

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: May 19-20, 2010

Reference No.: 2.4a.(1)
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Tony Tavares
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 Resolutions of Necessity (Resolution) C-20329 and C-20330 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 proposed project.
2. The proposed project is planned and located in a manner that will be most compatible with the greatest public good and the least private injury.
3. This property is necessary for the proposed project.
4. An offer to acquire the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property owners are contesting the Resolutions and have requested an appearance before the Commission. The property owners believe that the project, as proposed, is not compatible with the greatest public good and the least private injury, and that the acquisition of these properties could be avoided by redesigning the project to minimize impacts on the west side of existing Highway 70. The owners' objections and the Department's responses are contained in Attachments B and C.

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 the Resolutions 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 this time. Adoption will

assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

Extensive discussions have been ongoing between the property owners and the Department to address and resolve the issues, but these efforts have proven unsuccessful. Based on this impasse, the Department is requesting that these appearances proceed to the May 19-20, 2010 Commission meeting. Legal possession will allow construction activities on the parcels to commence, thereby avoiding and/or mitigating considerable right of way delay costs that will accrue if efforts to initiate the condemnation process are not taken immediately to secure timely legal possession of the subject properties.

C-20329 - Norma A. Akers, Trustee of the Norma A. Akers Revocable Trust

03-But-70-PM 5.36 - Parcel 035588-1 - EA 0E9309.

Right of Way Certification (RWC) Date: 10/15/10; Ready to List (RTL) Date: 10/15/10.

Conventional highway - construction of passing lanes on Route 70 in Butte County from 0.7 mile south of East Gridley Road to 0.4 mile north of Cox Lane. Authorizes condemnation of land in fee for a State highway. Located near the town of Oroville at 2147 Highway 70.

Assessor's Parcel Number (APN) 025-330-005.

C-20330 - Clint Akers, et ux

03-But-70-PM 5.45 - Parcel 035589-1 - EA 0E9309.

RWC Date: 10/15/10; RTL Date: 10/15/10. Conventional highway - construction of passing lanes on Route 70 in Butte County from 0.7 mile south of East Gridley Road to 0.4 mile north of Cox Lane. Authorizes condemnation of land in fee for a State highway. Located near the town of Oroville at 2147 Highway 70. APN 025-330-006.

Attachments:

Attachment A - Project Information

Exhibit A1 through A3 - Project Maps

Attachment B - Parcel Panel Report for Norma A. Akers Property (Resolution C-20329)

Exhibit B1 through B3 - Norma Akers Parcel Maps and Photos

Attachment C - Parcel Panel Report for Clint & Gwen Akers Property (Resolution C-20330)

Exhibit C1 through C3 - Clint and Gwen Akers Parcel Maps and Photos

Exhibit D1 - Project Alignment Variation Map

PROJECT INFORMATION

PROJECT DATA	03-But-70 - PM 3.3/5.9 EA: 0E9309
<u>Location:</u>	State Route (SR) 70 in Butte County between Marysville and Oroville.
<u>Limits:</u>	From 0.7 miles south of East Gridley Road to 0.4 miles north of Cox Lane.
<u>Costs:</u>	Construction Cost: \$15,700,000 Right of Way Cost: \$3,200,000 Mitigation Cost: \$1,500,000
<u>Funding Source:</u>	2009/2010 STIP
<u>Number of Lanes:</u>	Existing: two-lane conventional highway Proposed: four-lane conventional highway with a continuous two-way left turn lane
<u>Proposed Major Features:</u>	No major features are proposed other than widened pavement for new passing and left turn lanes.

NEED FOR THE PROJECT

SR 70 is a major commute route within urbanized and rural areas in Yuba and Butte Counties. This conventional highway is one of the primary farm-to-market routes for most of the agricultural products grown in the Sacramento Valley.

Traffic volumes and congestion on this highway have increased, based on greater use by commuters, farmers, truckers, and recreational vehicles. Congestion has also increased due the high volume of slow-moving commercial vehicles and large recreational vehicles now using this roadway. With increased traffic volumes, there is less opportunity to safely pass slower moving vehicles. This inability to pass restricts vehicular speed and maneuverability, and thus results in a heightened level of congestion. At present, the majority of SR 70 is a two-lane conventional highway with interspersed passing lanes.

The Department and Butte County Association of Governments (BCAG) propose to add passing lanes and turn channelization by widening the existing highway on the current SR 70 alignment in Butte County, south of Oroville. The total length of the proposed project is 2.7 miles. The purpose of the project is to provide a four-lane facility with a continuous left turn lane. This will provide passing and turning opportunities in both

directions, while reducing travel delay, enhancing safety, and incrementally addressing the growing needs of the regional transportation system.

The Interregional Transportation Strategic Plan identifies this portion of SR 70, between its junction with SR 99 in Sutter County and SR 149 in Butte County, as a High Emphasis Focus Route. The current average daily traffic count (ADT) of 17,000 is expected to increase to 32,000 over the next 20 years. The functional capacity of a two-lane highway in this range of ADT begins to break down during peak periods, necessitating capacity improvements such as those currently proposed to maintain operational efficiencies and safety on this segment of SR 70.

In regards to safety, collision rates on this segment of SR 70 are currently below the statewide average when compared to facilities with similar characteristics. However, there has been concern expressed by the driving public that the existing northbound passing lane located just north of the project limits, is not able to accommodate pent-up passing demand, resulting in unsafe passing maneuvers. The proposed project would address this concern by: 1) reducing the passing demand with the addition of lanes at the East Gridley Road intersection and 2) extending the existing northbound passing lane length from 0.6 miles to 2.6 miles.

Overall, this project will reduce travel delays and enhance safety by upgrading SR 70 from a two-lane to a four-lane conventional highway, with a continuous two-way left turn lane to facilitate left turn movements. The northbound passing lane will be extended and a southbound passing lane will also be added. There will also be minor adjustments in the existing alignment (reducing curve radius) to improve sight distance and safety. This project provides the ultimate facility configuration for this segment of SR 70, and is consistent with the Transportation Corridor Concept Plan.

PROJECT PLANNING AND LOCATION

Concerns expressed by impacted property owners were taken into consideration during the project development process, and efforts were taken by the Department to minimize the acquisition of needed right of way on this project. Steps were taken to design this project with minimum standards for sideslope, ditch type, ditch width, and median width to meet the project scope. These design features contributed to a reduced right of way footprint. The final alignment was selected to maximize the greatest public good and least private injury, balancing a variety of criteria. Factors taken into consideration were the amount of property acquired relative to overall property size, impacts to environmental resources, overall costs, and the impacts to an existing school site (Feather River School), all while meeting minimum design standards.

