

CITY OF YUBA CITY
STAFF REPORT

Date: March 3, 2009
To: Honorable Mayor & Members of the City Council
From: Public Works
Presentation by: George Musallam, Public Works Director

Summary

Subject: Grant of Non-Exclusive Irrevocable Easement Agreement with Pacific Bell Telephone Company for property located at 1301 Tharp Road [APN 59-010-072]
Recommendation: Adopt a resolution approving the execution of an Easement Agreement with Pacific Bell Telephone Company for the grant of a non-exclusive irrevocable easement for property located at 1301 Tharp Road [APN 59-010-072].
Fiscal Impact: \$160,000 – To be funded in FY 09-10 Capital Improvement Program

Background:

The La Bella Vita project, located at the southeast corner of Tharp Road and Butte House Road, is required to construct street improvements across the frontage of the project on the east side of Tharp Road. With the construction of the improvements, only one parcel will remain unimproved along the east side of Tharp Road between Poole Boulevard and Butte House Road. Pacific Bell Telephone Company (Pacific Bell) owns the parcel, which is identified as 1301 Tharp Road, and has no plans to make any modifications to the property which would give the City the ability to require dedication of right-of-way and construction of street improvements.

Analysis:

Staff contacted Pacific Bell to discuss the dedication of an easement on Tharp Road to the City in exchange for the installation of curb, gutter, and sidewalk across the frontage of the property. The attorney for Pacific Bell worked with the City Attorney to develop an agreement that complies with the California Public Utilities Commission regulations for the grant of a non-exclusive irrevocable easement to be dedicated to the City. In exchange, the City will agree to fund and construct the street improvements.

Fiscal Impact:

The estimated cost to widen Tharp Road and construct curb, gutter, and sidewalk across the subject parcel is \$160,000. Staff proposes to include funding for this project in the FY 09-10 Capital Improvement Program and design and construct the improvements late 2009.

Alternatives:

Do not approve the execution of the Easement Agreement and leave the east side of Tharp Road across the subject parcel unimproved.

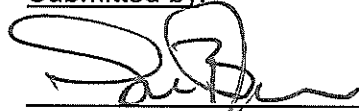
Recommendation:

Adopt a resolution approving the execution of an Easement Agreement with Pacific Bell Telephone Company for the grant of a non-exclusive irrevocable easement for property located at 1301 Tharp Road [APN 59-010-072].

Prepared by:

Diana Langley
Diana Langley
Principal Engineer

Submitted by:


Steven R. Jepsen
City Manager

Reviewed by:

