

BOS AGMT. NO. 19-246
DOT AGMT. NO. 190049

**County of Mendocino
Department of Transportation**

ACQUISITION OF RIGHT OF WAY AGREEMENT

THIS AGREEMENT made and entered on this 22 day of October, 2019 by and between the Pinoleville Pomo Nation, a federally recognized Indian tribe, hereinafter referred to as "OWNER," and the COUNTY OF MENDOCINO, a political subdivision of the State of California, hereinafter referred to as "COUNTY."

WHEREAS, in conjunction with Department of Transportation (DOT) Project No. A-1101, on North State Street, CR 104, at approximately Milepost 0.97, hereinafter referred to as "PROJECT," COUNTY plans for replacing the bridge over Ackerman Creek on North State Street north of the city of Ukiah, situated at the above mentioned location, will involve and require acquisition, by COUNTY, of certain easements and rights affecting the real property of OWNER as follows:

- a) COUNTY acquisition of a non-exclusive, nontransferable highway easement of 0.333 acres (14,499 square feet), more or less (the "Highway Easement"), over certain lands of OWNER located within the Pinoleville Indian reservation ("RESERVATION"); and which Highway Easement is more particularly described in Exhibit "A" and as depicted as Parcel 1 on Exhibit "B" attached hereto and fully incorporated herein, such Highway Easement being granted solely for the purposes of designing, planning, constructing, grading, widening, installing, operating, reconstructing, maintaining and replacing, as needed, roadways, bike lanes, sidewalks, public utilities and other structures as may be reasonably required in connection with the COUNTY Project (collectively, and together with the work identified in paragraphs b) and c) below, the "IMPROVEMENTS").
- b) COUNTY acquisition of nontransferable temporary construction easements of approximately 0.782 acres, (34,050 square feet), more or less, subject to Paragraph 5 below (the "Construction Easement"), over certain lands of OWNER located within the RESERVATION, and which Construction Easement is more particularly identified and depicted as Parcels 2A, 2B and 2C Temporary Construction Easement on Exhibit "B" attached hereto and fully incorporated herein, such Construction Easement being granted solely for the purposes of temporary, short-term storage of materials, equipment, and supplies, on an as-needed basis, the parties hereto acknowledging that COUNTY'S primary location for the storage of materials, equipment, and supplies with respect to the PROJECT is on or near 2147 State Street, Ukiah (directly across State Street to the east); and, further, providing access, including for construction vehicles and equipment, related to constructing the approach to the bridge and a new curb and gutter along the right-of-way.
- c) COUNTY acquisition of a non-exclusive, and nontransferable temporary re-vegetation/monitoring easement of approximately 0.393 acres, (17,099 square feet), more or less (the "Re-Vegetation/Monitoring Easement"), over certain lands of OWNER located within the RESERVATION, as more particularly identified and depicted as Parcel 3 Temporary Re-Vegetation/Monitoring Easement on Exhibit "B" attached hereto and fully incorporated herein, such Re-Vegetation/Monitoring Easement being granted solely for the

purposes of planting vegetation and maintaining and monitoring such vegetation for a period of sixty (60) months after the completion of the PROJECT. Vegetation maintenance and monitoring is anticipated to involve onsite activity occurring approximately once per month and generally consisting of hand work and no machinery.

Collectively, the Highway Easement, the Construction Easement, and the Re-Vegetation/Monitoring Easement shall be referred to herein as the "EASEMENTS" and the areas over which the Easements are being granted by way of this Agreement are the "PREMISES."

NOW THEREFORE, in consideration of the covenants hereinafter set forth, the parties hereto agree as follows:

1. OWNERSHIP OF PREMISES. OWNER represents and warrants, based on the deed by which it obtained ownership, that it is the owner in fee simple of the real property described in Exhibit "A" and as generally identified on Exhibit "B", and of the real property identified as Temporary Construction Easement and Temporary Re-Vegetation/Monitoring Easement on Exhibit "B" attached hereto, said property lying within the RESERVATION and also the unincorporated area of the County of Mendocino, State of California. OWNER represents and warrants that no other person or entity has any right to the occupancy or possession of the Premises.
2. GRANT OF EASEMENTS. OWNER agrees to grant to COUNTY the EASEMENTS, as described in the aforesaid Exhibit "A" and as depicted on Exhibit "B", for purposes of installation and maintenance of the Improvements for highway and utility purposes, free and clear of all liens and encumbrances, except those identified on Exhibit "C."
3. PROPERTY TAXES. Any and all delinquent taxes arising from OWNER'S ownership of the Premises that are due to be paid by OWNER to COUNTY as taxes under applicable law shall be deducted from the compensation provided for herein.
4. COMPENSATION. COUNTY agrees to compensate OWNER in the total amount of One Hundred Twelve Thousand One Hundred Fifty Dollars (\$112,150.00) for the EASEMENTS granted herein and as further described in the aforesaid Exhibit "A" and as depicted on Exhibit "B", and for the use of those certain lands identified and depicted as Temporary Construction Easement and Temporary Re-Vegetation/Monitoring Easement on Exhibit "B" and as described in paragraphs 5 and 6 below. Upon execution of this Agreement and recordation of the Highway Easement Deed, attached hereto, COUNTY shall pay said amount to OWNER; provided, however, that if the PROJECT must be cancelled, no transfer of title shall occur, no Highway Easement Deed will be recorded, and COUNTY shall have no obligation to compensate OWNER. The performance of this Agreement constitutes the entire consideration of said document and shall relieve COUNTY of all further claims on this account or on account of the location, grade, or construction of the proposed IMPROVEMENTS.
5. TEMPORARY CONSTRUCTION EASEMENT. It is understood and agreed by and between the parties hereto that a portion of the amount payable under paragraph 4 above is compensation in full for the actual non-exclusive use of the Temporary Construction Easement area identified on Exhibit "B" attached hereto and incorporated herein by this reference. Said right to enter such area shall be effective as of the PROJECT'S Right of Way certification date

for a period of twenty-four (24) months. Construction of the PROJECT is anticipated to take place over two construction seasons, and be suspended during the winter season of December 1 through April 30 of the first year of construction; COUNTY does not anticipate undertaking any work within the Temporary Construction Easement area during these months. In the case of unpredictable delays in construction, the terms of this Temporary Construction Easement may be extended at the request of COUNTY, and at the OWNER's approval in its sole discretion, in six (6) month increments, and shall be reappraised upon written notification from COUNTY to OWNER, and payment of current market value paid in advance for any such extension. This Temporary Construction Easement shall also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties. It is mutually understood that COUNTY shall leave all area of OWNERS' property affected by said Temporary Construction Easement in a neat and workmanlike condition during and upon completion of PROJECT. COUNTY acknowledges that OWNER may be improving the property (including, without limitation, engaging in its own construction and development activities on the property) (which improvement may be complete prior to the termination of the Temporary Construction Easement, in which case OWNER and its guests and invitees may be using the property for business operations) during the effective term of the Temporary Construction Easement and that, if OWNER notifies COUNTY that OWNER will commence construction or related activities on the property (which notice OWNER will attempt to provide at least sixty (60) days in advance of commencement of such activities), OWNER'S conveyance of the Temporary Construction Easement will be expressly subject to the following limitations without further action, which the parties may mutually amend in writing: (i) all activities of COUNTY within the Temporary Construction Easement area will be minimized to the extent practicable and no activity of COUNTY within the Temporary Construction Easement area shall prevent OWNER or its agents, representatives, contractors, or sub-contractors from engaging in construction activities on behalf of OWNER on the remainder of OWNER'S property adjacent to the Temporary Construction Easement area, (ii) OWNER'S, and its agents', representatives', contractors', sub-contractors', guests', and invitees' complete and unfettered access to the remainder of the property will remain open at all times, (iii) COUNTY's storage of materials, equipment, and supplies shall be on an as-needed basis so that, if other areas outside the property are available to COUNTY for such storage and such areas are not significantly less convenient, COUNTY shall first utilize those other areas before it uses the property for such storage, and (iv) there shall be no long-term storage (five (5) days or more) of any materials, equipment, or supplies without prior written approval of the OWNER. COUNTY agrees to devote reasonable efforts toward completing the PROJECT and concluding its need for the Temporary Construction Easement at the earliest time, and the parties agree to work together in good faith to resolve any differences that arise regarding use of the Temporary Construction Easement area and access to the Property.