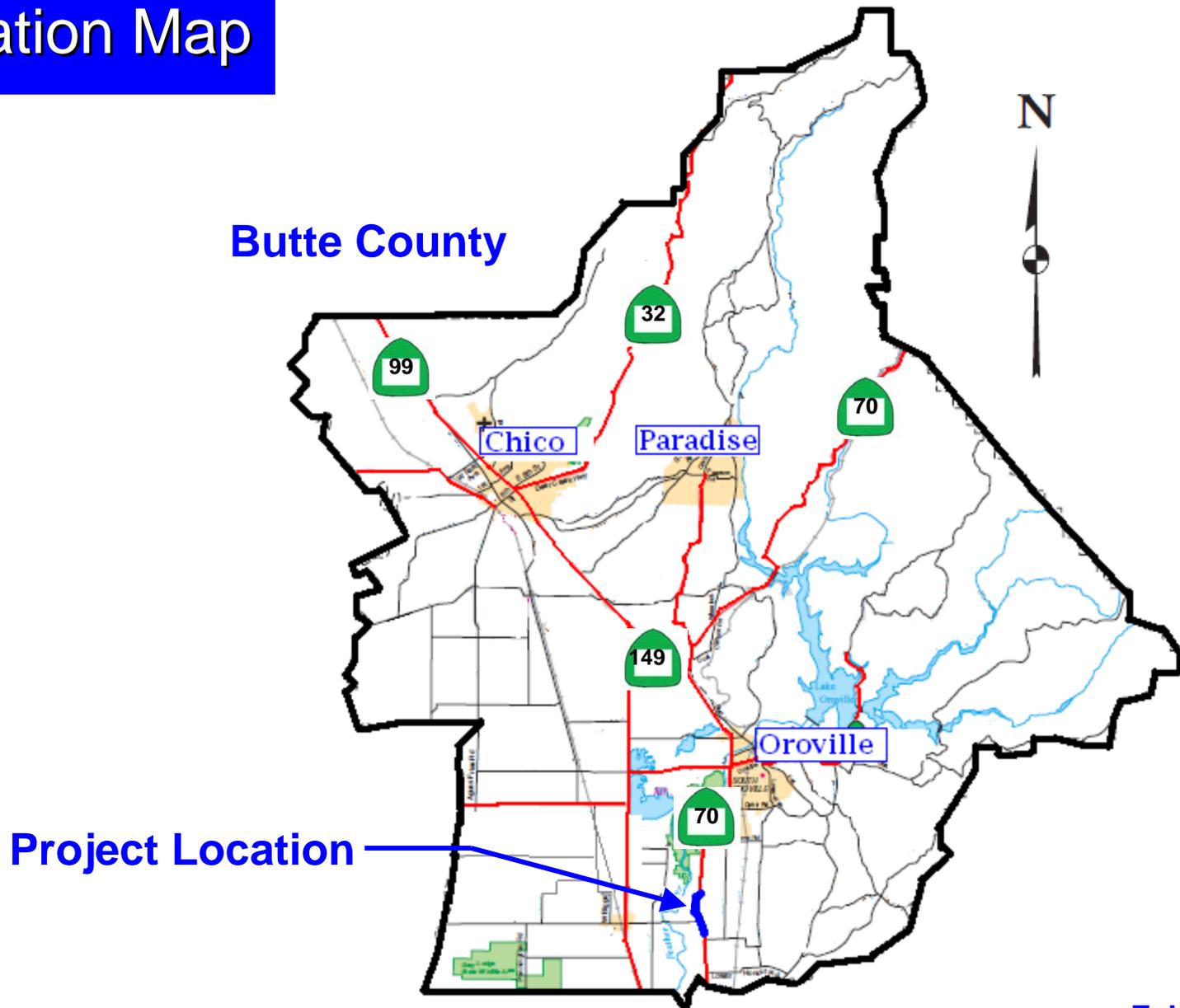
Various design proposals have been studied for this segment of SR 70, including a Northbound Passing Lane Project, favored by some impacted property owners, including the Akers. The northbound passing lane options, studied in the Project Study Report

(PSR) phase, were all located on the existing alignment. These passing lane proposals were studied during the Planning phase, and did not include widening the highway to four lanes, or a southbound passing lane, and were considered an interim project for this area.

During the PSR phase, BCAG who is partially funding this project, acquired additional funding and decided that they wanted to build the “ultimate facility” for this segment of SR 70 in accordance with the Transportation Corridor Concept Report (TCCR). On or about March 1, 2008, the Department signed a Letter of Agreement with the Executive Director of BCAG. Part of this agreement states that *“the Department agrees with BCAG to the significance of the Route 70 corridor, the Department will support the BCAG position to add \$3 million RIP to the Route 70 Passing Lanes for the scope increase....”*. This additional funding changed the scope of the project from the interim “passing lane only” project, to the “ultimate project” envisioned under the TCCR. Because the “ultimate project” design addressed the overall needs for this route segment, it was viewed as a preferred solution to the “passing lane only” projects. The examined alternatives never progressed past the PSR stage, as they were later rejected in favor of other alternatives, including the final alignment, which addressed both operational needs in the immediate area, and the ultimate facility needs as outlined in the TCCR.

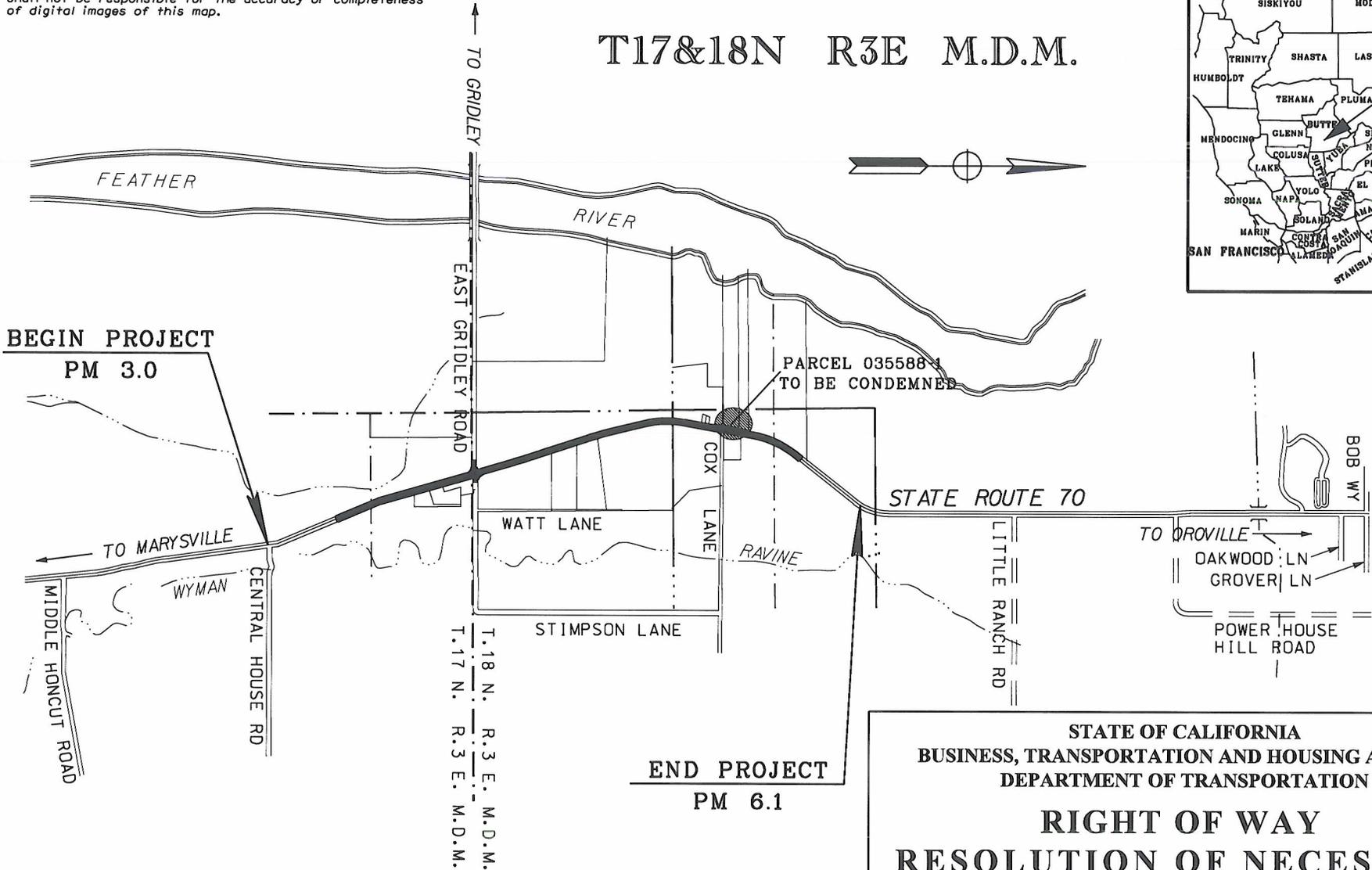
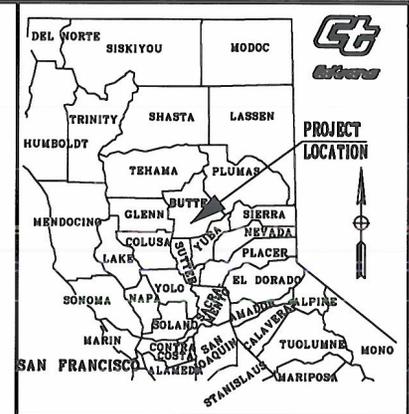
A Project Report addressing the above-referenced improvements to existing SR 70 was signed on March 3, 2008 and the environmental document for this project was signed on February 27, 2008. The Right of Way Certification and “Ready To List” Dates are currently targeted for October 15, 2010. Advertising of the construction contract is planned for December 15, 2010. It is currently anticipated that the contract will be awarded in April 2011. The project is scheduled to begin construction in May 2011, with targeted completion in November 2013.

