel is fairly rectangular in shape, and the topography is level. The access to the subject parcel is off State Route (SR) 70.

Improvements include a single-family residence, other structures on the property that appear to be used as shops or storage. The property owners also have fencing, gates, buffer trees and various fruit trees. There are two recorded access easements that overlap each other. Each easement is 45' wide and is over the northern portion of the parcel for roadway and incidental purposes.

NEED FOR SUBJECT PROPERTY

The need for this acquisition is based on a scope of work which adds a standard shoulder, a slow-moving vehicle lane, establishes a safe recovery zone, and the installation of a box culvert at the owner's driveway. The proposed shoulder and safe recovery zone are safety measures for motorists along SR 70. Therefore, the subject property cannot be avoided.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

Due to COVID-19, the Condemnation Review Panel (Panel) meeting was hosted online via WebEx on September 30, 2020. The Panel members included Jeffrey Purdie, Panel Chair, Department of Transportation (Department) Headquarters (HQ) Division of Right

of Way and Land Surveys (RWLS); Joe Carrol, HQ Legal Division; Tina Lucas, Department's Division of Design; and Paul Pham, HQ RWLS, Secretary to the Panel.

Representing the property owner at the meeting was Kristen Renfro, Attorney, from the law firm of Desmond, Nolan, Livaich & Cunningham. Mr. and Mrs. Patterson and their son (name not captured) also attended the meeting.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Department's Chief Engineer. The four criteria are as follows:

- The public interest and necessity require the proposed project.
 - SR 70 between Oroville and Marysville continues to experience higher than average traffic accidents and fatalities. Over the past several years, District 3 has initiated several projects along this corridor to address this critical safety issue. The project is 9.2 miles in length. Between 2010 and 2020, within this segment of SR 70, there have been 179 collisions including 20 fatalities and 160 injuries.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
 - A joint National Environmental Protection Act (NEPA) and California Environmental Quality Act (CEQA) study was conducted and approved in June 2019. Both the Environmental Impact Report (EIR) under CEQA and Environmental Assessment (EA) under NEPA found no significant impacts to the environment.
 - District 3 conducted several public workshops to gather input from the residents within the project limits. Many changes have been incorporated into the project scope and design. Through these workshops, the District redesigned the project to minimize the impacts. As a result of the redesign, the total number of parcels was reduced from over 200 to 98. In addition, the total acreage was reduced from an original 187 acres down to 67. The total number of displaced residents and businesses was reduced from 43 to 6.
- The property rights to be condemned are necessary for the proposed project.
 - The Owners' parcel is located between the project limits and adjacent to SR 70. This project requires a portion of the Owners' parcel for safety improvements that include standard shoulders, a slow-moving vehicle lane, a clear recovery zone, two-way left turn lane, and rumble strips. The project improvements in this segment cannot be constructed without acquiring the proposed property.

- An offer to purchase in accordance with Government Code Section 7267.2 has been made to the owners of record.
 - District 3 Right of Way staff conducted an appraisal. The appraiser contacted the Yuba County planning department and confirmed that the parcel's improvements in the post construction environment can remain as a legal non-conforming parcel. The appraisal went through a rigorous reviewing process and was approved on November 8, 2019. The District confirmed the appraised value as the Fair Market Value for the property rights being acquired. On January 30, 2020, a District Right of Way Agent met with the Owners and presented the offer. The acquisition Agent, District Right of Way Management, and Project Management have been in contact with the Owners and the owner's legal counsel to address concerns expressed regarding the acquisition. Negotiations have continued, but the Department and the grantor are currently at an impasse.

The primary concerns and objections expressed by the property owners through their attorney, in relation to the four criteria described above, are:

- The proposed project is not planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- A valid offer has not been made pursuant to Government Code 7267.2.

The following is a narrative of the specific concerns raised by the property owners and/or their representative, followed by the Department's response:

Owner Contends:

Owners have safety concerns with the proposed slow-moving vehicle lane starting south of their property that was shown at the public workshop.

Department's Response:

This safety project proposes adding standard shoulder widths, building recoverable slopes, adding rumble strips at edge of traveled way, establishing a clear recovery zone, and adding a slow-moving vehicle lane. These features will alert drivers who drift off the travel lane, allow errant vehicle to recover within the safe recovery zone, and provide slow-moving vehicles the ability to travel along the paved portion of the road.

Due to the high volume of truck traffic in this immediate area and also due to close proximity to three agricultural driers, for safety reasons, a slow-moving vehicle lane has been incorporated into the design at this location of the project; the lane has also been extended to the north of the subject parcel based on public comments received.

It allows trucks to safely ingress and egress the driers. It reduces the need for these vehicles to enter into the high-speed lane in this location and provides a transitional merging area at the south end of the project.

This project will reduce traffic fatalities and injury collisions along the corridor and, at the same time, will improve safety to the residents who live along this section of SR 70.

Owner Contends:

Property owners stated that the Department now has STIP funding for another project to add additional lanes on this route. At this point, Department should just do a full acquisition.

Department's Response:

The STIP project is a separate project still in the Environmental stage. Final design of that project has not yet been determined. The Department cannot acquire properties for that project prior to completion of the environmental clearance.

Owner Contends:

The ditch in front of their house is shallow and would like the new ditch constructed the same to reduce the amount of right of way needed for the project.

Department's Response:

The subject parcel currently has a swale in front of it and will have one in the after condition. The proposed right of way has been reduced as much as practicable without jeopardizing safety features.

Owner Contends:

The owners are concerned about their safety and quality of life due to the proximity of the roadway to their house in the after condition including apprehensions related to errant vehicles leaving the roadway as well as increased noise levels. Owners prefer to move the house further back from the new right of way line.

Department's Response:

The improvements can legally remain at current location as a legal non-conforming parcel. District Right of Way staff consulted with staff working at the Yuba County Planning Department and received a variance approval for this property. Additionally, this property was not identified as a parcel with predicted noise levels that will approach

or exceed the Noise Abatement Criteria (67 dBA for Activity Category B land use) in the Noise Study that was conducted in February 2019.

The District's Design team is of the opinion the residence will remain safe, as located, in the after condition. However, District Right of Way staff are continually engaging with the property owner's attorney and are trying to mitigate these concerns through a financial settlement, including the cost to physically relocate the house to a new location on the property. As this is a compensation issue, it is not one of the four criteria as pertains to this report and deliberation by the Commissioners of the California Transportation Commission.

Owner Contends:

The Owners contend that the proposed project is not planned or located in the manner that will be most compatible with the greatest public good and least private injury. The project has been aligned in a fashion that will create extreme private injury to the property owner.