6. TEMPORARY RE-VEGETATION/MONITORING EASEMENT. It is understood and agreed by and between the parties hereto that a portion of the amount payable under paragraph 4 above is compensation in full for the actual non-exclusive possession and use of the Temporary Re-Vegetation/Monitoring Easement area identified on Exhibit "B" attached hereto and incorporated herein by this reference for a period of sixty (60) months. Said right to enter upon the lands identified as a Temporary Re-Vegetation/Monitoring Easement area to be effective on the first term expiration date of the Temporary Construction Easement mentioned in paragraph 5 above. This Temporary Re-Vegetation/Monitoring Easement shall also extend to and bind

the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties.

7. CONDITIONS RELATED TO PREMISES. COUNTY will perform the following work under the terms of the PROJECT:

- a. RESTORATION OF PREMISES. COUNTY shall restore and conform, at no cost to OWNER, the private access road encroachment area to the proposed PROJECT improvements. Upon completion of construction of said road approaches any area within the County right-of-way will be considered as a permitted encroachment on the County roadway and is to be maintained, repaired and operated as such by OWNER in accordance with and subject to the applicable laws of the State of California and the County of Mendocino and the rules and regulations of said County.
- b. FENCING. During construction of the PROJECT, COUNTY shall install and maintain perimeter fencing at all times, at no cost to OWNER, to a height matching the existing fencing or as reasonably requested by OWNER. Any existing fencing that may be removed by COUNTY for the PROJECT shall be rebuilt and restored, at no cost to OWNER. Replacement fencing shall be comparable to existing fencing in height and likeness.
- c. IMPROVEMENT CONDITIONS. Installation of the IMPROVEMENTS shall not interfere with existing utilities or other facilities installed on or adjacent to the Premises. COUNTY's operation and maintenance of the IMPROVEMENTS shall not interfere with or obstruct OWNER's use of the remainder of its land adjacent to the Premises. OWNER shall retain all other rights in and usage of the Premises not inconsistent with the reasonable enjoyment of the grant of the EASEMENTS. Procurement of any applicable licenses, regulatory permission or consent is the sole responsibility of COUNTY. All of the limitations and obligations imposed upon the COUNTY pursuant to this Agreement and all rights reserved to OWNER hereunder shall apply with equal force and effect to any contractors and subcontractors performing any activities on behalf of COUNTY on the Premises. COUNTY agrees to maintain the Premises in a clean, neat and sanitary condition, and to properly and promptly dispose of all litter and debris during construction of the IMPROVEMENTS. Following completion of the IMPROVEMENTS, COUNTY shall remove all litter and debris resulting from construction of the IMPROVEMENTS from the Premises. In further consideration of the granting of the EASEMENTS, it is hereby agreed that all work performed by COUNTY, its consultants, contractors, subcontractors and agents in connection with this Easement shall be done with reasonable care and in accordance with all applicable laws, rules and regulations and the covenants, terms and conditions of this Easement. COUNTY acknowledges that OWNER is not involved in or responsible for any of the design, planning, construction, maintenance or operation of the PROJECT or the IMPROVEMENTS. While exercising its rights in connection with this Agreement and during the activities in connection with the Project or Improvements, COUNTY shall use best efforts to provide adequate security during its construction activities to

protect the equipment or supplies of COUNTY or any contractor from use or access by unauthorized third parties.