Department Head

Finance

City Attorney

Other

Guy
RD

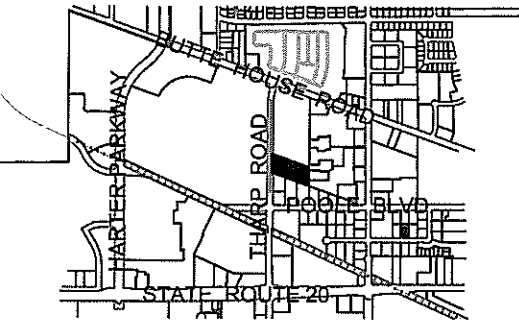
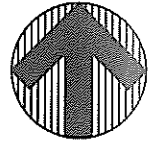
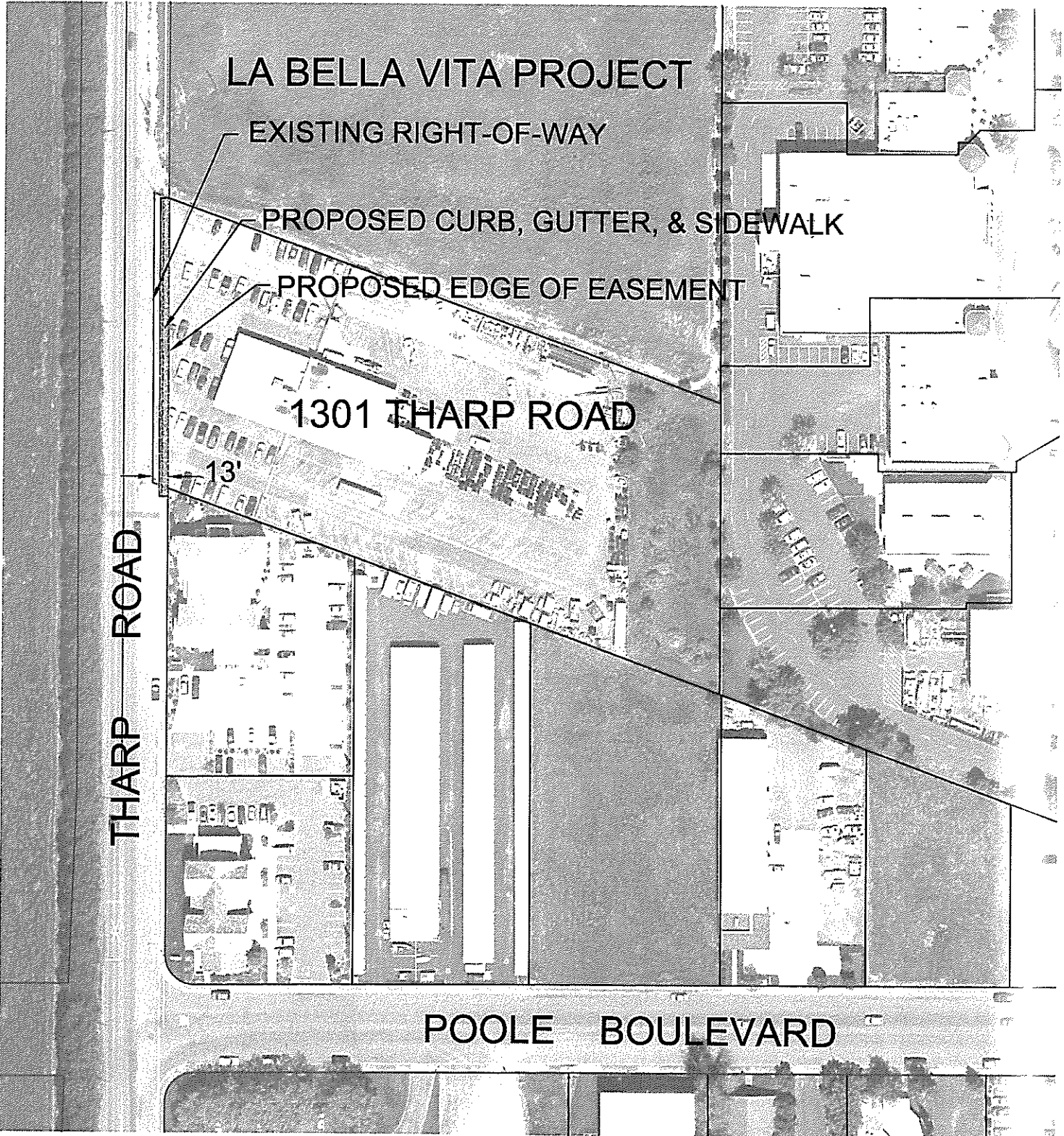


EXHIBIT
1301 THARP ROAD



SCALE: 1" = 120'



RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
AUTHORIZING EXECUTION OF THE GRANT OF NON-EXCLUSIVE
IRREVOCABLE EASEMENT AGREEMENT WITH PACIFIC BELL
TELEPHONE COMPANY

BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF
YUBA CITY AS FOLLOWS:

That the Mayor and City Clerk be, and they are hereby authorized and directed to execute on behalf of the City of Yuba City that certain Grant of Non-Exclusive Irrevocable Easement Agreement between the City of Yuba City and Pacific Bell Telephone Company.

That a copy of said Grant of Non-Exclusive Irrevocable Easement Agreement is on file at the City Clerk's office.

The foregoing Resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 3rd day of March 2009.