Department's Response:

The Department has considered many aspects, including the issues raised by the owners when choosing the final alternative for this project. This alignment has been the best option to achieve all safety objectives.

In order to address issues from cross-center collisions, nonstandard shoulders, hundreds of residential, commercial, and agricultural driveway ingress and egress to/from the highway, and high volume slow-moving vehicle traffic, this project proposed adding the Two-Way Left Turn Lane, standard shoulder throughout the project limits, clear recovery zone, rumble strips along the edges of the travel way, and slow-moving vehicle lanes at certain locations.

The proposed alignment allows the southbound traffic to remain open during construction and reduces construction duration by an estimated 200 days.

At the subject parcel area, extending the right of way to the west minimizes the impact to local properties. Three (3) parcels are impacted under this alignment rather than eleven (11) parcels that would be impacted if the right of way lines were extended on both sides. These safety features require additional right of way from the subject parcel. At this location, there is a high volume of slow-moving trucks and other agricultural vehicles that ingress and egress to and from the agricultural driers. A slow-moving vehicle lane is a project need since it allows these vehicles to safely turn in and out of the driers

Even with the safety objectives, the Design Team has minimized the right of way needs as much as practicable in an effort to reduce the impacts to residences.

Owner Contends:

The Owners expressed concerns about the mature trees being removed within the acquisition area, and the State's Appraisal did not have an in-depth analysis of the damages to the remainder. Therefore, the Department has not complied with Government Code Section 7267.2.

Department's Response:

After consulting with the County and receiving a variance approval, District Right of Way appraisal staff concluded that there are no damages to the remainder parcel as a result of proposed acquisition, including the loss of trees. The State's appraisal addressed all potential compensable damages and has met all requirements of Government Code Section 7267.2 for setting the Fair Market Value of this parcel. Therefore, the offer is valid. As this is also a compensation issue, it is not one of the four criteria as pertains to this report and deliberation among the Commissioners of the California Transportation Commission.

DEPARTMENT CONTACTS WITH THE PROPERTY OWNERS:

The following is a summary of the contacts made with the property owner/attorney:

Type of Contact	No of Contacts
Mailing of information	2
Emailing of Information	24
Telephone	31
Personal Call	2
Number of WebEx	2

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record as required by the Government Code Section 7267.2. The Owners have been notified that issues related to compensation are outside the purview of the Commissioners 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 accordance 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.

Jeffrey A. Purdie

JEFFREY A. PURDIE

Chief, Office of Project Delivery
HQ Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

Michael D. Keever

MICHAEL D. KEEVER

Chief Engineer

SEPTEMBER 30, 2020 CONDEMNATION PANEL REVIEW MEETING ATTENDEES

The Panel for the Condemnation Panel Review Meeting

Jeffrey A, Purdie, HQ Division of Right of Way and Land Surveys, Panel Chair
Joe Carroll, Legal Counsel, HQ Legal Division, Panel Member
Tina Lucas, HQ Division of Design, Panel Member
Paul Pham, HQ Division of Right of Way and Land Surveys, Panel Secretary

Other Headquarters Attendees

Mike Whiteside, HQ Division of Design
Devin Porr, HQ Division of Design

Legal Attendee

Paul Brown, Assistant Chief Counsel, Sacramento Legal Division

District Attendees

Amarjeet Benipal, District Director, District 3
Carlos Portillo, Principal Transportation Engineer, District 3
Karl Dreher, Principal Transportation Engineer, District 3
Scott Foster, Project Manager, Program Project Management, District 3
Ken Keaton, Sr. Transportation Engineer, District 3
John Ballantyne, Deputy District Director- Right of Way, North Region
Janel Wilson, Office Chief, Right of Way, District 3
Ronald Guenther, Transportation Surveyor, Right of Way Engineer, District 3

Grantors, Grantor's Relatives and Legal Representation

Ross Patterson, Owner
Diane Patterson, Owner
Mr. and Mrs. Patterson's son (name not recorded)
Kristen Renfro, Attorney at Desmond, Nolan, Livaich & Cunningham

ATTACHMENT C

DESMOND, NOLAN, LIVAICH & CUNNINGHAM

Attorneys At Law

*4/14/20
Forwarded to:
Right of way
Copied to:
Terri Anderson*

April 10, 2020

SENT VIA U.S. MAIL & EMAIL

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



Re: Request to Appear and Be Heard at Hearing on Proposed Resolution of Necessity to Acquire Property owned by ROSS A. PATTERSON AND DIANNA J. PATTERSON, HUSBAND AND WIFE AS JOINT TENANTS; 11290 State Highway 70, Marysville, CA 95901, 03-Yub-70-PM 24.2, EA 4F3809, Project #0314000153, Parcel 37130-1; Objections to Adoption of Resolution of Necessity

To Executive Director and Commission Members:

Our office represents Ross and Dianna Patterson ("Pattersons"), owners of the above-referenced real property ("Subject Property"). We are in receipt of the California Transportation Commission's Notice of Intent to Adopt Resolution of Necessity to Acquire Certain Real Property or Interest in Real Property by Eminent Domain, dated March 27, 2020, post-marked March 30, 2020 ("Notice").

This letter constitutes the Pattersons' formal request, and reservation of right, for one or more of its representatives to appear and be heard at the Resolution of Necessity ("RON") Hearing. We request that provisions be made, and instructions provided, to accommodate a remote appearance in light of the fact that the RON Hearing is planned to be held in San Diego, hundreds of miles from the Subject Property, and on a date when the present statewide "stay at home" order of indefinite duration may remain in place and/or travel and appearance at a public meeting may subject the Pattersons and/or their legal counsel to undue health risks.

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Of Counsel
Gary Livaich
William W. Nolan
Edward K. Dunn

Earl D. Desmond
(1895-1958)
E. Wayne Miller
(1904-1965)
Richard F. Desmond
(1923-2004)
William C. Livaich
(1950-2007)

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The Pattersons further submit this correspondence to serve as a statement of written objections to be included in the official record of the proceeding.

The Pattersons object to adoption of the proposed RON for the following reasons:

1. The Proposed Project Is Not Planned or Located in the Manner that Will Be Most Compatible With the Greatest Public Good and Least Private Injury.

Among the findings that must be made before adopting the RON are that the project is planned in the manner that will be most compatible with the greatest public good and the least private injury. (CCP §1240.030(b).) In this instance, such a conclusion cannot be reasonably drawn. The project has been aligned in a fashion that will create extreme private injury to the Pattersons and other property owners, particularly those living in residences in close proximity to Highway 70; and Caltrans has neither adequately assessed, nor made any effort to either mitigate, or adequately compensate for, these injuries. It has not, for example, made warranted offers to move residential structures and/or provide relocation benefits for permanent or temporary displacements.

