

Attachments

C.4
3/13/09

Recorded at the request of:
City of Concord

After recording return to:
City of Concord
1950 Parkside Dr., MS-03
Concord, CA 94519
Attention: City Clerk

A.P.N.: 145-070-042 (portion of)

GRANT OF EASEMENT

For good and valuable consideration, including but not limited to the agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, CONTRA COSTA COUNTY, a political subdivision of the State of California, for and on behalf of CONTRA COSTA COUNTY FIRE PROTECTION DISTRICT, (hereinafter "COUNTY"), hereby grants to the City of Concord, (hereinafter "GRANTEE"), a nonexclusive right to a perpetual easement and right of way access for installing, constructing, reconstructing, removing, replacing, repairing, upgrading, maintaining, operating and using traffic signal equipment and appurtenances thereto, and for no other purposes whatsoever, along and in all of the hereinafter described parcel of land situated in the County of Contra Costa, State of California, described as follows:

FOR DESCRIPTION AND PLAT MAP, SEE ATTACHED EXHIBITS "A" AND "B"

The foregoing grant is made subject to the following terms and conditions:

1. **PRIMARY USE OF THE PROPERTY:** The primary use of the Property subject to this easement (hereinafter the "Property") is for COUNTY purposes, including, but not limited to, the right to maintain the COUNTY college and Station 10. GRANTEE acknowledges and agrees that the use just described constitutes the primary use of the Property and that any and all rights granted or implied by this Grant of Easement are secondary and subordinate to the primary use of the Property by the COUNTY, its successors and assigns. GRANTEE shall not, at any time, use or permit the public to use the easement area in any manner that will interfere with or impair the COUNTY's primary use of the Property. GRANTEE shall not fence said easement without the prior written approval of the COUNTY, and shall remove any fencing when requested by COUNTY to do so. GRANTEE shall not otherwise obstruct the easement area.
2. **DISTRICT TITLE:** GRANTEE hereby acknowledges COUNTY's title to the Property and agrees never to assail or resist said title.
3. **CONSTRUCTION AND MAINTENANCE ACTIVITIES:** (a) GRANTEE shall, prior to any construction, reconstruction, remodeling, excavation, installation or plantings within the easement area, submit specific plans and specifications to the COUNTY for review and approval. Such approval, together with any additional requirements to be in the form of a written permit issued by COUNTY to GRANTEE.

(b) Normal maintenance by GRANTEE of its facilities within the easement area, including inspection and cleaning of existing pipelines, shall not require prior notice

to the COUNTY. GRANTEE shall perform maintenance of its facilities so as to prevent damage to the site.

4. **MODIFICATION, RELOCATION AND REMOVAL OF GRANTEE'S FACILITIES:** COUNTY reserves the right to require GRANTEE to modify its facilities, to relocate said facilities within the easement area or, at COUNTY's sole discretion, to remove its facilities from the easement area to another site selected by COUNTY, at GRANTEE's sole expense. If COUNTY directs GRANTEE to remove its facilities from the easement area to a site outside the easement area, COUNTY shall provide the GRANTEE with a similar easement for the new site. GRANTEE shall be responsible for all costs of relocating its facilities but shall not be required to pay for the relocated easement area. In the event that GRANTEE fails to commence the required work within thirty days after being directed to do so by COUNTY, or such reasonable extension as COUNTY may agree to, or fails to complete the required work within a reasonable time thereafter, COUNTY may perform or complete the work at the expense of GRANTEE, which expense GRANTEE agrees to pay to COUNTY promptly upon demand, including but not limited to engineering costs and any legal expenses incurred to collect such costs. If GRANTEE's facilities are removed from the current easement area to a new easement area, GRANTEE shall promptly quitclaim to COUNTY its interest in the prior easement area.
5. **DAMAGE TO COUNTY PROPERTY:** Any and all COUNTY Property, facilities, landscaping or other improvements, removed or damaged as a result of the use of the easement area by GRANTEE, or any other person or entity acting under GRANTEE's direction or control, shall, at COUNTY's discretion and direction, be repaired or replaced by COUNTY, with all reasonable costs and expenses to be paid by GRANTEE (including but not limited to engineering costs and legal costs of collecting any unpaid expenses) or shall be repaired or replaced by GRANTEE, at the sole cost and expense of GRANTEE, equivalent to or better than their existing condition. In the event that GRANTEE fails to commence the required work within thirty days after being directed to do so by COUNTY, or such reasonable extension as COUNTY may agree to in writing, or fails to complete the required work within a reasonable time thereafter, COUNTY may perform or complete the work at the expense of GRANTEE, which expense GRANTEE agrees to pay to COUNTY promptly upon demand, including but not limited to engineering costs and any legal expenses incurred to collect such costs.
6. **DAMAGE TO GRANTEE'S FACILITIES:** COUNTY shall have no responsibility for the protection, maintenance, damage to, or removal of GRANTEE's facilities, appurtenances or improvements, caused by or resulting from COUNTY's use of the Property or work or operation thereon. It shall be the sole responsibility of the GRANTEE to provide and maintain adequate protection and surface markings for its own facilities. Subject to the foregoing, if GRANTEE's properly marked, protected and maintained facilities are damaged by the sole, active negligence or willful misconduct of COUNTY, COUNTY shall repair the damage at its sole cost and expense or, at the discretion of and upon written notice from COUNTY, the damage shall be repaired by GRANTEE and the pre-approved reasonable cost of such repair shall be paid for by COUNTY. Under no circumstance shall COUNTY have any liability to GRANTEE or to any other person or entity, for consequential or special damages, or for any damages based on loss of use, revenue, profits or business opportunities arising from or in any way relating to, any damage or

