

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: July 25-26, 2007

Reference No.: 2.4a.(2)  
Action Item

From: CINDY McKIM  
Chief Financial Officer

Prepared by: Bimla G. Rhinehart  
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 C-19664 summarized on the following page.

## **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 project.
2. The project is planned and located in a manner that will be most compatible with the greatest public good with 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 to discuss the outstanding issue, which is that the project will increase traffic volumes at the driveway and will create unsafe left turns to enter and exit the property.

## **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 the owner may subsequently be entitled. Adoption of the resolution will not interrupt the Department's efforts to secure 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.

C-19664 - La Verne Pat Brothers

10-Ama-88-PM 29.5 - Parcel 15567-1 - EA 499809.

Right of Way Certification Date: 07/01/07; Ready to List Date: 07/01/07. Conventional highway - add left-turn lane. Authorizes condemnation of land in fee for a State highway and underlying fee.

Located in the unincorporated area of Pioneer at 24655 SR 88.

Assessor's Parcel Number 031-050-038.

Attachments

## SUMMARY OF ISSUES

The property owner, La Verne Pat Brothers, has expressed through her representatives, that she does not contest the purpose and need for the project. However, concerns were expressed regarding safe access to the property.

The following is a description of the concerns expressed by representatives of the property owner, followed by the Department's response.

### **Owner:**

The owner believes that there are safety issues relating to potential conflicts in turning movements. The project will increase traffic volumes at the driveway and will create unsafe left turns to enter and exit the property.

### **Department Response:**

The purpose of this project is to address an identified safety concern with regard to left turning vehicles at the State Route (SR) 88/Defender Grade Road intersection. The construction of the proposed two-way left turn lane stretching from the Defender Grade Road intersection and the driveway to the Brothers property is intended to make turning movements safer in all directions by providing a refuge for left turning traffic onto and off of the highway.

The project will provide a two-way left turn pocket for SR 88 traffic.

- Turning onto Defender Grade Road.
- Turning into the school and the Brothers' driveway.
- Turning into the Sutter Health Clinic.

People entering the health clinic and the school site will continue to frequent the facilities as their needs dictate. The addition of the left turn lane will not increase volumes to the driveways.

### **Owner:**

The relocation of the power pole and installation of a paved drainage inlet at the Brothers' driveway has removed a "barrier" which caused incoming traffic to slow down.

### **Department Response:**

The Department is providing a clear recovery zone by relocating the power pole. The Department is replacing a hole used to collect drainage water with a standard drainage inlet and will not pave around the recessed drainage inlet, to act as a visual deterrent. There will be a clear separation of the health clinic and the Brothers' driveways.

### **Owner:**

The property owner contends that this project will promote more left turn movements across the property to the school driveway.

**Department Response:**

Traffic volumes to the school should stay the same. The school has purchased an adjacent property and has constructed a second driveway west of the shared driveway with Brothers. The additional driveway will allow vehicles to enter the school from the Brothers' driveway, drop off their children, and exit out of the new driveway, therefore reducing the traffic volume at each driveway.

**Owner:**

Parents are parking on SR 88 to pick up children from school. The property owner voiced concern about inadequate sight distances for pedestrian crossings.

**Department Response:**

The property owner raised the issue of the vehicles of school parents blocking or obstructing the Brothers' driveway during certain times of the day. The Department's Design representatives proposed the consideration of placing a no-parking zone along the north side of SR 88 that would cover the east driveway to Pioneer School, the Brothers driveway, and the driveway to the Sutter Health Clinic. The property owner appeared to be receptive to this proposal. Design has since incorporated no-parking road signs into the project plans that will establish this no-parking zone and will improve sight distance.

**Owner:**

The current project will not prevent vehicles from parking in the driveway area and has asked for delineation and signing to prevent this.

**Department Response:**

The project proposed to place standard delineation and "No Parking" signs along SR 88. The Department cannot control parking on private property.

**Owner:**

The property owner proposed that the Department purchase an access easement, or fee, for the Pioneer School site, across the Brothers property, and relinquish the property to the school.

**Department Response:**

Ms. Brothers does own the property on which the driveway for Pioneer School accesses SR 88. A review of the title report for the Brothers property does not show a recorded easement for the school to access SR 88 across their property. The property owner has given verbal permission for Pioneer School to use the driveway. The property owner may grant an easement for such use at anytime. It would be a private property transaction, not required by the State's highway Safety Project.

The Department is not in the business of purchasing excess property to give it away. The Departments' acquisition of property is restricted to the purchase of property that is necessary for the construction of the project.