Location Map



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.

T17&18N R3E M.D.M.



STATE OF CALIFORNIA
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY
 DEPARTMENT OF TRANSPORTATION

**RIGHT OF WAY
 RESOLUTION OF NECESSITY**

EXHIBIT A

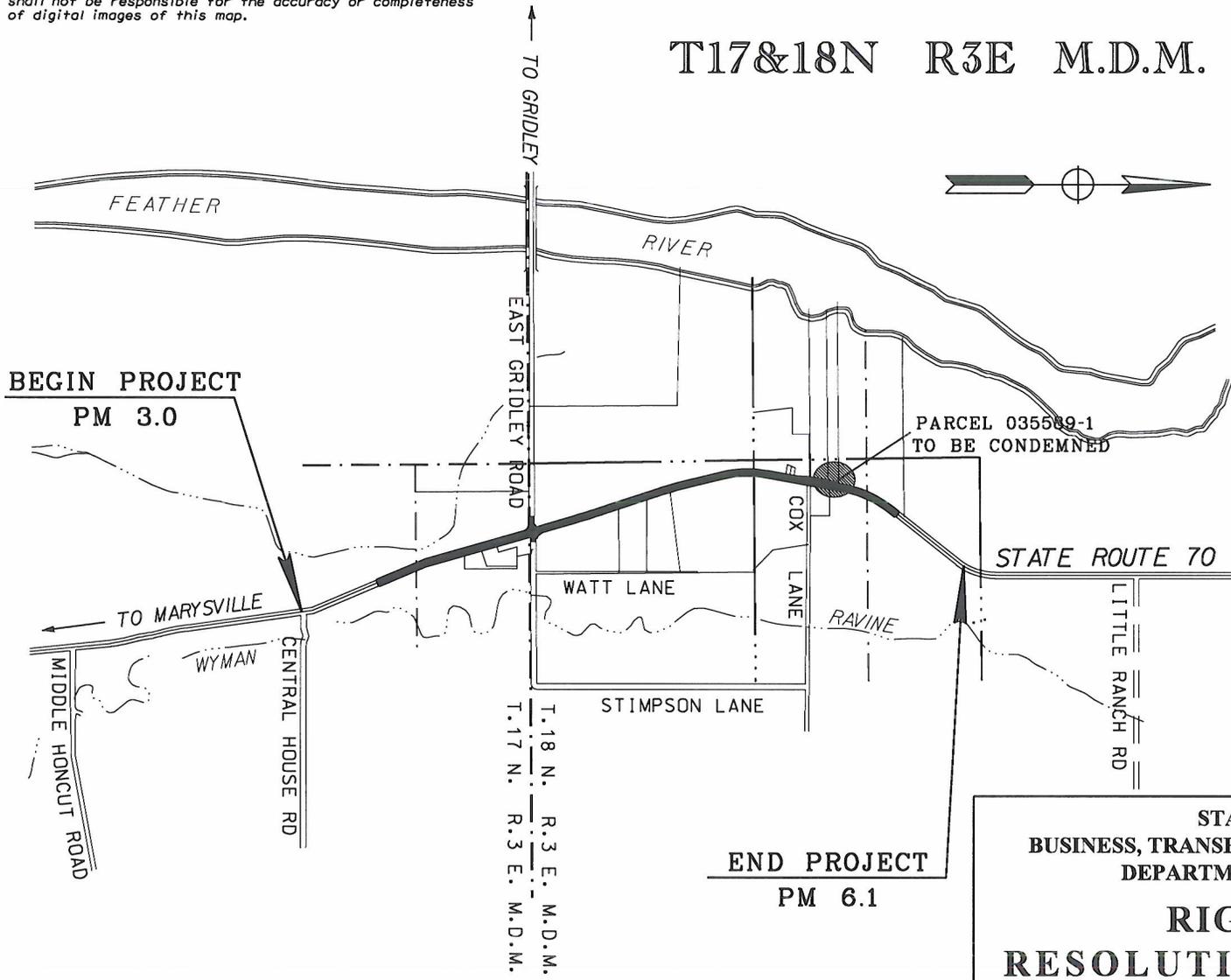
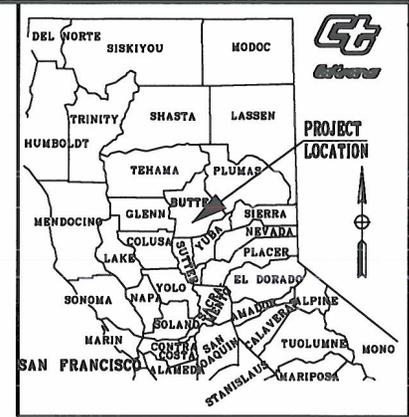
NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
03	BUT	70	3.0/6.1	C-0E930-02	1 OF 2

Exhibit A2

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.

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STATE OF CALIFORNIA
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY
 DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY RESOLUTION OF NECESSITY

EXHIBIT A

NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
03	BUT	70	3.0/6.1	C-0E930-03	1 OF 2

Exhibit A3

Exhibit A3

PARCEL PANEL REPORT

PARCEL DATA

<u>Property Owner:</u>	Norma A. Akers, Trustee
<u>Parcel Location:</u>	Approximately 500 feet (ft) north of Cox Lane on west side of existing State Route (SR) 70 Assessor Parcel Number (APN): 025-330-005
<u>Present Use:</u>	Agriculture with Home Site
<u>Area of Property:</u>	62.07 acres
<u>Area Required:</u>	Parcel 035588-1: 0.534 acre (Fee)

PARCEL DESCRIPTION

This appearance request addresses Parcel 035588-1, which is owned by Norma A. Akers, Trustee of the Norma A. Akers Revocable Trust. This property is generally level, and comprises 62.07 acres. The subject parcel is zoned “U”, or “Unclassified”, as per the Butte County Planning Department. This property is currently utilized for agricultural and home site uses. These uses represent the highest and best use of the property at the present time.