destruction of any portion of the GRANTEE's facilities. GRANTEE hereby acknowledges that its sole remedy for any damage to or destruction of any portion of GRANTEE's facilities, to the extent COUNTY is otherwise so liable under this Grant of Easement, shall be to require COUNTY to repair or replace the damaged or destroyed portion or reimburse GRANTEE for GRANTEE's pre-approved reasonable costs and expenses in repairing or replacing the damaged or destroyed portion.

7. **NON-EXCLUSIVE EASEMENT:** The easement granted hereunder is non-exclusive. This easement is subject and subordinate to all existing rights, rights of way, licenses, reservations, franchises and easements of record, or that would be evident from a physical inspection or accurate survey of the Property, in and to the Property. COUNTY shall have the right to require GRANTEE to modify, remove or relocate its facility within the easement area or to a similar easement to be granted to GRANTEE by COUNTY at no cost, in a timely manner at GRANTEE's sole cost as reasonably necessary to accommodate the COUNTY's, or any other existing user's right to construct, replace, enlarge, repair, maintain and operate its facilities, in the same manner as required by Section 4 of this easement, including the rights and remedies contained therein. GRANTEE agrees to take all precautions required to avoid damage to the facilities of the existing users. If GRANTEE damages the facilities or improvements of any existing user, GRANTEE shall repair or replace such facilities at GRANTEE's sole cost and expense. Nothing contained herein shall be construed to prevent COUNTY from granting other easements, franchises, licenses or rights of way over said lands, provided however, that said subsequent uses do not unreasonably prevent or obstruct GRANTEE's easement rights hereunder.

8. **INDEMNIFICATION, AS-IS CONDITION OF PROPERTY:** (a) In the exercise of all rights under this easement, GRANTEE shall be responsible for any and all injury to the public, to persons and to property arising out of or connected with GRANTEE's use of the Property. GRANTEE shall indemnify, defend, save, protect and hold harmless, COUNTY, its officers, agents, employees and contractors from and against any and all threatened or actual loss, damage (including foreseeable and unforeseeable consequential damages), liability, claims, suits, demands, judgments, orders, costs, fines, penalties or expense of whatever character including but not limited to those relating to inverse condemnation, and including attorneys' fees, (hereinafter collectively referred to as "Liabilities") to persons or property, direct or consequential, directly or indirectly contributed to or caused by the granting of this easement, GRANTEE's operations, acts or omissions pursuant to this easement, or the GRANTEE's use of the easement, save and except Liabilities arising through the sole negligence or sole willful misconduct of the COUNTY, its officers or employees.