The proposed project will move existing right of way 60 feet closer to the Pattersons' home – to *within 20 feet of the home*. The furthest distance traveled way might be constructed will be a mere 70 feet from the home—roughly the distance of the pitcher's mound to home plate in an MLB diamond. This close proximity is particularly concerning given that all of the existing mature trees that currently serve as a buffer between the highway and the home are being removed. More troubling yet, we are advised that *additional lanes of travel are actually planned and have been approved that would necessarily push the travelled right of way even closer to the home*.

The conditions Caltrans intends to impose on the Pattersons and such other owners fly in the face of the stated purpose of the project to improve safety. Prioritizing the safety of some members of the public who utilize the affected segment of Highway 70 over those who both regularly use and live adjacent to it, fails the standard of greatest public good and least private injury.

2. Requirements of Government Code Section 7267.2 Have Not Been Complied With.

Although amount of compensation will not be considered at the hearing, the issue of compensation is distinct from the question of whether a condemnor has complied with Government Code section 7267.2. (*People ex rel. Dept. of Transportation v. Cole* (1992) 7 Cal.App.4th 1281, 1286.) A condemnor must consider the property owner's objections

that the mandatory requirements of section 7267.2 have not been complied with, including objections concerning the adequacy of the appraisal upon which an offer is based. (*Id.* at 1285-86 (*City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005, 1011-1013).)

Section 7267.2, subdivision (a)(1) requires: "Prior to adopting a resolution of necessity pursuant to Section 1245.230 of the Code of Civil Procedure and initiating negotiations for the acquisition of real property, the public entity shall establish an amount that it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established." (*Id.*) "The amount shall not be less than the public entity's approved *appraisal* of the fair market value of the property." (Cal. Gov. Code § 7267.2 (emphasis added).)

Further: "The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation." (Gov. Code § 7267.2(b).) The written statement must "contain detail sufficient to indicate clearly the basis for the offer" and *must separately state "damages to real property," with included "calculations and narrative explanation supporting the compensation."* (Gov. Code § 7267.2(b), (b)(3) (emphasis added).) When a taking involves only a portion of a larger parcel, "*compensation must be awarded for the injury, if any, to the remainder.*" (*City of San Diego v. Neumann* (1993) 6 Cal.4th 738, 740.) CCP section 1263.420 defines damage to the remainder as being caused by "[t]he severance of the remainder from the part taken" and/or "[t]he construction and use of the project for which the property is taken in the manner proposed by the plaintiff whether or not the damage is caused by a portion of the project located on the part taken." (CCP § 1263.240(a), (b).)

Caltrans has failed to fully comply with the requirements of section 7267.2. It proposes a partial fee take and the construction of highway improvements on real property on which the Pattersons' home is situated. However, its "appraisal"—conducted by in-house right of way staff, who do not appear to be licensed appraisers—does not assess severance damages in accordance with proper valuation methodology. Nor does the skeletal report provided to the Pattersons contain any calculations or description of severance damages to the remainder of the Pattersons' property. There is a bare list of "damages" included as one category in a listing of components of "market value of required property," but these consist of no more than concluded costs for replacement of some fencing and the reconnecting of water lines.

To the limited extent any narrative evaluation can be said to have been supplied regarding severance damages, it consists wholly of the bald assertion that there "is a lack of market evidence to suggest that a severance damage (further loss in value) arises from the right of way moving closer to the subject property residence." No explanation is offered as to how this conclusion was reached. Nor can one be surmised by the Pattersons, given that the only comparable sales identified in the report are for bare land. The report does not discuss potential noise impacts, privacy or security concerns, or any other potential impacts of the construction or operation of the project on the Pattersons' remainder, or any assumed mitigation measures that would resolve or alleviate such impacts.

To the extent Caltrans can fairly be said to have completed an appraisal at all, the appraisal and offer to purchase based thereon clearly fail to reflect the full measure of just compensation mandated by Article I, section 19 of the California Constitution and the Eminent Domain Law. And although a report was supplied to the Pattersons, it did not contain anywhere close to statutorily adequate detail concerning severance damages as required by the Government Code.

Should the RON be adopted and a condemnation suit initiated, the Pattersons will be compelled to challenge the right to take, and will assert the objections stated herein, as well as any additional objections raised at the RON Hearing, or which exceed the parameters set forth in the Notice. The bases for objection stated herein are informed by the Notice's stated parameters, and the objections are limited to those the Pattersons are reasonably capable of making prior to being afforded an opportunity to review the text of the proposed Resolution and final plans for the project. The Pattersons reserve the right to raise additional arguments objecting to the right to take both at the RON Hearing and in any future proceedings.

We request that the Board provide by email transmission a copy of the proposed resolution and any other materials relating to consideration of the resolution ahead of the RON Hearing, at the earliest time the documents are available.

We would appreciate confirmation of your timely receipt and filing of this correspondence, and we expect its inclusion in the official record of the proceeding. We have attempted to transmit copies to multiple relevant staff contacts, through multiple means, in addition to mailing as directed in the Notice, to ensure that one way or another the correspondence is timely processed. In the event there is any delay in receipt and/or filing of this correspondence, which may be attributable to irregularities caused by the current coronavirus situation with respect to timeliness of mail service or processing by staff, we respectfully request and presume that the correspondence will nonetheless be filed and included in the record of the proceeding and be

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deemed timely filed.