## Resolution of Necessity Appearance Fact Sheet

**PROJECT DATA** 10-Ama-88-PM 29.48  
Expenditure Authorization (EA) 499809

Location: State Route (SR) 88 in Amador County, in the town of Pioneer

Limits: At the intersection of Defender Grade Road

Cost: Programmed construction cost: \$1,360,000  
Current right of way cost estimate: \$824,000

Funding Source: 2004 SHOPP, Highway Safety Improvement Program (201.010)

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

Proposed  
Major Features: Widening for two-way left turn lane and shoulders

Traffic: Existing (year 2006): 10,900 Average Annual Daily Traffic (AADT)  
Proposed (year 2027): 11,300 AADT

### PARCEL DATA

Property Owner: La Verne Pat Brothers

Parcel Location: On the north side of SR 88, approximately 460 feet east of the  
Defender Grade Road intersection  
24655 Highway 88, Pioneer  
Assessor's Parcel Numbers 031-050-038

Present Use: Driveway to a rural residence and Pioneer Elementary School  
Zoned Residential Suburban (R-S)

Area of Property: 6.14 acres

Area Required: Parcel 15567-1 = .026 acres (1,307 square feet) in fee

## **RESOLUTION OF NECESSITY REVIEW PANEL REPORT**

The Condemnation Review Panel (Panel) met at the Department of Transportation's (Department) Sacramento Headquarters office on May 22, 2007. The Panel members include Donald Grebe, Department Headquarters (HQ) Division of Right of Way and Land Surveys; Richard B. Williams, 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, La Verne Pat Brothers, were John Brothers and Mr. Steven P. Belzer, legal counsel for the property owner.

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 property owner does not contest the purpose and need for the project. The outstanding concern of the Brothers family is that the project will increase traffic volumes at the driveway and will create unsafe left turns to enter and exit the property.

### **NEED FOR THE PROJECT**

This safety project was initiated to address an identified pattern of westbound rear-end collisions due to left turn movements from State Route (SR) 88 to Defender Grade Road. To address this collision pattern, it was determined that a left turn lane should be constructed for westbound traffic on SR 88. During development of the project, it was decided to stripe part of the turn lane as a two-way left turn lane in the area of the Brothers and Sutter Health Clinic driveways in order to reduce potential traffic congestion by allowing for eastbound left turning vehicles to make their turning movements from the turn lane, rather than the eastbound through lane.

The project will construct a two-way left turn lane to allow drivers to pull out of the through lane and wait for a gap in the westbound traffic so that they can make a safe turning movement. The project will also construct standard eight-foot shoulders on both sides of the highway within the project's limits. All existing driveways will be perpetuated.

Since this is a safety project, it is the Department's highest priority. It is consistent with the Department's goal to "provide the safest transportation system in the nation for users and workers."

### **PROJECT PLANNING AND LOCATION**

SR 88 is one of three major State highways that provide access to the Sierras, Sierra ski resorts, and Lake Tahoe Basin from the Central Valley. The route traverses through San Joaquin, Calaveras, Amador, and Alpine Counties. The route is designated as a scenic highway from Dewdrop Ranger Station to the Nevada State line. SR 88 is part of the Statewide Bicycle Route System and is considered the best route for bicycle travel over the Sierras from the Central Valley, starting at SR 99 in Stockton to the Nevada State line near Markleeville. The Route Concept Report documents that peak bike traffic on SR 88 was 500 cyclists per week in 1980 and was forecasted to increase to 600 cyclists per week by the year 2000.

SR 88 is functionally classified a Principal Arterial for its entire length. For this project location, it is in the Freeway/Expressway System (F & E), on the Interregional Road System (IRRS) and the National Highway System (NHS); however, is not considered a High Emphasis or Focus Route. Also, it is not on the Strategic Highway Network (STRAHNET) and the National Network for Surface Transportation Assistance Act (STAA) Route.

Defender Grade Road is a two lane county road that connects to SR 88 at an at-grade “tee” intersection (37 degree skew), in the community of Pioneer, about 2.5 miles east of the junction of SR 88 and SR 26. SR 88 at this location is a two-lane roadway consisting of two 11-foot lanes with varying shoulder width from zero to five feet. Throughout the length of this segment, State right of way is typically by prescriptive rights only.