b) GRANTEE further agrees to defend, indemnify, save, protect and hold harmless, COUNTY from any and all actual or threatened claims, costs, actions or proceedings to attack, set aside, void, abrogate or annul this grant of easement or any act or approval of COUNTY related thereto.

c) GRANTEE accepts the easement area in an "as is" physical condition, with no warranty, guarantee, representation or liability, express or implied on the part of the COUNTY as to any matter, including but not limited to the physical condition of the

Property and/or the condition and/or possible uses of the land or any improvements thereon, the condition of the soil or the geology of the soil, the condition of the air, surface water or groundwater, the presence of known and unknown faults, the presence of any hazardous substance, materials, or other kinds of contamination or pollutants of any kind in the air, soil, groundwater or surface water, or the suitability of the Property for the construction and use of the improvements thereon. It shall be the sole responsibility of GRANTEE, at its sole cost and expense, to investigate and determine the suitability of the soil, water, geologic, environmental and seismic conditions of the Property for the intended use contemplated herein, and to determine and comply with all building, planning and zoning regulations relative to the Property and the uses to which it can be put. GRANTEE relies solely on GRANTEE's own judgment, experience and investigations as to the present and future condition of the Property or its suitability for GRANTEE's intended use and is not relying in any manner on any representation or warranty by COUNTY. GRANTEE agrees that neither GRANTEE, its heirs, successors or assign shall ever claim have or assert any right or action against COUNTY for any loss, damage or other matter arising out of or resulting from the presence of any hazardous substance or any other condition of the Property at the commencement of the easement or from the release of any hazardous substance in, on or around any part of the Property or in the soil, water, subsurface strata or ambient air by any person or entity other than the COUNTY following the commencement of this easement. As used herein, "hazardous substance" means any substance, material or waste which is or may become designated, classified or regulated as being "toxic," "hazardous" or a "pollutant" under any federal, state or local law, regulation or ordinance. Nothing in this section is intended in any way to restrict the right of GRANTEE to seek contribution or indemnity from any person or entity other than COUNTY whose activities are a cause of any discharge, leakage, spillage or emission of hazardous materials on or to the Property.

d) To the extent permitted by law, GRANTEE shall indemnify, defend, save, protect and hold the COUNTY harmless from and against any and all claims, demands, Liabilities, expenses (including without limitation attorneys fees and consultants fees), penalties, damages, consequential damages and losses, and costs (including but not limited to the costs of any required or necessary testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties and from and against the preparation of any cleanup, remediation, closure or other required plans whether such action is required or necessary prior to or following the termination of the easement), of any kind or nature, to the extent caused or contributed to by GRANTEE's operation or performance under this easement, or GRANTEE's use, release or disposal of any hazardous substance, including all costs, claims, damages (including property and personal injury) caused by the uncovering, release or excavation of hazardous materials (including petroleum) as a result of GRANTEE's construction, reconstruction, maintenance, use, replacement, or removal of its facilities, to the extent that such activities increase the costs attributable to the cleanup or remediation of such hazardous materials.

e) The obligations contained in this section shall survive the expiration or other termination of this easement.

9. **NO WARRANTIES:** GRANTEE understands and acknowledges that COUNTY makes no representations, warranties or guarantees of any kind or character,

express or implied, with respect to the Property, and GRANTEE is entering into this transaction without relying in any manner on any such representation or warranty by COUNTY.


10. **ABANDONMENT:** In the event GRANTEE shall cease to use the easement herein continuously for a period of one year, or in the event GRANTEE abandons its facilities or fails to use the easement for the purpose for which it is granted, then all rights of GRANTEE in and to said lands shall thereupon cease and terminate and shall immediately revert to and vest in COUNTY or its successors. Upon any such termination of GRANTEE's rights, GRANTEE shall, upon request by COUNTY, and at GRANTEE's sole cost and expense, remove all of its facilities from the easement area and restore said Property to its original condition. Upon the failure of GRANTEE to do so, this work may be performed by COUNTY at GRANTEE's expense, which expense GRANTEE agrees to pay to COUNTY upon demand. GRANTEE shall execute any Quitclaim Deeds required by COUNTY in this regard.
11. **NO ASSIGNMENT OF EASEMENT:** No rights granted hereunder shall be transferred, apportioned or assigned without the prior written consent of COUNTY.
12. **NO SECONDARY RIGHTS:** Nothing herein contained shall be deemed to construe that access or other secondary rights are conveyed by this document over any of COUNTY's adjacent lands lying outside of the aforesaid strip of land above described.
13. **ENTIRE AGREEMENT:** This grant of easement contains the entire agreement between the parties hereto and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.
14. **CONSTRUCTION:** This grant of easement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this grant of easement and their counsel have read and reviewed this grant of easement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this grant of easement.