- d. SURRENDER OF PREMISES. Regarding the temporary Construction Easement and the temporary Re-Vegetation/Monitoring Easement, at the expiration or earlier termination of such easement, as applicable, COUNTY shall promptly quit and surrender the Premises in a condition deemed to be reasonably satisfactory to OWNER. If all or any portion of Premises is not vacated at the end of the applicable term as described in this Agreement, OWNER shall be and is hereby authorized to remove from the Premises and store, at the expense of COUNTY, all goods, wares, merchandise and property of any kind or description (collectively, the "Goods") which may be then occupying all or any portion of the Premises. All removal and/or storage charges must be paid to OWNER by COUNTY before the Goods will be released to COUNTY. In any event, OWNER may dispose of any the Goods as it sees fit after the expiration of thirty (30) calendar days from the end of the applicable term. OWNER shall not be liable for any damage to or loss of the Goods sustained either during the removal, storage and/or disposal of same and OWNER is hereby expressly released from any and all claims for any such loss or damage. This section shall survive expiration or earlier termination of this Agreement.
 - e. CONDITION OF PREMISES. COUNTY acknowledges that it has inspected the Premises and finds the Premises to be suitable for the Improvements and related uses contemplated by this Agreement. COUNTY hereby waives all warranties (express or implied) as to the suitability or fitness for any particular purpose, or the merchantability of Premises for the Improvements and related uses. Furthermore, the Easements granted by OWNER and acquired by COUNTY are delivered "As-Is, Where-Is, With All Faults" with no right of set-off or reduction and such grant is made without representation or warranties, express or implied, either oral or written, made by OWNER or any agent or representative of OWNER with respect to the physical or structural condition of the Premises, or with respect to the existence or absence of petroleum, hazardous substances, pollutants or contaminants in, on, under, or affecting the real property affected by this Agreement or with respect to the compliance of the Premises or its operation with any laws, ordinances or regulations of any government or other body. COUNTY acknowledges and agrees that OWNER has not made and does not make any representations, warranties or covenants of any kind or character whatsoever, whether express or implied, with respect to the Premises, including, without limitation, its suitability or fitness for any particular purpose, or its merchantability, all of which warranties OWNER hereby expressly disclaims. COUNTY is relying entirely upon information and knowledge obtained from its own investigation, experience, or inspection of the Premises. No statements of fact or disclosures, if any, made in this Agreement, constitute warranties or representations of any nature.
8. COUNTY ESCROW. This transaction will be handled through an internal escrow by the County of Mendocino, Department of Transportation, 340 Lake Mendocino Drive, Ukiah, CA 95482.

9. NO ORAL OR WRITTEN LEASES. OWNER warrants that there are no oral or written leases on all or any portion of the Premises exceeding a period of one month, and OWNER agrees to hold COUNTY harmless and reimburse COUNTY for any and all of its losses and expenses occasioned by reason of any lease of the Premises held by any tenant of OWNER for a period exceeding one month.

10. GENERAL CONDITIONS.

- a. HAZARDOUS SUBSTANCES. COUNTY shall not use, produce, treat, generate, release, discharge, store, transport, or cause to be transported, or dispose of any hazardous substances at, on, under, in, or about the Premises in violation of applicable law. The term "hazardous substances" shall mean any toxic or hazardous or noxious substance, material, or waste which is regulated by any local government authority having jurisdiction over the Premises, the State of California, or the United States government.
- b. INSURANCE. COUNTY shall obtain and maintain at its sole cost and expense public liability insurance with limits of not less than \$1,000,000 per occurrence in which OWNER is named as an additional insured. COUNTY shall furnish to OWNER, in a form satisfactory to OWNER, a copy of said policy or a certificate indicating that such insurance has been issued.
- c. TOOLS AND EQUIPMENT. COUNTY shall promptly remove all tools, equipment and materials from the Premises upon completion of the IMPROVEMENTS and restore the Premises to substantially the same state and condition as when entered upon.
- d. ASSIGNMENT AND SUBLETTING. This Agreement may not be assigned by COUNTY and COUNTY shall not sublet the Premises, or any part thereof, or any interest therein, and any subletting or assignment in violation of this prohibition shall be null and void.
- e. AMENDMENTS TO AGREEMENT. No changes, alterations or modifications to any of the provisions hereof shall be effective unless contained in a written agreement signed by OWNER and COUNTY.
- f. WAIVER, SEVERABILITY. The failure of any party to exercise any right hereunder, or to insist upon strict compliance by the other party, shall not constitute a waiver of either party's right to demand strict compliance with the terms and conditions of this Agreement. If any provision of this Agreement is held to be unenforceable for any reason, its unenforceability shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.
- g. INDEMNIFICATION AND WAIVER. COUNTY shall hold harmless and indemnify OWNER and its officers, directors, agents, affiliates, insurers and employees (the "Indemnified Parties") from and against any and all losses,

damages, liens, claims, demands, debts, obligations, liabilities, fines, penalties, suits or actions, judgments, and costs of any kind whatsoever (including reasonable attorneys' fees) related to the use of the Premises or any land adjacent to the Premises which COUNTY may use, caused by any act, omission or neglect of the COUNTY or COUNTY'S employees, guests, invitees or assignees. COUNTY hereby waives and releases all claims against the Indemnified Parties, with respect to all matters for which OWNER has disclaimed liability pursuant to this Agreement. This section shall survive expiration or earlier termination of this Agreement.