Sincerely,

DESMOND, NOLAN, LIVAICH & CUNNINGHAM

Kristen Renfro

Kristen Renfro
KDR/kms

cc: Client

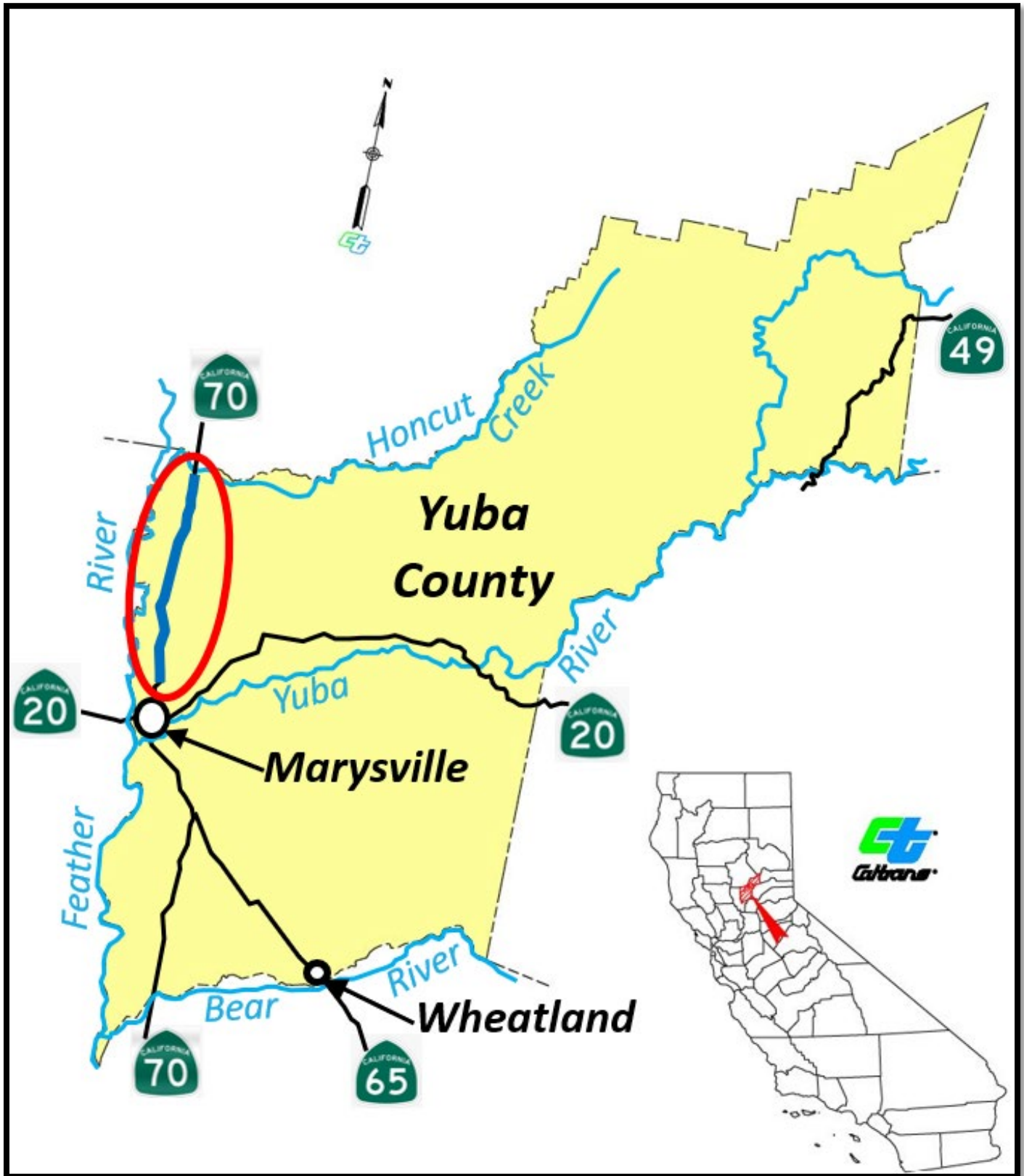
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EXHIBIT A