15. **SUCCESSORS AND ASSIGNS:** This indenture and all of the covenants herein contained shall inure to the benefit of and be binding upon the heirs, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, this Grant of Easement is signed and executed this _____ day of MARCH 03,, 2009.

CONTRA COSTA COUNTY, a political Subdivision of the State of California, for and on behalf of Contra Costa County Fire Protection District

CITY OF CONCORD

By 
Chair, Board of Supervisors

By _____

By _____

APPROVED AS TO FORM
by County Counsel
July, 1999

STATE OF CALIFORNIA)
COUNTY OF CONTRA COSTA)

EMY L. SHARP

On MARCH 03, 2009 before me, Clerk of the Board of Supervisors, Contra Costa County, personally appeared SUP. SUSAN BONILLA, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 
Deputy Clerk

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Notice of Exemption

CONTRA COSTA COUNTY DEPARTMENT OF CONSERVATION AND DEVELOPMENT
651 PINE STREET 2ND FLOOR NORTH WING MARTINEZ, CALIFORNIA 94553

Telephone: (925) 313-2176

Contact Person: Trina Torres- Public Works Dept.

Project Description, Common Name (if any) and Location: **Fire Station #10 (Fire Station and Training Center) Traffic Signal Easement (APN 145-070-024), Concord area, Project No. 4500-6X5044, County File: CP# 08-38**

Description: This activity consists of Contra Costa County (County) granting an easement (approximately 15 ft by 15ft) in the southwest portion of APN 145-070-024, to the City of Concord.

Contra Costa County Fire Protection District intends to grant the City of Concord (City) an easement allowing the City to operate, maintain, and access the traffic signal equipment at the Contra Costa County Fire Protection District's Fire Station and Training Center / Fire Station No. 10 (APN 145-070-024), located on Treat Boulevard southwest of Oak Grove Road, in the City of Concord.

The City of Concord has already conducted CEQA analysis for the installation of the signal (the Notice of Exemption was filed on December 22, 2006). General Plan Conformance will be necessary from the City of Concord for the easement.

Location: The activity is located in central Contra Costa County, within the City of Concord.

This project is exempt from **CEQA** as a:

- Ministerial Project (Sec. 15268)
- Declared Emergency (Sec. 15269(a))
- Emergency Project (Sec. 15269(b) or (c))
- Categorical Exemption, *Class* _____
- Other Statutory Exemption, Section _____
- General Rule of Applicability** [Section 15061 (b) (3)]

for the following reason(s): It can be seen with certainty that there is no possibility that the activity may have a significant adverse effect on the environment.

Date: _____ By: _____
Dept. of Conservation and Development Representative

AFFIDAVIT OF FILING AND POSTING	
I declare that on _____ I received and posted this notice as required by California Public Resources Code Section 21152(c). Said notice will remain posted for 30 days from the filing date.	
_____ Signature	_____ Title

Applicant:	Department of Fish and Game Fees Due	
Public Works Department 255 Glacier Drive Martinez, CA 94553 Attn: <u>Trina Torres</u> Environmental Section	<input type="checkbox"/> EIR - \$2,768. ²⁵ <input type="checkbox"/> Neg. Dec. - \$1,993. ⁰⁰ <input checked="" type="checkbox"/> County Clerk - \$50 <input checked="" type="checkbox"/> Department of Conservation and Development -\$25	Total Due: \$ 75.00 Total Paid \$ _____ Receipt #: _____