### **NEED FOR SUBJECT PROPERTY**

The Brothers parcel is required for the SR 88 Defender Grade Road Intersection Safety Improvement project. The acquisition of said parcel is needed to relocate an existing utility pole, guy wire, and overhead utility lines that are currently within the Department’s standard clear recovery zone. Shielding of the pole is not feasible due to its location between two existing driveways. There is insufficient room for the installation of a standard crash cushion or guardrail approach and such an installation may affect sight distance at the driveways. Relocating the utility lines underground would be difficult due to the steepness of the surrounding terrain and the existence of several archeological sights within the project limits.

The parcel is located on the north side of SR 88 approximately 460 feet east of the Defender Grade Road intersection. The fee acquisition is a long, narrow triangle of land, with a depth of 17.5 feet and a length of 124 feet, with an area of 0.06 acres. The proposed acquisition area is used as a driveway for the Brothers’ land and the Pioneer Elementary School.

The following is a description of the concerns expressed by the owner, followed by the Department’s response:

#### **Owner:**

The owner believes that there are safety issues relating to potential conflicts in turning movements. The project will increase traffic volumes at the driveway and will create unsafe left turns to enter and exit the property.

#### **Department Response:**

The purpose of this project is to address an identified safety concern with regard to left turning vehicles at the SR 88/Defender Grade Road intersection. The construction of the proposed two-way left turn lane stretching from the Defender Grade Road intersection and the driveway to the Brothers property is intended to make turning movements safer in all directions by providing a refuge for left turning traffic onto and off of the highway.

The project will provide a two-way left turn pocket for SR 88 traffic.

- Turning onto Defender Grade Road.
- Turning into the school and the Brothers' driveway.
- Turning into the Sutter Health Clinic.

People entering the health clinic and the school site will continue to frequent the facilities as their needs dictate. The addition of the left turn lane will not increase volumes to the driveways.

**Owner:**

The relocation of the power pole and installation of a paved drainage inlet at the Brothers' driveway has removed a "barrier" which caused incoming traffic to slow down.

**Department Response:**

The Department is providing a clear recovery zone by relocating the power pole. The Department is replacing a hole used to collect drainage water with a standard drainage inlet and will not pave around the recessed drainage inlet, to act as a visual deterrent. There will be a clear separation of the health clinic and the Brothers' driveway.

**Owner:**

The property owner contends that this project will promote more left turn movements across the property to the school driveway.

**Department Response:**

Traffic volumes to the school should stay the same. The school has purchased an adjacent property and has constructed a second driveway west of the driveway with Brothers. The additional driveway will allow vehicles to enter the school from the Brothers' driveway, drop off their children, and exit out of the new driveway, therefore reducing the traffic volume at each driveway.

**Owner:**

Parents are parking on SR 88 to pick up children from school. The property owner voiced concern about inadequate sight distances for pedestrian crossings.

**Department Response:**

The property owner raised the issue of the vehicles of school parents blocking or obstructing the Brothers' driveway during certain times of the day. The Department's Design representatives proposed the consideration of placing a no-parking zone along the north side of SR 88 that would cover the east driveway to Pioneer School, the Brothers driveway, and the driveway to the Sutter Health Clinic. The property owner appeared to be receptive to this proposal. Design has since incorporated no-parking road signs into the project plans, which will establish this no-parking zone and will improve sight distance.

**Owner:**

The current project will not prevent vehicles from parking in the driveway area and has asked for delineation and signing to prevent this.

**Department Response:**

The project proposed to place standard delineation and “No Parking” signs along SR 88. The Department cannot control parking on private property.

**Owner:**

The property owner proposed that the Department purchase an access easement, or fee, for the Pioneer School site, across the Brothers property, and relinquish the property to the school.

**Department Response:**

Ms. Brothers does own the property on which the driveway for Pioneer School accesses SR 88. A review of the title report for the Brothers property does not show a recorded easement for the school to access SR 88 across their property. The property owner has given verbal permission for Pioneer School to use the driveway. The property owner may grant an easement for such use at anytime. It would be a private property transaction, not required by the State’s highway Safety Project.

The Department is not in the business of purchasing excess property to give it away. The Department’s acquisition of property is restricted to the purchase of property that is necessary for the construction of the project.

**PARCEL DESCRIPTION**

The subject parcel is located at 24655 State Highway 88, Assessor’s Parcel Number 031-050-038, in the town of Pioneer in Amador County. Access to the parcel is from SR 88. This larger parcel has an area of 6.14 acres and is improved with a single-family dwelling. An area of 0.026 acres is needed for this project. The remainder of the parcel will not be acquired and the parcel’s access to SR 88 would be perpetuated. The building improvements on the larger parcel are not impacted by the proposed project.

The required area includes asphalt paving and replacement of a new fence end post, as well as the relocation of two signs, an address signpost, utility pole, and fire lane sign.