Project Vicinity Map



Project Location

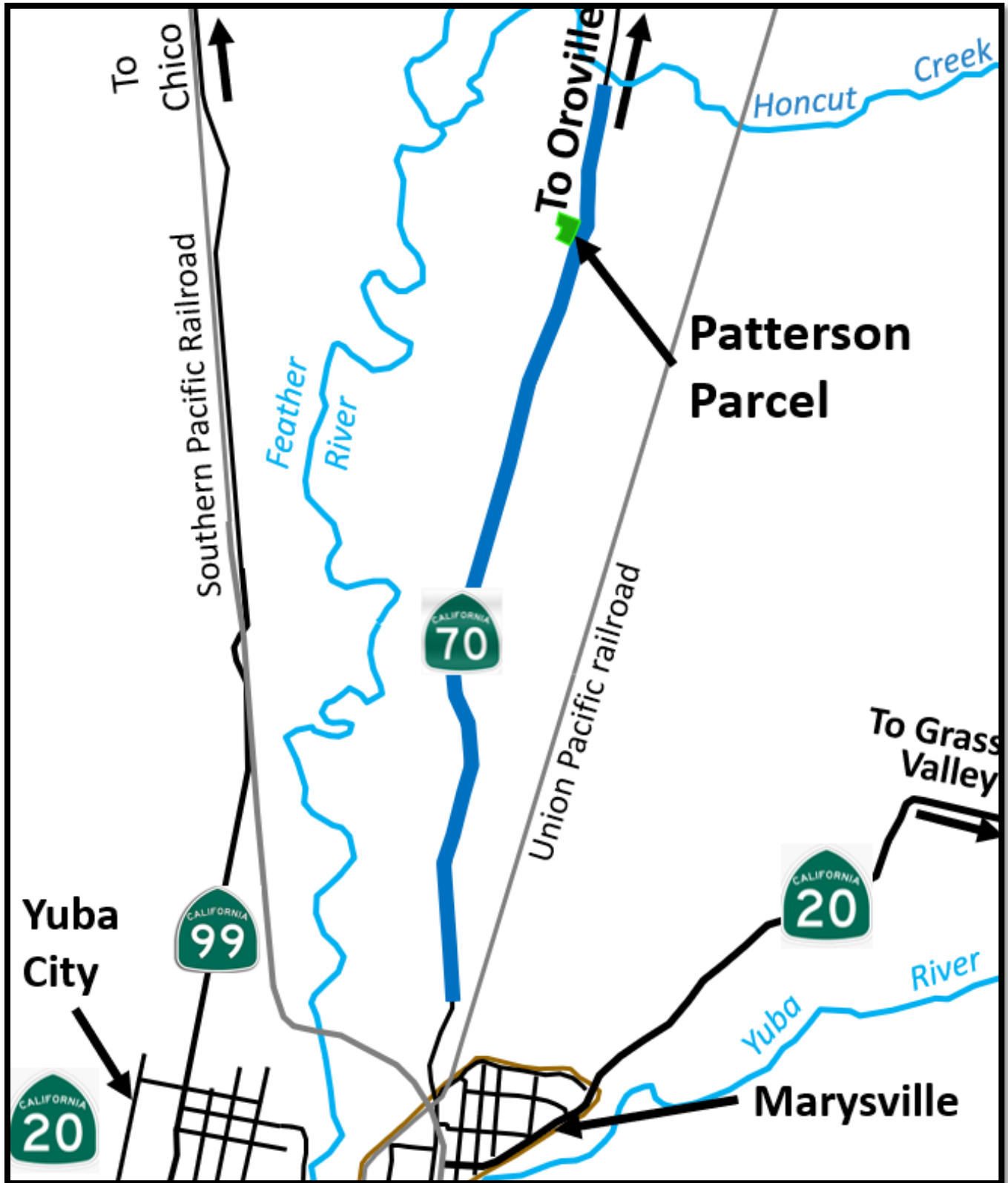
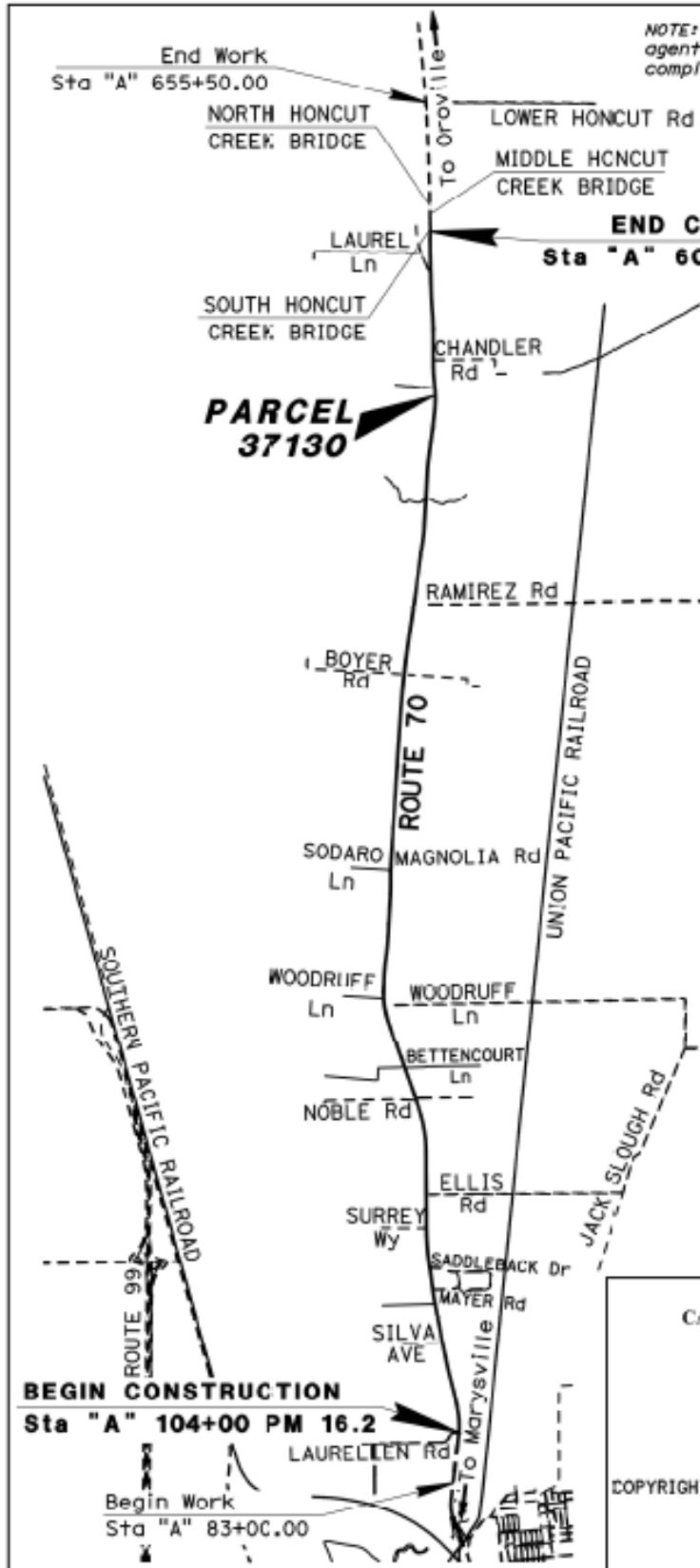


EXHIBIT B

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.



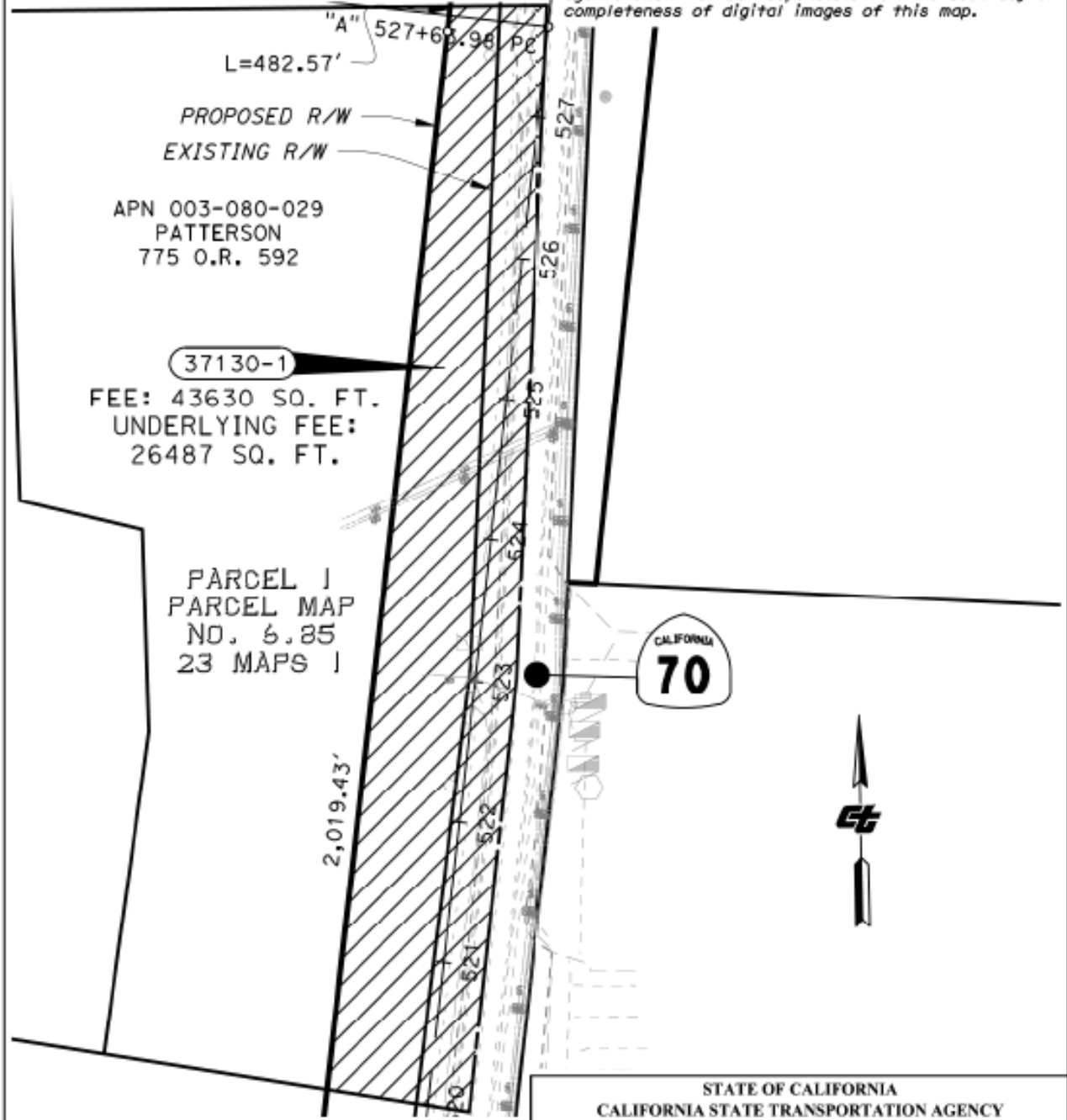
STATE OF CALIFORNIA
 CALIFORNIA STATE TRANSPORTATION AGENCY
 DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY
RESOLUTION OF NECESSITY MAP
EXHIBIT A