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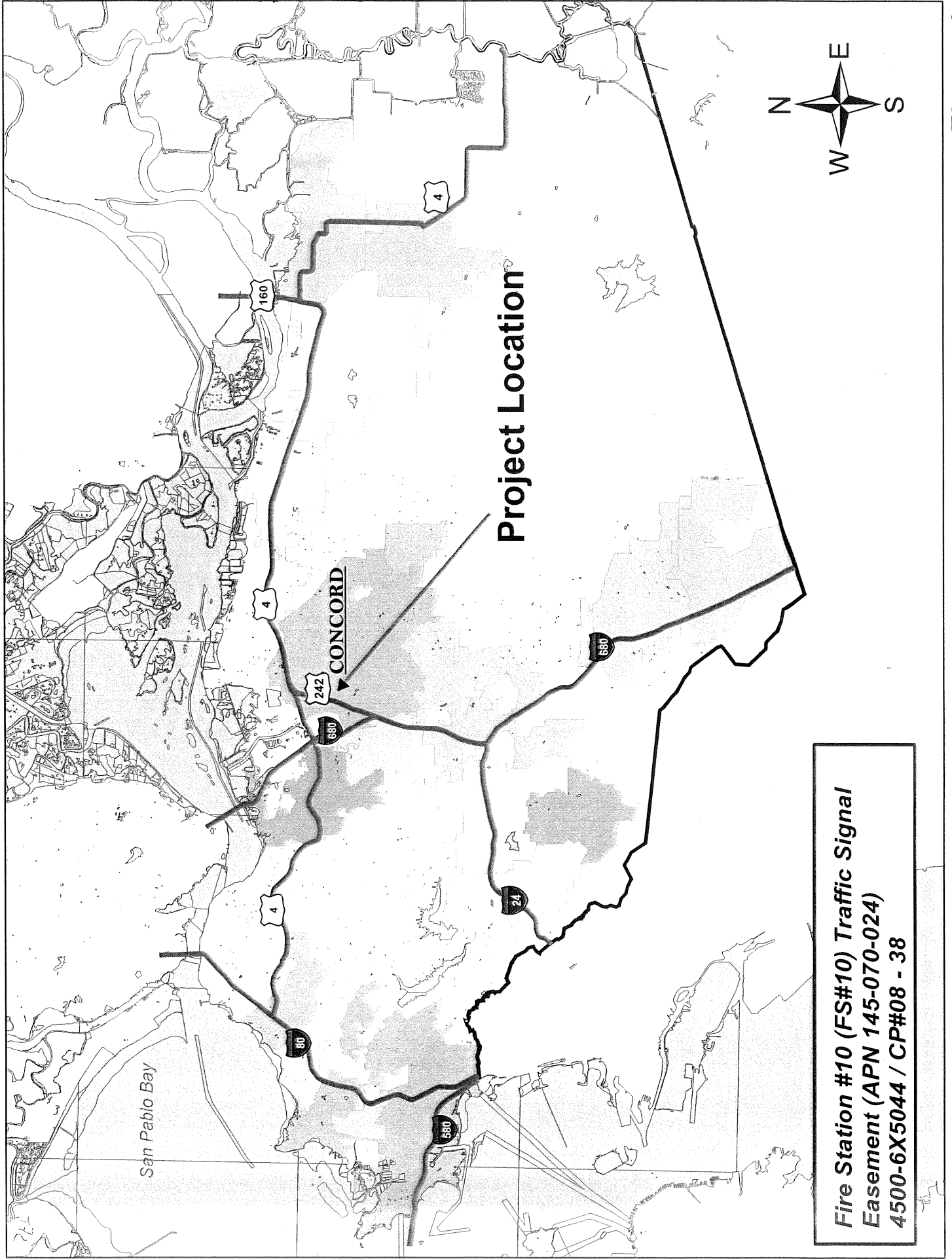