AYES:

NOES:

ABSENT:

MAYOR

ATTEST:

CITY CLERK

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Yuba City
1201 Civic Center Blvd.
Yuba City, CA 95993
Attn: City Clerk

(Space Above This Line For Recorder's Use)

The undersigned grantor(s) declare(s):

Documentary Transfer Tax is \$

computed on full value of property conveyed;

computed on full value less value of liens and encumbrances
remaining at time of sale.

Unincorporated area: City of Yuba City

Realty not sold

GRANT OF NON – EXCLUSIVE IRREVOCABLE EASEMENT AGREEMENT

THIS GRANT OF EASEMENT AGREEMENT ("Agreement") is made this the _____ day
of _____, 2008, by and between PACIFIC BELL TELEPHONE COMPANY, A California
Corporation, ("Pacific"), and THE CITY OF YUBA CITY, a municipality, (the "City").

WITNESSETH

WHEREAS, Pacific is the sole owner of that certain real property located in the City of
Yuba City, County of Sutter, State of California, which property is legally described on "Exhibit
A" attached hereto, (the "Pacific Parcel"); and

WHEREAS, the City is vested with the power of eminent domain to acquire real property
by virtue of Article 1, Section 19, of the Constitution of the State of California, 1240.010 –
1240.050, 1240.110, 1240.125, 1240.350, 1240.510, 1240.610; and California Government
Code sections 37350.5, 37353, 39792, 40401 and 40404; and

WHEREAS, Pacific and City each agree that in lieu of City exercising its rights of
eminent domain, the parties will agree to the creation of an easement to the Pacific Parcel; and

WHEREAS, Pacific and City desire to create an irrevocable, non-exclusive easement on
the Pacific Parcel and to enter into certain covenants which are intended to be binding upon
them.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

Easement

Section 1.1 Irrevocable Easement Granted

(a) Subject to the conditions set forth in Article III of this Agreement, Pacific hereby grants to the City, the non-exclusive use by City personnel (persons employed by and acting on behalf of the City) of that westerly portion of the Pacific Parcel, as legally described on "Exhibit B" attached hereto (the "Easement Area"), for purposes of widening Tharp Road thereby constructing curb, gutters and a sidewalk along the frontage including but not limited to a minimum of two (2) - twenty-foot (20') wide concrete driveways for Pacific's access to the Pacific Parcel and the relocation of two (2) light standards at the north and south end of the Pacific Parcel ("Frontage Improvements").

(b) Pacific shall not cause or permit an obstruction in a manner which would prevent the construction and/or the use of the Frontage Improvements.

(c) The Easement provided for in this Section shall not terminate.

(d) This easement is made subject to the provisions of General Order 69-C of the Public Utilities Commission of the State of California ("CPUC"), the terms and conditions of which are incorporated herein by reference and made a part of this easement grant.

ARTICLE II

Maintenance and Repair of Easement

Section 2.1 Maintenance

(a) Pacific agrees to make a reasonable effort to keep the easement free and clear of any obstructions.

(b) In the event damage, to the Pacific Parcel, is caused as a result of the City's use of the easement the City shall promptly repair the damaged area and return it to the condition existing prior to the damage, at the sole cost of the City.

(c) In the event Pacific reasonably requires access to its underground infrastructure for maintenance, repair, installation, or other activities related to the service provided by Pacific, and such access is obstructed by the Frontage Improvements, City shall provide said access. Any repair or replacement of the Frontage Improvements caused by such activities conducted by Pacific shall be at the sole cost and expense of the City. The City shall reimburse Pacific for expenses attributable directly and solely to the Frontage Improvements and its related

appurtenances, within thirty (30) days of Pacific's presentation of relevant documentation of costs incurred.

ARTICLE III

Conditions Precedent

Section 3.1 Conditions

(a) In consideration of the easement granted in Section 1.1 of this Agreement, the City shall provide Pacific with plans and proposals, as may be related to the Frontage Improvements, to Pacific, for Pacific's advance review and approval, which shall not be unreasonably withheld, prior to the City approval and issuance of any construction permit(s).