The subject property is currently improved with one single-family residence, with a majority of the parcel being used for agricultural purposes including irrigated pasture, and the cultivation of hay/alfalfa. This property currently has direct access to SR 70 along its eastern boundary.

NEED FOR SUBJECT PROPERTY

The right of way area on the subject parcel is required for construction of the widened SR 70 roadway and related drainage ditches, driveway improvements, and utility relocation activities. Given property owner concerns expressed during the project development process, the California Department of Transportation (Department) has made a concerted effort to minimize the project footprint where possible, in the hopes of minimizing or mitigating potential impacts to all properties located within the project corridor.

The Department took property owner concerns into consideration during the design process, and labored to minimize the right of way areas required for construction of the current project. Steps were taken to minimize areas needed for side slope, ditch type,

ditch width, and center median width. The final alignment was selected to maximize the greatest public good and least private injury, all while balancing a variety of criteria. Factors taken into consideration were the amount of property acquired relative to the overall size of each affected property, minimizing impacts to sensitive environmental resources, minimizing overall costs, and minimizing the impacts to a nearby school site.

The proposed project requires a fee acquisition of 0.534 acre from the Akers property (or 0.8 percent of the current property size). This right of way requirement abuts existing SR 70, and parallels the eastern boundary of the subject parcel. This generally rectangular-shaped right of way area has a maximum width of approximately 60 ft. Upon completion of the project, the Akers residence will be located approximately 250 ft from the new highway edge of traveled way (versus an existing distance of 300 ft).

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met in Marysville on January 5, 2010. The Department's Panel members included Donald Grebe, Panel Chair, Headquarters Division of Right of Way and Land Surveys; Joann Georgallis, Headquarters Legal Division; Linda Fong, Headquarters Division of Design; and Robert Dauffenbach, Headquarters Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property owners was Clint Akers.

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 has questioned the design and location of the project. The following is a description of the concerns expressed by the owner, followed by the Department's responses:

Owner:

Why didn't the Department proceed with constructing a Northbound Passing Lane Project only, which would minimize right of way impacts on the subject property?

Department:

It is the Department's responsibility to work with our transportation partners to plan, design, and construct this project in a manner that will be most compatible with the greatest public good and the least private injury, while adhering to regulatory mandates and all applicable laws, guidelines, and restrictions.

Various northbound passing lane options were studied in the Project Study Report (PSR) phase, and all were located on the existing alignment. During the PSR phase, the Butte

County Association of Governments (BCAG), which is partially funding this project, obtained additional funding and decided that they had sufficient funding to build the “ultimate” facility for this segment of SR 70, in accordance with the approved Transportation Corridor Concept Report (TCCR).

Because the design of the ultimate facility addresses the overall needs for this route segment, it is a preferred solution to the “passing lane only” concepts which would only address operational needs in the vicinity of the East Gridley Road intersection. Much of what would have been constructed for a “passing lane only” project would be of no use in building the “ultimate facility”. In addition, the Department would still need to acquire additional right of way from the subject property in the future, to accommodate construction of the “ultimate facility”. A northbound passing lane only project has never been an option or alternative under study by BCAG or the Department, when considering how to construct the “ultimate facility”, as planned in the TCCR.

Owner:

Please confirm the location of vernal pools on the east side of existing SR 70 (specifically on the Daley property), and why the Department needs to minimize and balance impacts to these resources, and others, when designing the current project, instead of shifting the alignment eastward to avoid the subject property.

Department:

The Department provided Mr. Akers a copy of the Biological Opinion for this project, dated January 18, 2008, as prepared by the United States Department of the Interior, Fish and Wildlife Service Branch. Included with above, was a table depicting the location of United States Army Corps of Engineers Jurisdictional Wetlands located within the project area. The above materials identified and explained the locations of 23 vernal pools in the immediate area of the project, including those located on the Daley parcel. The above report also explained applicable laws and regulations regarding impacts to wetland areas, including those containing vernal pools. Minimizing and mitigating impacts to vernal pools and wetlands is required under State and Federal law, and as such, must be considered when designing transportation projects.

The Department analyzed three possible alignment variations to investigate potential impacts. Please refer to Exhibit D1 attached, for a visual depiction of these alternative alignments.

Alternative Alignment 1: This first variation focused on a “best geometric” design, meeting rural expressway standards with a single 5,000 ft radius curve. As depicted, this alignment would significantly increase right of way impacts on the Akers property. Note that the curve radius extends much farther westward, necessitating the acquisition of

additional right of way and pushing the new alignment much closer to the residential improvements located on the subject property.

Alternative Alignment 2: This second variation focused on eliminating all impacts to the subject property by shifting the project alignment eastward near the East Gridley Road intersection, as had been requested by the Akers. By avoiding all impacts to the Akers property under this scenario, there would be a net increase in needed right of way of 2.4 acres to construct the project. In addition, this shift in the proposed alignment would necessitate a 1.7 acre increase in impacts to vernal pool habitat on the Daley parcel, which could result in increased project costs of over \$1 million to mitigate for these environmental impacts. In addition, such an alignment, while missing the subject property, increases right of way impacts on a private school site (Feather River School) while also potentially heightening noise and air quality impacts on this existing school site. In addition, to avoid acquiring any property from the subject parcel, the Department would need to disproportionately acquire a significantly greater amount of right of way from the owners located on the east side of the project.

Proposed Alignment: In an effort to balance impacts to all parcels located within the project corridor, the proposed alignment was designed to include two 2,500' radius curves. This meets design standards for a rural expressway in flat terrain (70 mph minimum). As noted previously, the Department took property owner concerns into consideration during the design of this alignment, and labored to minimize right of way areas required for construction of the proposed project. This proposed alignment still creates greater right of way impacts on the east side rather than the west side of existing SR 70 where the subject parcel is located.

Owner:

Repeated right of way acquisitions by the Department are devaluing the subject property.

Department:

According to Department records, right of way acquisitions affecting the subject property occurred in 1950, 1998, and now in 2010. Prior to 1950, a 60 ft right of way corridor crossed the subject parcel. In 1950, the Department acquired an additional easement to widen SR 70 to provide a 22 ft paved traveled way with roadside ditches. In 1998, the Department purchased additional right of way to add eight ft shoulders and improve the highway geometrics, while also improving drainage ditches. Currently, the Department is seeking to acquire right of way to widen the existing conventional highway from two-lanes to four-lanes, with a continuous left turn lane and eight ft wide shoulders. In addition, acquisition will also be used to improve highway geometrics and reconstruct side ditches. In total, the above right of way acquisition activities, including those undertaken at present, will only have extended the highway alignment 86 ft into the

subject property over a 60-year period. These right of way transactions by the Department since 1950 have totaled only 0.44 acre, or 2.2 percent of the subject property.

A detailed narrative appraisal was completed by Department appraisers to address currently proposed right of way impacts on the subject property. A complete copy of this appraisal was provided to the property owners. The property owners have elected not to retain an independent appraiser to evaluate these impacts in support of their contentions that the current acquisition will devalue their property. The Department continues to stand ready to review any such appraisals that may be obtained by the property owner, in the hope of facilitating ongoing efforts to reach a negotiated settlement. Such negotiations will continue in good faith, even after the condemnation process has been initiated. The property owner has been advised that the Commission does not consider issues of compensation which will either be resolved via continued negotiation or through the courts via the eminent domain process.

Owner:

Property owner made repeated references to historic flooding patterns in project area, and was worried that the current project would exacerbate this pre-existing problem.