- h. ENTIRE AGREEMENT. This Agreement represents the entire agreement between the parties regarding the granting of the EASEMENTS over the Premises.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

OWNER: PINOLEVILLE POMO NATION

BY: Leona L. Williams 8/21/19
Leona L. Williams, Chairperson DATE

BY: Angela James 8/21/19
Angela James, Vice Chairperson DATE

RECOMMENDED FOR APPROVAL BY:

Howard N. Dashiell 9/17/19
HOWARD N. DASHIELL DATE
Director of Transportation
County of Mendocino

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
Acting County Counsel

COUNTY OF MENDOCINO

By: Carre Brown OCT 23 2019
CARRE BROWN, Chair DATE
BOARD OF SUPERVISORS

By: Deputy 9/19/19
Deputy DATE

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: Karla Vantaghen
Deputy OCT 23 2019 DATE

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: Karla Vantaghen
Deputy OCT 23 2019 DATE

EXECUTIVE OFFICE FISCAL
REVIEW:

APPROVAL RECOMMENDED

By: Deputy CEO 9/23/19
Deputy CEO DATE

INSURANCE REVIEW:

By: Samuel J. Angelo 9/25/19
Risk Management DATE

NO OBLIGATIONS OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED.

SPACE BELOW FOR OFFICIAL USE:

EXHIBIT "A"
HIGHWAY EASEMENT

A PORTION OF THE EAST PARCEL AS SHOWN ON THE RECORD OF SURVEY RECORDED ON JULY 13, 2006 IN MAPS, DRAWER 73 AT PAGE 77 OF OFFICIAL RECORDS OF MENDOCINO COUNTY, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHEASTERLY CORNER OF SAID PARCEL; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID PARCEL, SAID EASTERLY LINE ALSO BEING THE WESTERLY RIGHT OF WAY LINE OF NORTH STATE STREET (C.R. 104) AS SHOWN ON THAT CERTAIN RECORD OF SURVEY RECORDED IN DRAWER 80 OF MAPS AT PAGES 86 TO 93, S11°18'30"W, 591.25 FEET, MORE OR LESS, TO THE SOUTHEASTERLY CORNER OF SAID PARCEL;

THENCE LEAVING SAID RIGHT OF WAY LINE AND ALONG THE SOUTHERLY LINE OF SAID PARCEL N88°50'40"W, 20.16 FEET; THENCE LEAVING SAID SOUTHERLY LINE N10°24'26"E, 591.41 FEET, MORE OR LESS, TO A POINT ON THE NORTHERLY LINE OF SAID PARCEL; THENCE ALONG SAID NORTHERLY LINE S85°29'00"E, 29.35 FEET MORE OR LESS TO THE POINT OF BEGINNING.

CONTAINING A TOTAL OF 14,499 SQUARE FEET, MORE OR LESS.

BEARINGS ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83), ZONE 2, EPOCH DATE OF 1991.35.

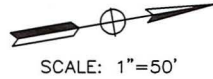
ROTATE BEARINGS DESCRIBED HEREIN 00°53'00" COUNTERCLOCKWISE TO MATCH BEARINGS SHOWN ON ABOVE DESCRIBED RECORD OF SURVEY RECORDED IN DRAWER 73 AT PAGE 77.