Figure 1

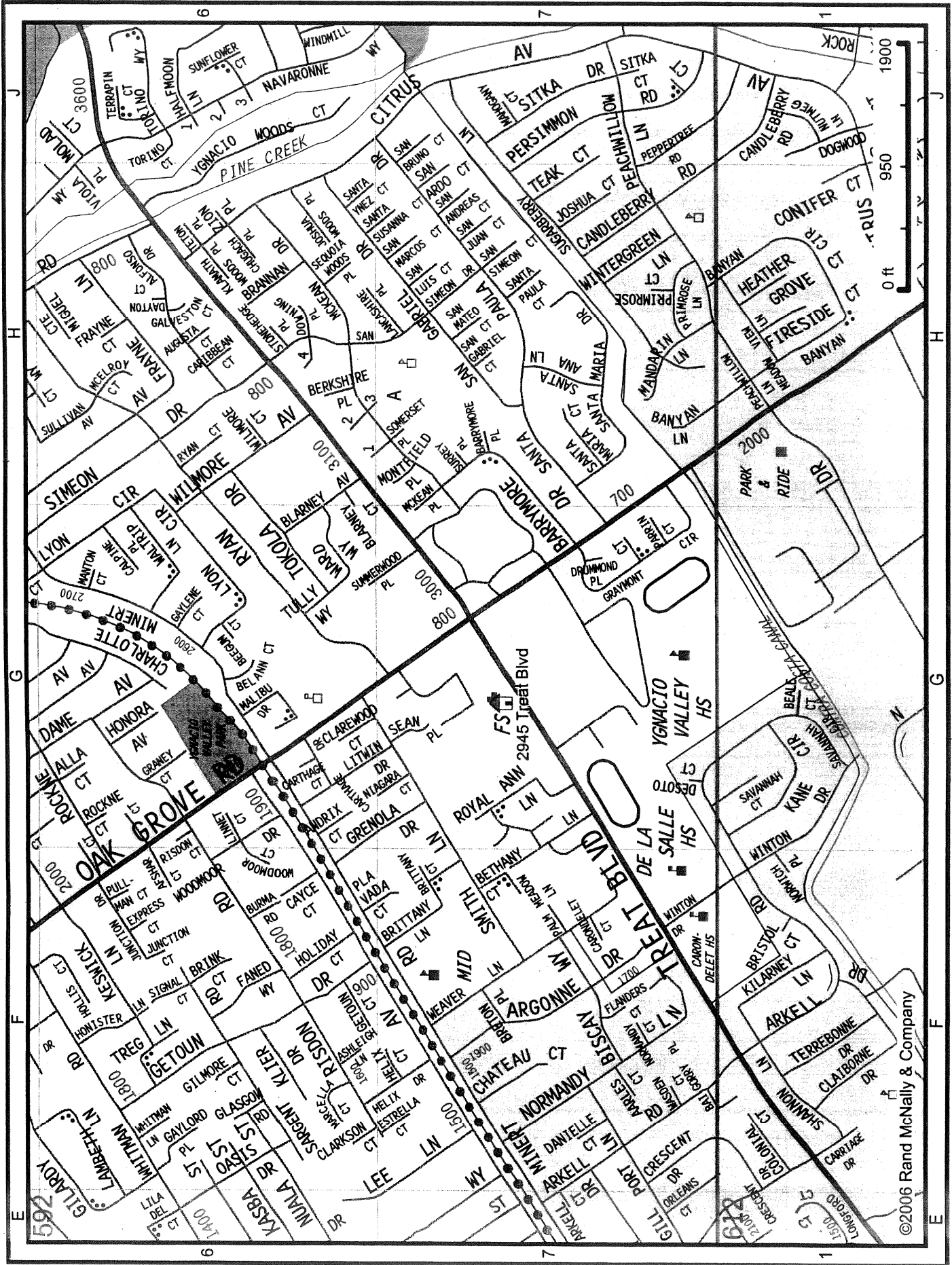
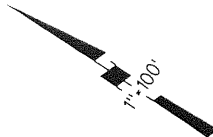


Figure 2

E. A. SMITH'S SUBN NO. 1 M.B. 3-75
 1-1974 2P.M.42 1-22-88
 2-1981 44L.S.M.39 8-31-88
 A-1990 ROLL- TRACT 7096 WOODADAM MANOR
 M.B. 335-13
 3-147P.M.47 7-25-90

RYAN RD.



NOTE: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY AND NO LIABILITY IS ASSUMED FOR ANY ERRORS OR OMISSIONS. THE INFORMATION DELINEATED HEREON, ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL LOT SPLIT OR BUILDING SITE ORDINANCES.