Department:

Representatives from the Department's Hydraulics and Maintenance Divisions were consulted for information related to historic flooding patterns in the immediate area of the subject property. A Floodplain Risk Assessment Study, dated March 12, 2007, did in fact reference one historical location of nuisance flooding and shallow highway inundation within the project limit. This flooding resulted in several brief highway closures prior to 2000.

In 2000, historic highway cross drainage systems throughout the project limits were upgraded/replaced. These upgrades included increasing the size and capacity of the older pipes that had become damaged or deteriorated with age. In certain sections, the highway profile was also raised throughout the flood plain to eliminate non-standard vertical curves, which contributed to historic nuisance flooding episodes. There have been no reported instances of highway inundation since the upgrades and replacements facilities were installed and the highway profile elevated. As proof of these drainage improvements functioning well, there have been two significant storm events in the past four years (January 2005 & December 2005/January 2006), which did not result in any highway flooding at the above location.

It should also be noted that the highway profile adjacent to the subject parcel would be raised slightly, with the construction of the current project. This will result from overlaying existing highway pavement. The existing roadway is now elevated above the existing floodplain in the immediate area of the subject property.

Other planned drainage upgrades and/or replacements will further improve the drainage of this facility when the project is constructed, further reducing the likelihood of nuisance flooding and inundation at this location.

Based on the above drainage improvements, the Department has concluded that the current project will have no significant effect on potential flooding in the immediate area of the subject property.

DEPARTMENT CONTACTS

The following contacts have been made with the property owner:

Type of Contact	Number of Contacts
Telephone contacts	7
Personal meeting/contacts	6
Mailing of information	3
E-Mail of information	N/A
Telephone messages	4

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject properties and offered the full amount of the appraisal to the owners of record as required by Government Code Section 7267.2. The property owner has been notified that issues related to compensation are outside the purview of the 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 a manner that will be most compatible with the greatest public good and least private injury.
- The property rights to be condemned are necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the Commission.

DONALD E. GREBE
Chief
Office of Right of Way 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 JANUARY 5, 2010**

Donald E. Grebe, HQ Division of Right of Way and Land Surveys, Panel Chair
Linda Fong, HQ Division of Design, Panel Member
Joann Georgallis, HQ Legal Division, Panel Member
Robert Dauffenbach, HQ Division of Right of Way and Land Surveys, Panel Secretary
Clint Akers, Property Owner
Jody Jones, North Region District Director
Brent Green, District 3 Right of Way Office Chief
Tom Wood, District 3 Division of Design
Fermin Barriga, District 3 Division of Design

Project Impact

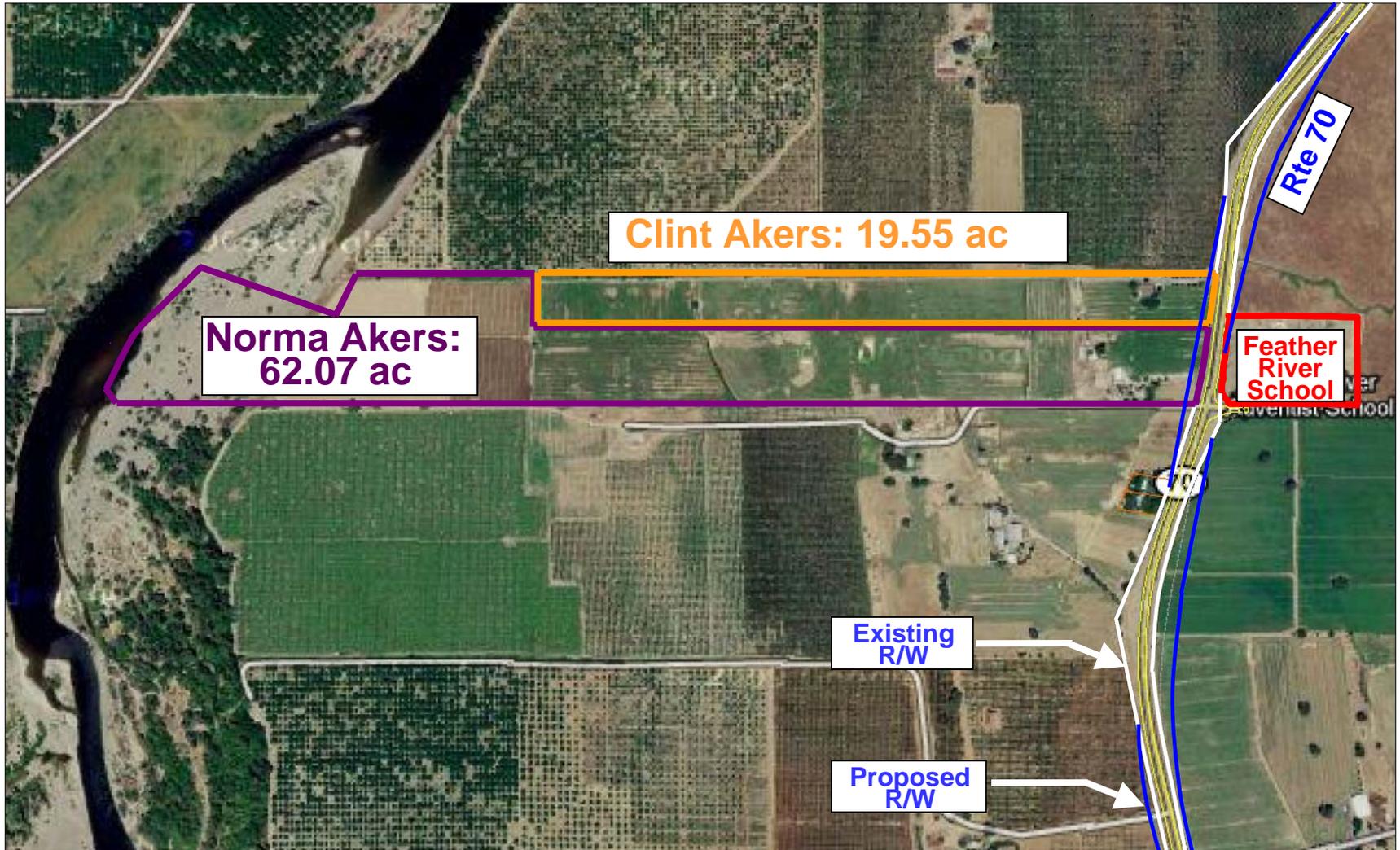
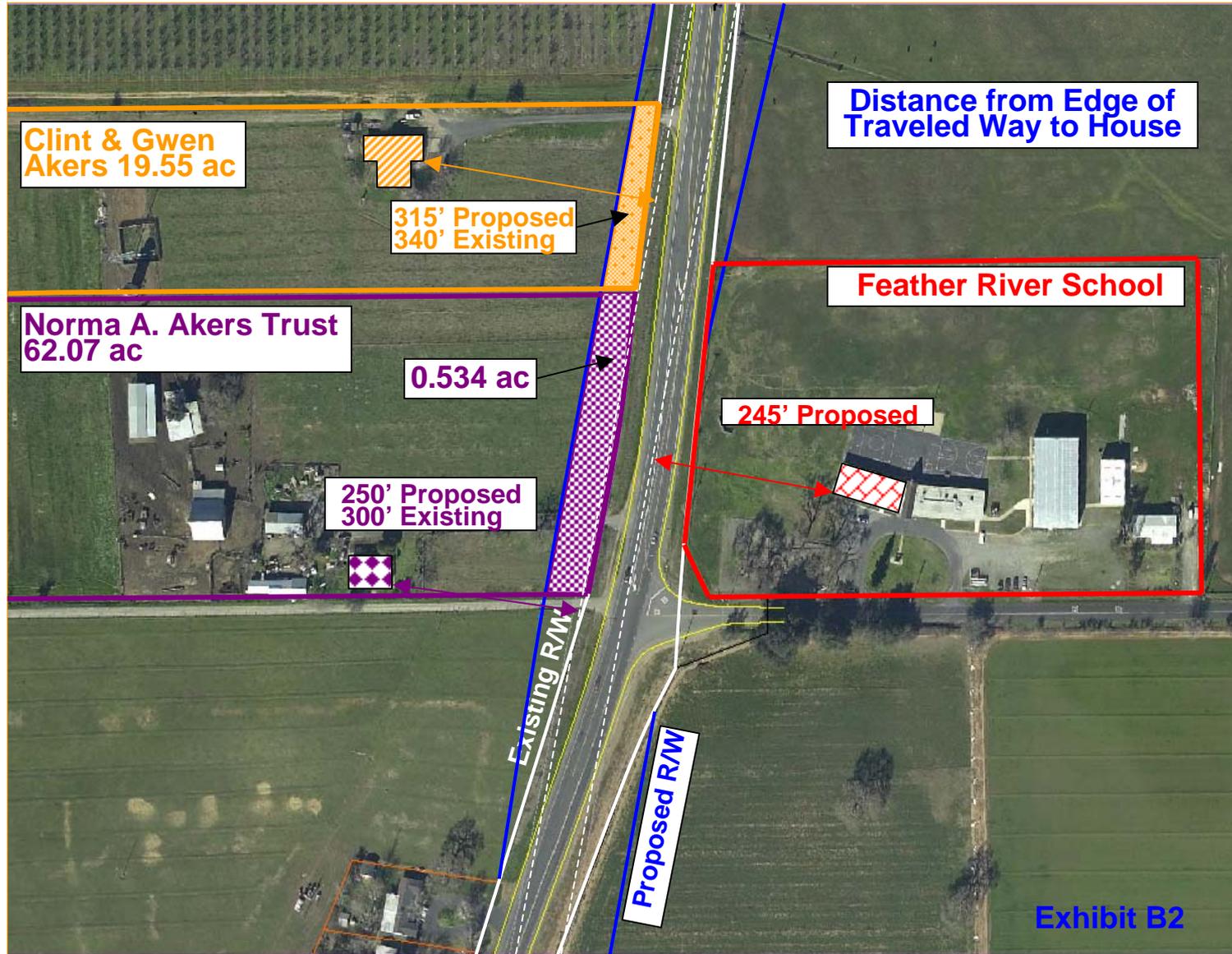