**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 Government Code Section 7267.2.

**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 California Transportation 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 MAY 22, 2007**

Donald Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair  
Richard B. Williams, 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

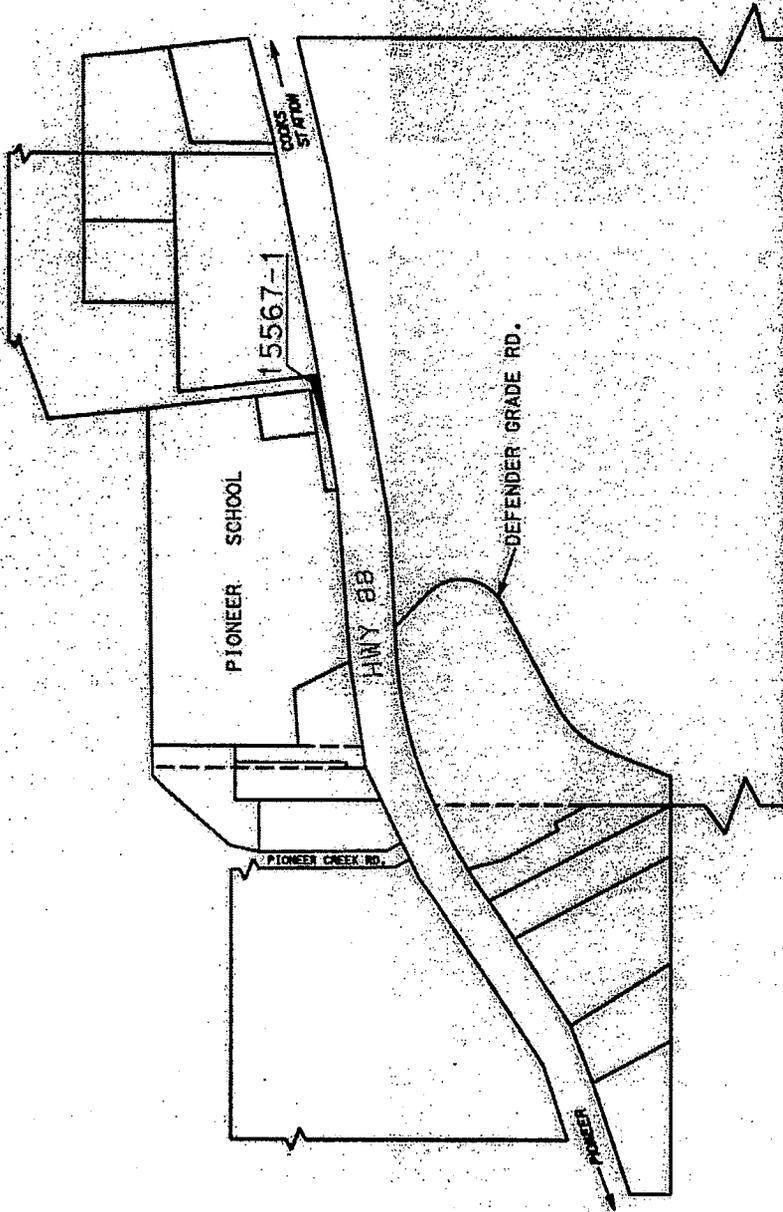
John Brothers, Owner  
Steven P. Belzer, Attorney for the Owner

Kome Ajise, District 10 District Director  
Dennis T. Agar, District 10 Program/ Project Manager  
Terry Ogle, Central Region Design  
Mark Orr, Central Region Design  
Grace Magsayo, District 10, Project Manager  
Michael Rodrigues, Central Region Right of Way  
Sharon Parsons, Central Region Right of Way