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 NO SCALE

DRAFTED BY	DATE	DISTRICT	COUNTY	ROUTE	SHEET	PM	SHEET NO.	TOTAL SHEETS
R. GUENTHER	02/24/2020	03	YUBA	070	24.2		1	2

COUNTY OF YUBA

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.



NOTES

Coordinates and bearings are on CCS 1983(2004.69) Zone 2. Distances and stationing are grid distances. Divide by 0.99992 to obtain ground distances. All distances are in feet unless otherwise noted.

LEGEND

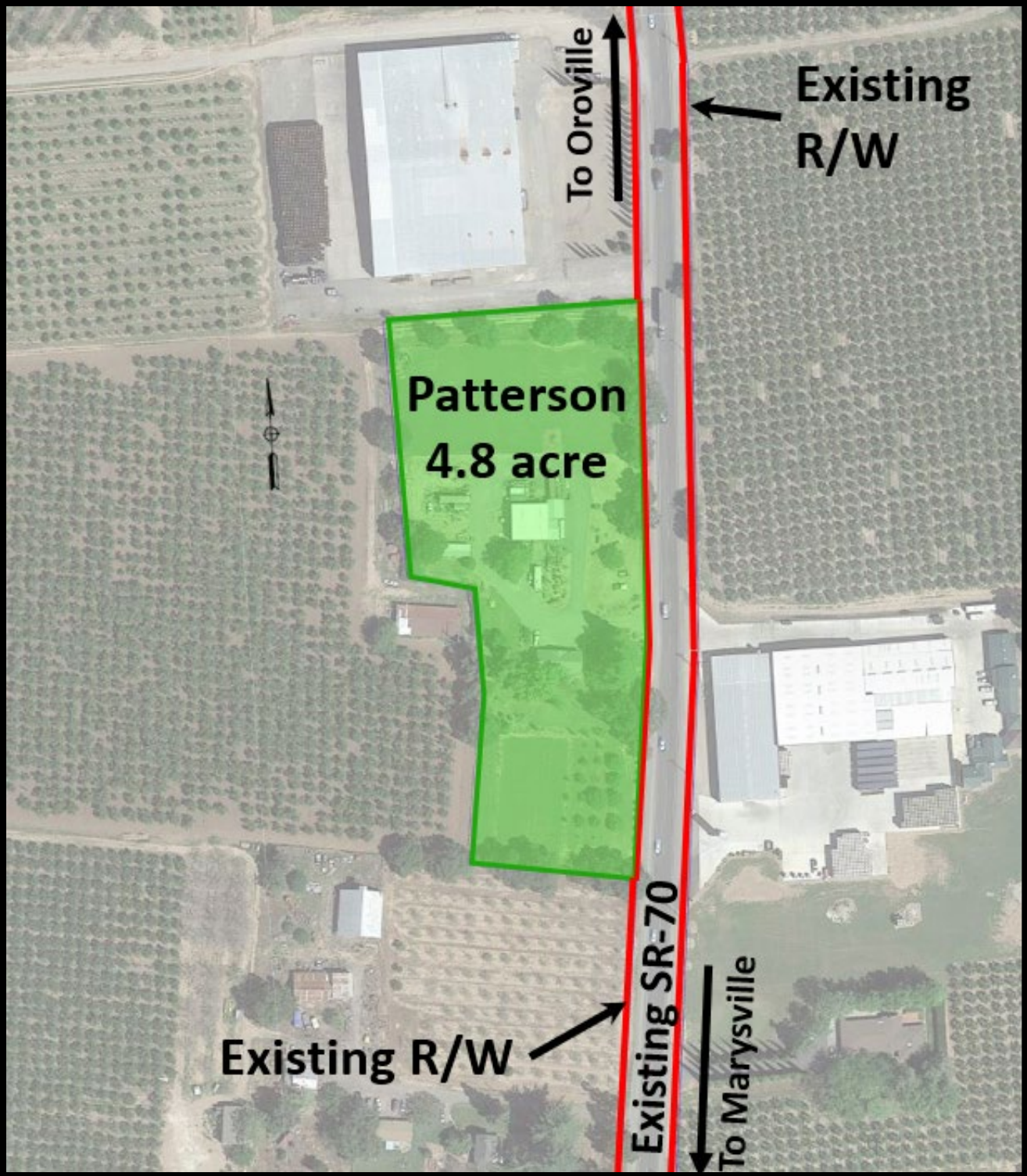
STATE OF CALIFORNIA
CALIFORNIA STATE TRANSPORTATION AGENCY
DEPARTMENT OF TRANSPORTATION
**RIGHT OF WAY
RESOLUTION OF NECESSITY MAP
EXHIBIT B**

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SCALE: 1" = 100'



DRAFTED BY	DATE	DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
R. GUENTHER	02/24/2020	03	YUB	070	24.2	2	2