Exhibit B1

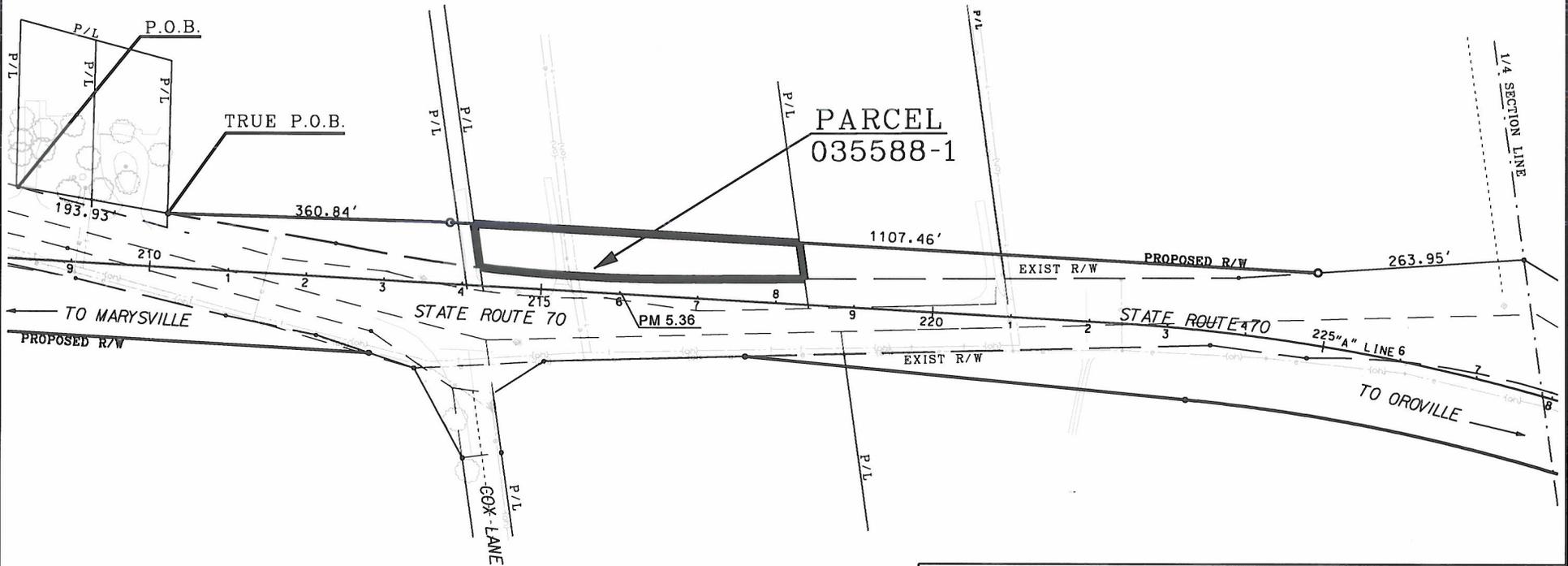
Property Impacts



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T18N R3E MDM

SEC. 26



STATE OF CALIFORNIA
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY
 DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY RESOLUTION OF NECESSITY

EXHIBIT B

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
03	BUT	70	5.36	C-OE930-02	2 OF 2

Exhibit B3

PARCEL PANEL REPORT

PARCEL DATA

Property Owner: Clint and Gwen Akers

Parcel Location: 2147 Highway 70, Oroville, CA 95965
Approximately 500 feet (ft) north of Cox Lane on west side
of existing State Route (SR) 70

Assessor Parcel Number (APN): 025-330-006

Present Use: Agriculture with Home Site

Area of Property: 19.55 acres

Area Required: Parcel 035589-1: 0.228 acre (Fee)

PARCEL DESCRIPTION

This appearance request addresses Parcel 035589-1, which is owned by Clint and Gwen Akers. This property is generally level, and comprises 19.55 acres. The subject parcel is zoned "U", or "Unclassified", as per the Butte County Planning Department. This property is currently utilized for agricultural and home site uses. These uses represent the highest and best use of the property at the present time.

The subject property is currently improved with one single-family residence, with a majority of the parcel being used for agricultural purposes including irrigated pasture, and the cultivation of hay/alfalfa. This property currently has direct access to SR 70 along its eastern boundary.

NEED FOR SUBJECT PROPERTY

The right of way area on the subject parcel is required for construction of the widened SR 70 roadway and related drainage ditches, driveway improvements, and utility relocation activities. Given property owner concerns expressed during the project development process, the California Department of Transportation (Department) has made a concerted effort to minimize the project footprint where possible, in the hopes of minimizing or mitigating potential impacts to all properties located within the project corridor.

The Department took property owner concerns into consideration during the design process, and labored to minimize the right of way areas required for construction of the current project. Steps were taken to minimize areas needed for side slope, ditch type,

ditch width, and center median width. The final alignment was selected to maximize the greatest public good and least private injury, all while balancing a variety of criteria. Factors taken into consideration were the amount of property acquired relative to the overall size of each affected property, minimizing impacts to sensitive environmental resources, minimizing overall costs, and minimizing the impacts to a nearby school site.