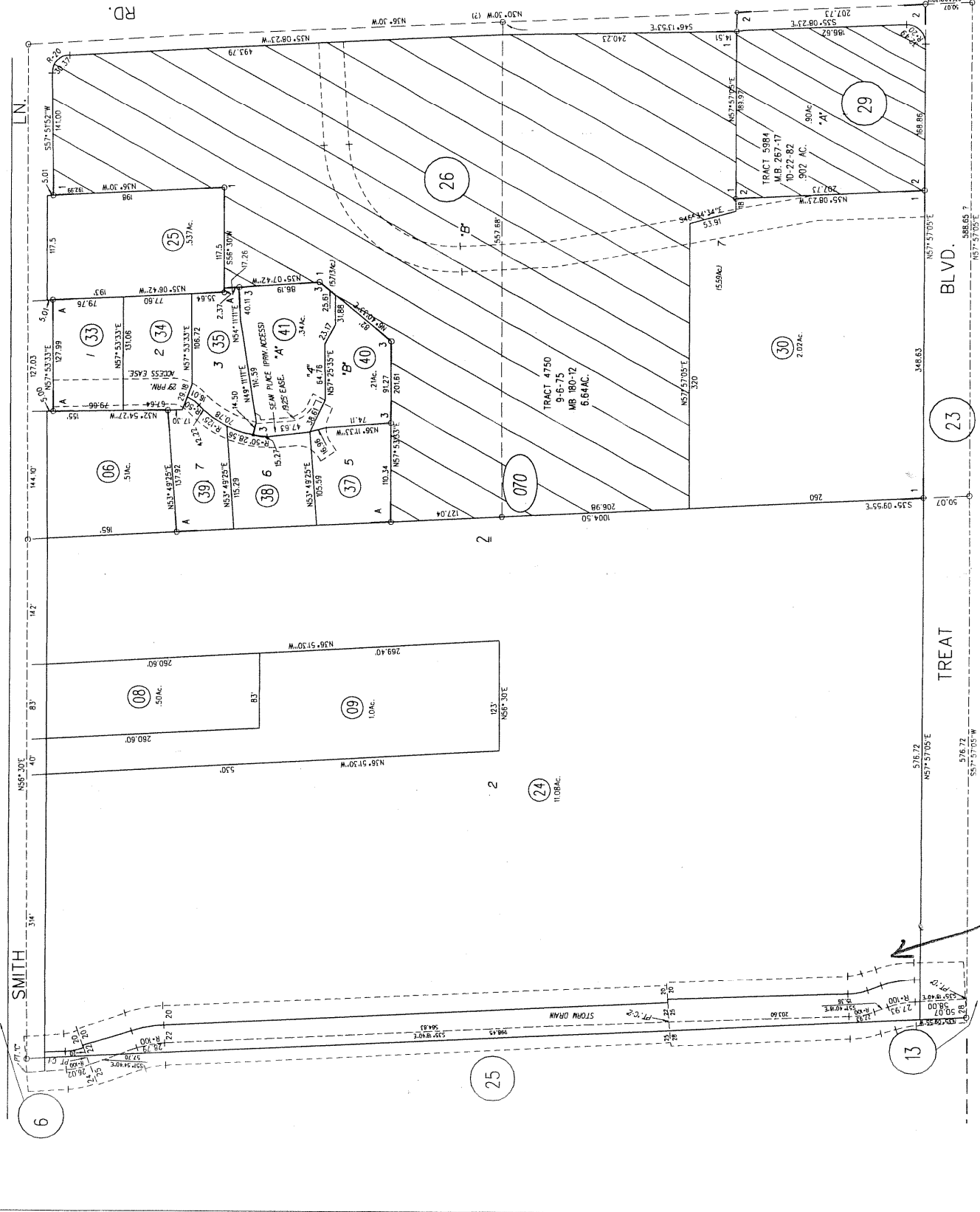
P.B. 129

070

TREAT BLVD.

ASSESSOR'S MAP #02-90
 BOOK 145 PAGE 07
 #02 CONTRA COSTA COUNTY, CALIF.

Figure 3



Project Location