Current



After

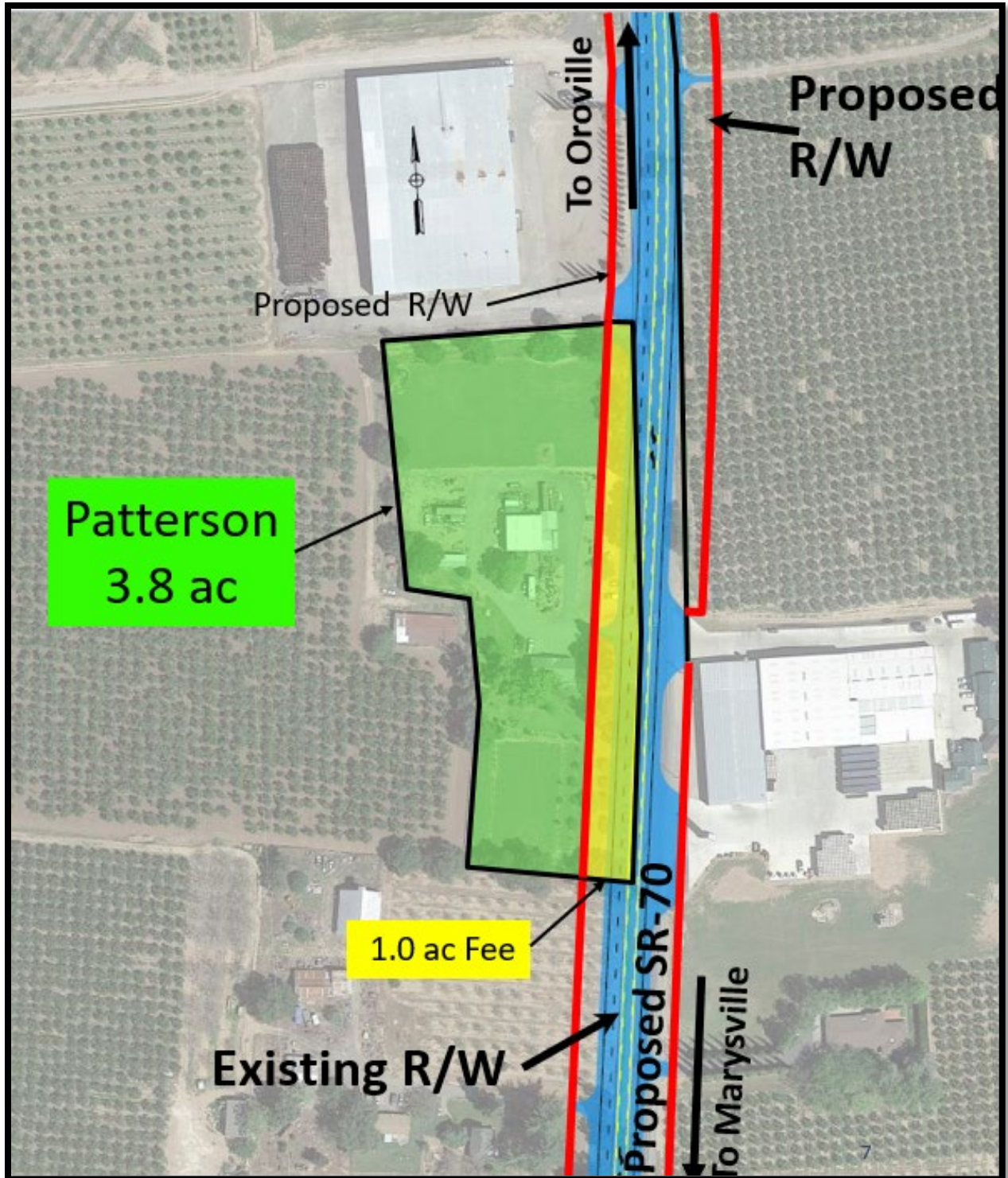


EXHIBIT C

1 **TRANSPORTATION COMMISSION**
2 **RESOLUTION NO.**

3 **C-21969**

4 CALIFORNIA TRANSPORTATION COMMISSION
5 RESOLUTION OF NECESSITY
6 TO ACQUIRE CERTAIN REAL PROPERTY
7 OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN
8 HIGHWAY 03-Yub-70-PM 24.2 PARCEL 37130-1

9 OWNER: Ross A. Patterson and Dianna J. Patterson, husband and wife as joint tenants

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

13 The hereinafter described real property is necessary for State Highway purposes
14 and is to be acquired by eminent domain pursuant to Streets and Highways Code Section
15 102;

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

18 The proposed project is planned and located in the manner that will be most
19 compatible with the greatest public good and the least private injury;

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

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

RESOLVED by this Commission that the Department of Transportation be and said
Department is hereby authorized and empowered;