The proposed project requires a fee acquisition of 0.534 acre from the Akers property (or 0.8 percent of the current property size). This right of way requirement abuts existing SR 70, and parallels the eastern boundary of the subject parcel. This generally rectangular-shaped right of way area has a maximum width of approximately 60 ft. Upon completion of the project, the Akers residence will be located approximately 250 ft from the new highway edge of traveled way (versus an existing distance of 300 ft).

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

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Department:

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Because the design of the ultimate facility addresses the overall needs for this route segment, it is a preferred solution to the “passing lane only” concepts which would only address operational needs in the vicinity of the East Gridley Road intersection. Much of what would have been constructed for a “passing lane only” project would be of no use in building the “ultimate facility”. In addition, the Department would still need to acquire additional right of way from the subject property in the future, to accommodate construction of the “ultimate facility”. A northbound passing lane only project has never been an option or alternative under study by BCAG or the Department, when considering how to construct the “ultimate facility”, as planned in the TCCR.

Owner:

Please confirm the location of vernal pools on the east side of existing SR 70 (specifically on the Daley property), and why the Department needs to minimize and balance impacts to these resources, and others, when designing the current project, instead of shifting the alignment eastward to avoid the subject property.

Department:

The Department provided Mr. Akers a copy of the Biological Opinion for this project, dated January 18, 2008, as prepared by the United States Department of the Interior, Fish and Wildlife Service Branch. Included with above, was a table depicting the location of United States Army Corps of Engineers Jurisdictional Wetlands located within the project area. The above materials identified and explained the locations of 23 vernal pools in the immediate area of the project, including those located on the Daley parcel. The above report also explained applicable laws and regulations regarding impacts to wetland areas, including those containing vernal pools. Minimizing and mitigating impacts to vernal pools and wetlands is required under State and Federal law, and as such, must be considered when designing transportation projects.

The Department analyzed three possible alignment variations to investigate potential impacts. Please refer to Exhibit D1 attached, for a visual depiction of these alternative alignments.

Alternative Alignment 1: This first variation focused on a “best geometric” design, meeting rural expressway standards with a single 5,000 ft radius curve. As depicted, this alignment would significantly increase right of way impacts on the Akers property. Note that the curve radius extends much farther westward, necessitating the acquisition of

additional right of way and pushing the new alignment much closer to the residential improvements located on the subject property.

Alternative Alignment 2: This second variation focused on eliminating all impacts to the subject property by shifting the project alignment eastward near the East Gridley Road intersection, as had been requested by the Akers. By avoiding all impacts to the Akers property under this scenario, there would be a net increase in needed right of way of 2.4 acres to construct the project. In addition, this shift in the proposed alignment would necessitate a 1.7 acre increase in impacts to vernal pool habitat on the Daley parcel, which could result in increased project costs of over \$1 million to mitigate for these environmental impacts. In addition, such an alignment while missing the subject property, increases right of way impacts on a private school site (Feather River School) while also potentially heightening noise and air quality impacts on this existing school site. In addition, to avoid acquiring any property from the subject parcel, the Department would need to disproportionately acquire a significantly greater amount of right of way from the owners located on the east side of the project.

Proposed Alignment: In an effort to balance impacts to all parcels located within the project corridor, the proposed alignment was designed to include two 2,500' radius curves. This meets design standards for a rural expressway in flat terrain (70 mph minimum). As noted previously, the Department took property owner concerns into consideration during the design of this alignment, and labored to minimize right of way areas required for construction of the proposed project. This proposed alignment still creates greater right of way impacts on the east side rather than the west side of existing SR 70 where the subject parcel is located.

Owner:

Repeated right of way acquisitions by the Department are devaluing the subject property.

Department:

According to Department records, right of way acquisitions affecting the subject property occurred in 1950, 1998, and now in 2010. Prior to 1950, a 60 ft right of way corridor crossed the subject parcel. In 1950, the Department acquired an additional easement to widen SR 70 to provide a 22 ft paved traveled way with roadside ditches. In 1998, the Department purchased additional right of way to add eight ft shoulders and improve the highway geometrics, while also improving drainage ditches. Currently, the Department is seeking to acquire right of way to widen the existing conventional highway from two-lanes to four-lanes, with a continuous left turn lane and eight ft wide shoulders. In addition, acquisition will also be used to improve highway geometrics and reconstruct side ditches. In total, the above right of way acquisition activities, including those undertaken at present, will only have extended the highway alignment 86 ft into the

subject property over a 60-year period. These right of way transactions by the Department since 1950 have totaled only 0.44 acre, or 2.2 percent of the subject property.

A detailed narrative appraisal was completed by Department appraisers to address currently proposed right of way impacts on the subject property. A complete copy of this appraisal was provided to the property owners. The property owners have elected not to retain an independent appraiser to evaluate these impacts in support of their contentions that the current acquisition will devalue their property. The Department continues to stand ready to review any such appraisals that may be obtained by the property owner, in the hope of facilitating ongoing efforts to reach a negotiated settlement. Such negotiations will continue in good faith, even after the condemnation process has been initiated. The property owner has been advised that the Commission does not consider issues of compensation which will either be resolved via continued negotiation or through the courts via the eminent domain process.

Owner:

Property owner made repeated references to historic flooding patterns in project area, and was worried that the current project would exacerbate this pre-existing problem.

Department:

Representatives from the Department's Hydraulics and Maintenance Divisions were consulted for information related to historic flooding patterns in the immediate area of the subject property. A Floodplain Risk Assessment Study, dated March 12, 2007, did in fact reference one historical location of nuisance flooding and shallow highway inundation within the project limit. This flooding resulted in several brief highway closures prior to 2000.

In 2000, historic highway cross drainage systems throughout the project limits were upgraded/replaced. These upgrades included increasing the size and capacity of the older pipes that had become damaged or deteriorated with age. In certain sections, the highway profile was also raised throughout the flood plain to eliminate non-standard vertical curves, which contributed to historic nuisance flooding episodes. There have been no reported instances of highway inundation since the upgrades and replacements facilities were installed and the highway profile elevated. As proof of these drainage improvements functioning well, there have been two significant storm events in the past four years (January 2005 & December 2005/January 2006), which did not result in any highway flooding at the above location.

It should also be noted that the highway profile adjacent to the subject parcel would be raised slightly, with the construction of the current project. This will result from overlaying existing highway pavement. The existing roadway is now elevated above the existing floodplain in the immediate area of the subject property.

Other planned drainage upgrades and/or replacements will further improve the drainage of this facility when the project is constructed, further reducing the likelihood of nuisance flooding and inundation at this location.

Based on the above drainage improvements, the Department has concluded that the current project will have no significant effect on potential flooding in the immediate area of the subject property.

DEPARTMENT CONTACTS

The following contacts have been made with the property owner:

Type of Contact	Number of Contacts
Telephone contacts	7
Personal meeting/contacts	6
Mailing of information	3
E-Mail of information	N/A
Telephone messages	4

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject properties and offered the full amount of the appraisal to the owners of record as required by Government Code Section 7267.2. The property owner has been notified that issues related to compensation are outside the purview of the 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 a manner that will be most compatible with the greatest public good and least private injury.
- The property rights to be condemned are necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the Commission.