PTN. APN. 169-211-26

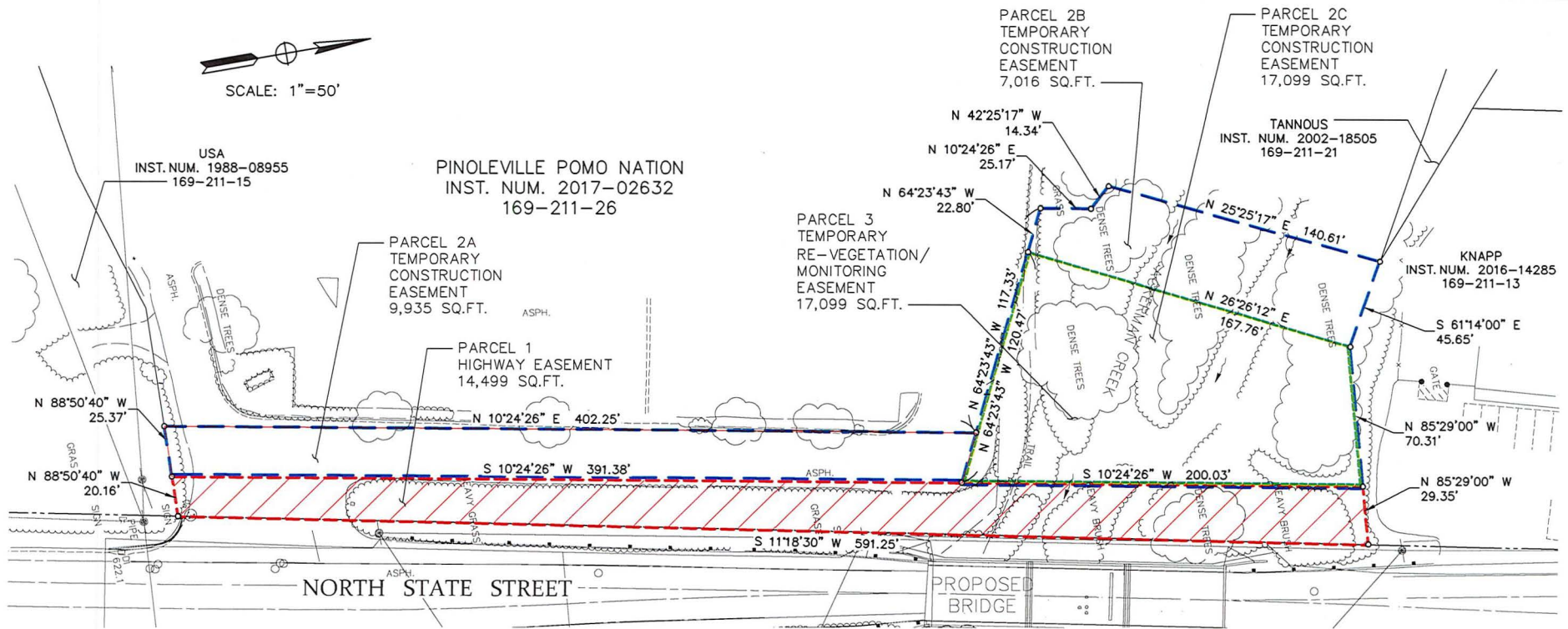
THIS DESCRIPTION WAS PREPARED UNDER MY DIRECTION IN CONFORMANCE WITH SECTION 8726 OF THE BUSINESS AND PROFESSIONS CODE OF THE STATE OF CALIFORNIA.


JAMES A. THORNTON DATE
PLS L8926





SCALE: 1"=50'



APN	OWNER	ORIGINAL PARCEL AREA		PARCEL 1 HWY EASMT		PARCEL 2A TCE		PARCEL 2B TCE		PARCEL 2C TCE		PARCEL 3 TRME		REMAINING PARCEL AREA (MINUS R/W)	
		SQ. FT.	ACRE	SQ. FT.	ACRE	SQ. FT.	ACRE	SQ. FT.	ACRE	SQ. FT.	ACRE	SQ. FT.	ACRE	SQ. FT.	ACRE
169-211-26	PINOLEVILLE POMO NATION	223,462	5.130	14,499	0.333	9,935	0.228	7,016	0.161	17,099	0.393	17,099	0.393	208,963	4.797



EXHIBIT "B"
NORTH STATE STREET BRIDGE AT ACKERMAN CREEK
RIGHT OF WAY EXHIBIT
PINOLEVILLE POMO NATION
APN: 169-211-26

DATE: 02/26/2019

LEGEND:

- EXISTING RIGHT-OF-WAY LINES
- PROPERTY LINES
- - - - - HIGHWAY EASEMENT
- - - - - TEMPORARY CONSTRUCTION EASEMENT (TCE)
- - - - - TEMPORARY RE-VEGETATION/MONITORING EASEMENT
- o DIMENSION POINT