AMADOR COUNTY  
TOWN OF PIONEER



EXHIBIT B



RESOLUTION OF  
NECESSITY MAP

INDEX MAP

29 AMA 88 PM 29.5 KP 47.5



EXHIBIT C

T. 7N. R. 13E. M. D. B. M.  
AMADOR COUNTY  
SECTION 29

LEGEND

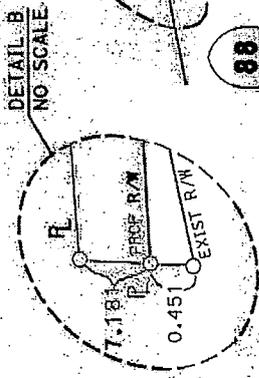
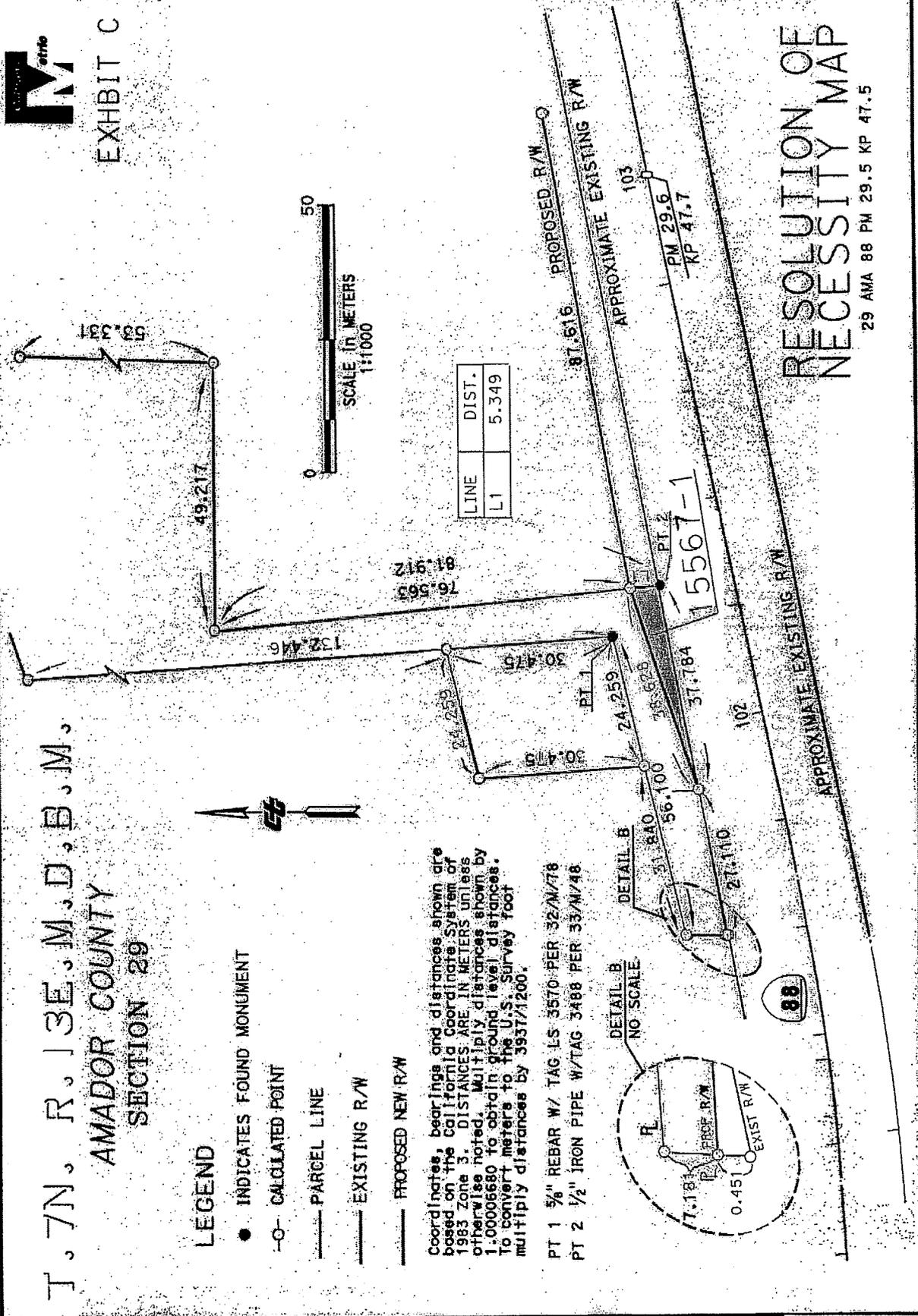
- INDICATES FOUND MONUMENT
- CALCULATED POINT
- PARCEL LINE
- EXISTING R/W
- PROPOSED NEW R/W

Coordinates, bearings and distances shown are based on the California Coordinate System of 1983 Zone 3. DISTANCES ARE IN METERS unless otherwise noted. Multiply distances shown by 1.0006680 to obtain ground level distances. To convert meters to the U.S. Survey foot multiply distances by 3937/1200.

PT 1 5/8" REBAR W/ TAG LS 3570 PER 32M/78  
PT 2 1/2" IRON PIPE W/TAG 3488 PER 35M/76



LINE	DIST.
L1	5.349



RESOLUTION OF  
NECESSITY MAP

29 AMA 88 PM 29.5 KP 47.5