APPROVED AS TO FORM AND PROCEDURE

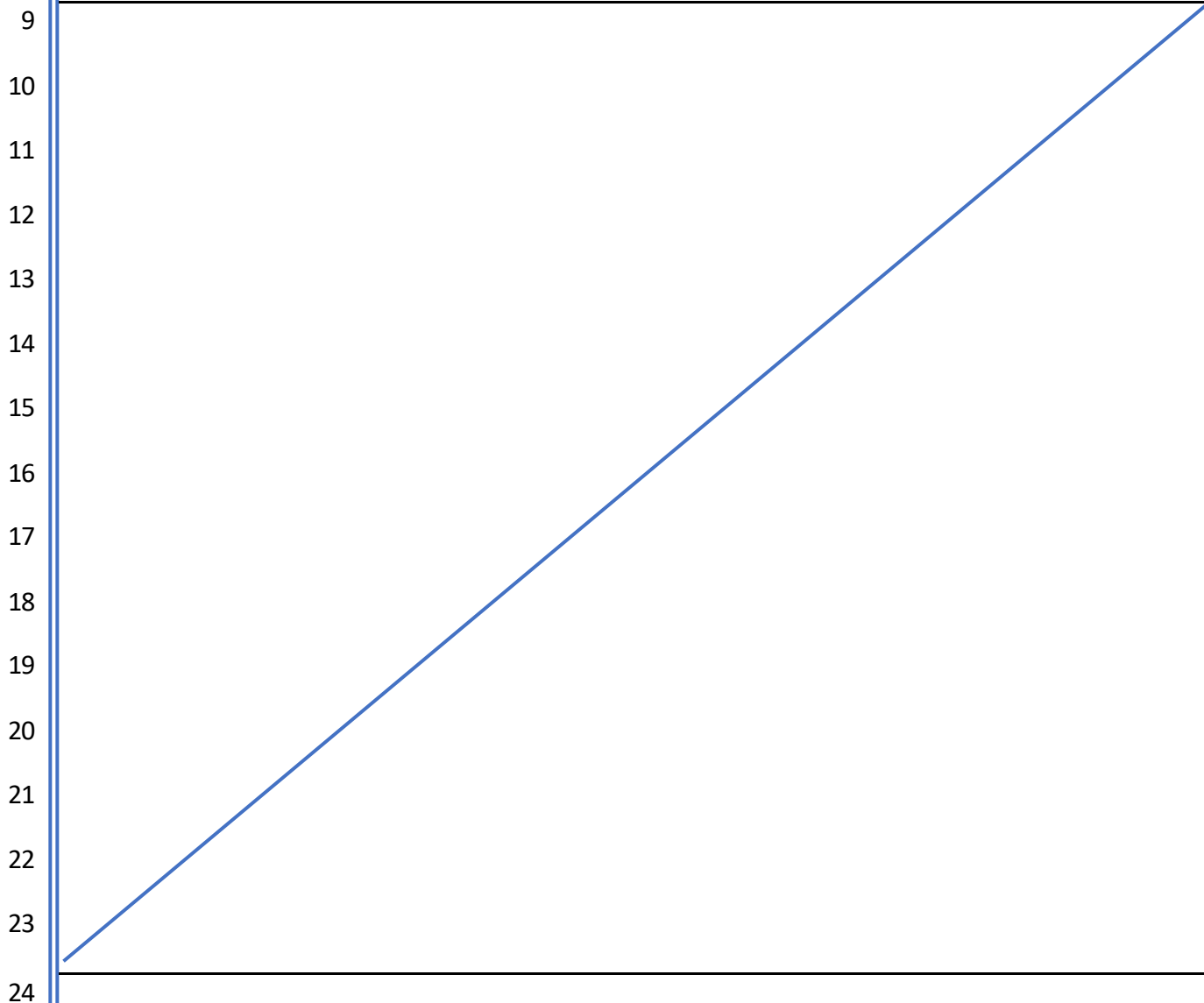
APPROVAL RECOMMENDED

Attorney, Department of Transportation

DIVISION OF RIGHT OF WAY

1 To acquire, in the name of the People of the State of California, in fee simple
2 absolute, unless a lesser estate is hereinafter expressly described, the said hereinafter
3 described real property, or interests in real property, by condemnation proceeding or
4 proceedings in accordance with the provisions of the Streets and Highways Code, Code of
5 Civil Procedure and of the Constitution of California relating to eminent domain;

6 The real property or interests in real property, which the Department of
7 Transportation is by this resolution authorized to acquire, is situated in the County of Yuba,
8 State of California, Highway 03-Yub-70 and described as follows:



PARCEL 37130-1: For State highway purposes, all that real property situated in the unincorporated area of the County of Yuba, State of California, being a portion of Parcel 1 as said parcel is shown on Parcel Map No. 6.85 filed in Book 23 of Maps, at Page 1, Yuba County Records, said portion being all that part lying easterly of the following described line:

BEGINNING at a 1/2 inch rebar with plastic cap stamped "RCE 18842" in lieu of a 1/2 inch rebar with cap stamped "LS 3341" marking a point on the westerly right of way line of State Route 70, also being the southeasterly corner of Parcel 1 as shown on Parcel Map No. 79-18 filed in Book 30 of Maps, at Page 45, Yuba County Records, said point lying South 2°11'40" East 560.00 feet from a 3/4 inch open iron pipe marking the northeasterly corner of said Parcel 1; THENCE from said point of beginning leaving said westerly right of way line along the southerly line of said Parcel 1, North 84°52'59" West 15.68 feet to a point thereon, said point being the beginning of a non-tangent curve to the right having a radius of 4980.00 feet to which point a radial line bears South 89°03'02" East; THENCE leaving said southerly line southerly along said curve through a central angle of 5°33'08" an arc distance of 482.57 feet; THENCE South 6°30'06" West 2019.43 feet to the beginning of a curve to the left having a radius of 5125.00 feet; THENCE along said curve through a central angle of 4°41'36" an arc distance of 419.80 feet; THENCE South 1°48'30" West 650.95 feet; THENCE South 3°32'30" West 351.42 feet; THENCE South 2°48'13" West 428.46 feet; THENCE South 2°27'52" West 844.15 feet to the beginning of a non-tangent curve to the right having a radius of 4980.00 feet to which point a radial line bears South 87°11'47" East; THENCE southerly along said curve through a central angle of 4°45'06" an arc distance of 413.01 feet; THENCE South 7°33'19" West 3214.07 feet; THENCE South 7°35'11" West 1141.07 feet to the beginning of a non-tangent curve to the left having a radius of 18070.00 feet to which point a radial line bears North 82°20'09" West; THENCE southerly along said curve through a central angle of 1°25'44" an arc distance of 450.61 feet; THENCE South 6°14'07" West 760.15 feet to the beginning of a curve to the left having a radius of 18070.00 feet; THENCE along said curve through a central angle of 1°46'39" an arc distance of 560.61 feet; THENCE South 4°27'28" West 687.52 feet to the beginning of a curve to the left having a radius of 18070.00 feet; THENCE along said curve through a central angle of 1°22'22" an arc distance of 432.93 feet; THENCE South 3°05'06" West 5822.47 feet; THENCE South 3°47'08" West 397.72 feet; THENCE South 2°44'31" West 292.89 feet to a point on the northerly line of Parcel A as said parcel is described in Lot Line Adjustment 94-08 recorded on September 6, 1994 in Document No. 94-10787, Official Records, Yuba County Records; THENCE along said northerly line South 86°47'56" East 8.09 feet to a point thereon, said point being the beginning of a non-tangent curve to the left having a radius of 8351.75 feet to which point a radial line bears North 88°58'07" West; THENCE leaving said northerly line southerly along said curve through a central angle of 2°14'23" an arc distance of 326.48 feet; THENCE South 0°39'47" East 199.67 feet to the beginning of a curve to the right having a radius of 10630.00 feet; THENCE along said curve through a central angle of 3°15'29" an arc distance of 604.48 feet; THENCE South 2°35'42" West 53.27 feet to a point on the southerly line of Parcel C as said parcel is described in said Lot Line Adjustment 94-08; THENCE along said southerly line South 86°57'19" East 11.92 feet to the point of intersection thereof with the westerly right of way line of State Route 70, said point being the POINT OF TERMINUS, said point lying North 2°48'06" East 191.99 feet from a 5/8 inch rebar with plastic cap stamped "RCE 18003" marking a point on said westerly right of way line and the northeasterly corner of Parcel 1 as shown on Parcel Map No. 89-04, filed in Book 51 of Maps, at Pages 35 and 36, Yuba County Records.