DONALD E. GREBE
Chief
Office of Right of Way 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 JANUARY 5, 2010**

Donald E. Grebe, HQ Division of Right of Way and Land Surveys, Panel Chair
Linda Fong, HQ Division of Design, Panel Member
Joann Georgallis, HQ Legal Division, Panel Member
Robert Dauffenbach, HQ Division of Right of Way and Land Surveys, Panel Secretary
Clint Akers, Property Owner
Jody Jones, North Region District Director
Brent Green, District 3 Right of Way Office Chief
Tom Wood, District 3 Division of Design
Fermin Barriga, District 3 Division of Design

Project Impact

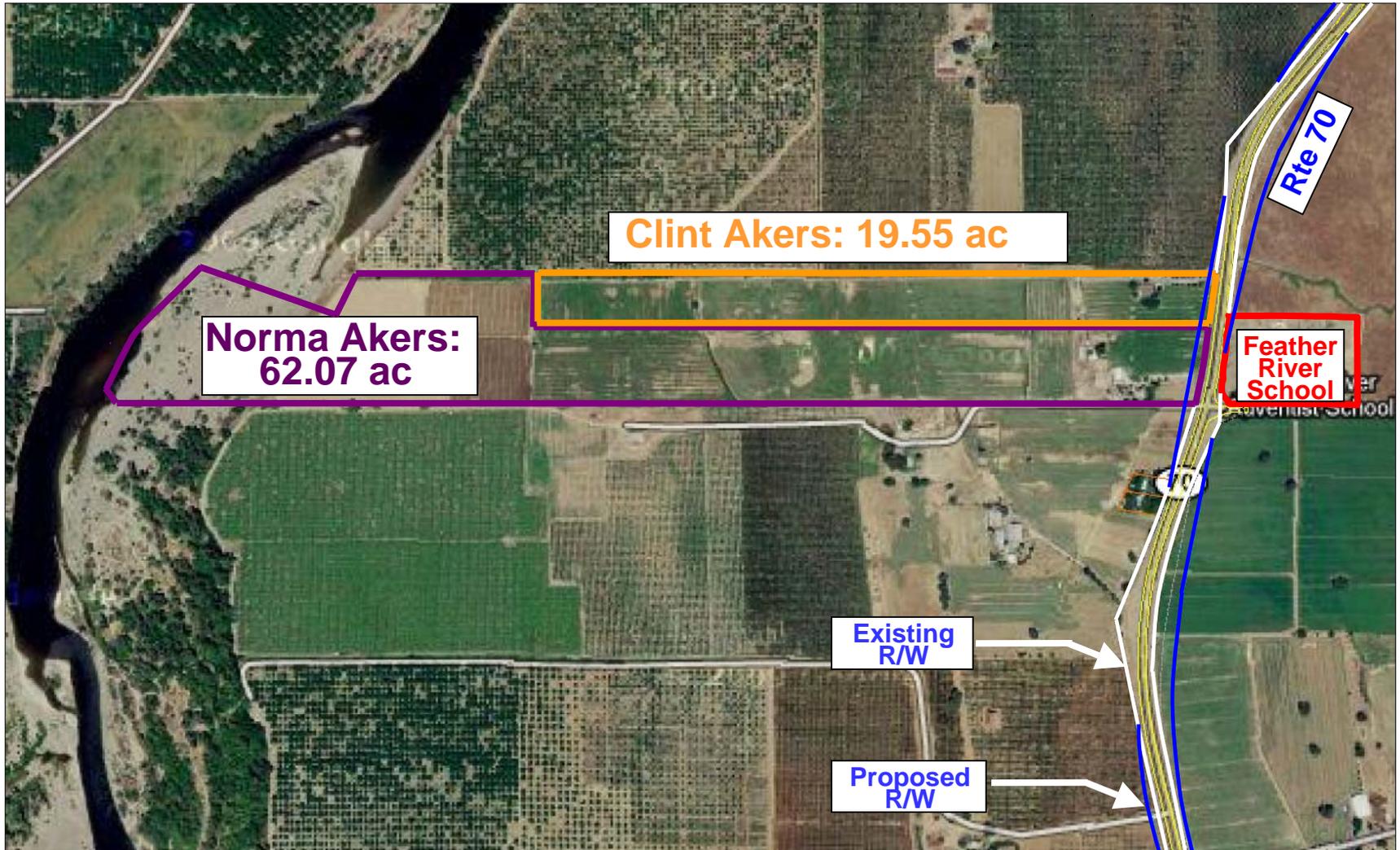


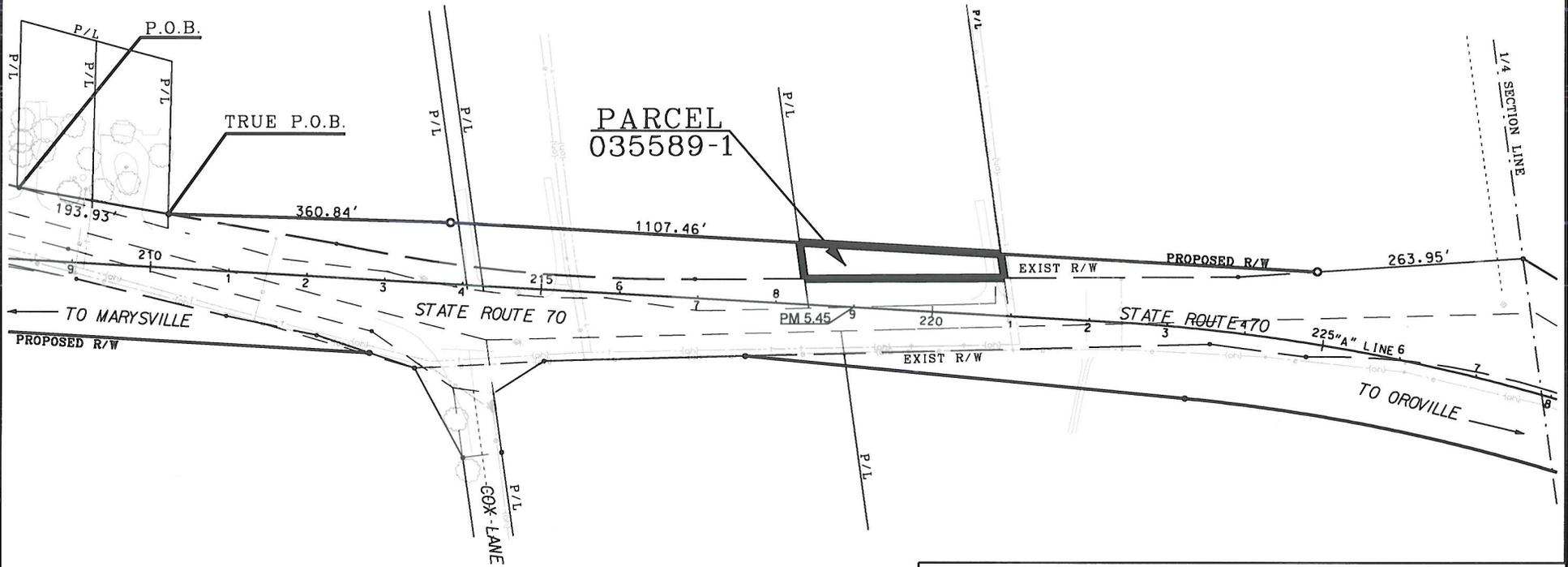
Exhibit C1

Property Impacts



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.

T18N R3E MDM SEC. 26



STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY RESOLUTION OF NECESSITY

EXHIBIT B



DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
03	BUT	70	5.45	C-OE930-03	2 OF 2

Proposed and Alternate Alignment Impacts