(b) Any construction of the Frontage Improvements, maintenance, repair, removal, and replacement related thereto, shall be the sole cost, expense, and responsibility of the City.

ARTICLE IV

Miscellaneous

Section 4.1 Modifications This Agreement may not be modified in any respect whatsoever except with the mutual consent of all parties hereto, and then only by written instrument duly executed in recordable form.

Section 4.2 Indemnification The City shall indemnify and hold Pacific harmless of and from any and all loss, cost, liability, damage, injury, or expense, including reasonable attorney's fees, which may arise by reason of any of the following relating to the Frontage Improvements:

a). Any violation committed by the City, its agents, servants, contractors or employees, of any federal, state or local law, ordinance rule, or regulation; or

b). Injury or death to any person(s), damage to property; or claims of lien for work performed and/or materials or supplies furnished, or arising out of or in connection with the negligent acts or omissions of the City or its agents, servants, contractors or employees.

Section 4.3 Entire Agreement This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed and no other representations or promises, written or oral, made by either party to the other which is not contained herein shall be binding or valid.

Section 4.4 Attorney's Fees In the event of any controversy, claim, or dispute relating to this instrument or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees and costs.

Section 4.5 Notices Any notice to be given hereunder by either of the parties hereto to the other may be personally delivered by a nationally recognized overnight courier service, or may be deposited in the United States mail, registered or certified, postage prepaid and return receipt requested, addressed to the party for whom intended as follows:

To City: City of Yuba City
1201 Civic Center Blvd.
Yuba City, CA 95993
Attn: Public Works Director

To Pacific: Pacific Bell Telephone Company
Room 3E300E
2600 Camino Ramon
San Ramon, CA 94583
Attn: Paul Tasin, AT&T Real Estate

Any party may change its address at any time by notifying the other, in writing, of such change. Service of any notice pursuant hereto shall be deemed received at the time of delivery or at the time delivery is refused.

Section 4.6 Insurance The City shall either self insure, to the satisfaction of Pacific, or, shall obtain and maintain at all times public liability insurance insuring against claims on account of death, bodily injury or property damage that may arise from or be occasioned by the condition or use of the easement by City Personnel, employees, agents, contractors or others acting on behalf of the City. If obtained, said insurance shall be maintained with a reputable insurance company or companies qualified to do business in the State of California, with a Best's rating of A or better, and having limits for bodily injury or death in an amount not less than \$1,000,000 for injury to or death of one person, \$1,000,000 for injury to or death of more than one person in one accident and property damage insurance in an amount not less than \$1,000,000. Such insurance shall name Pacific as an additional insured and provide that the insurance may not be cancelled without at least ten (10) days' prior written notice being given by the insurer to Pacific.

Section 4.7 No Partnership, Joint Venture, or Principal Agent Relationship Nothing in this Agreement nor any acts of the parties hereto shall be construed or deemed by the parties, or by any third Person, to create the relationship of partnership, joint venture, or of principal and agent, between the parties hereto.

Section 4.8 Severability If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which is invalid or unenforceable) except those terms and provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 4.9 Governing Laws This Agreement shall be construed and governed in accordance with the domestic laws of the State of California.

Section 4.10 California Public Utilities Commission (CPUC) Pacific is a public utility regulated by the CPUC, and therefore this agreement shall be subject to, and contingent upon, compliance with any and all mandates imposed by the CPUC in the exercise of its jurisdiction. In the event of a conflict regarding the regulatory requirements of the CPUC with respect to this agreement, Pacific's Regulatory personnel shall determine the appropriate resolution to comply with such requirements.

Each party signing this agreement warrants that it has the power and authority to sign this agreement on behalf of the party whom it purports to represent.

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

Pacific Bell Telephone Company, Owner,
a California corporation

By: _____

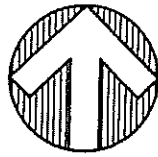
Its: _____

The City of Yuba City, a municipality

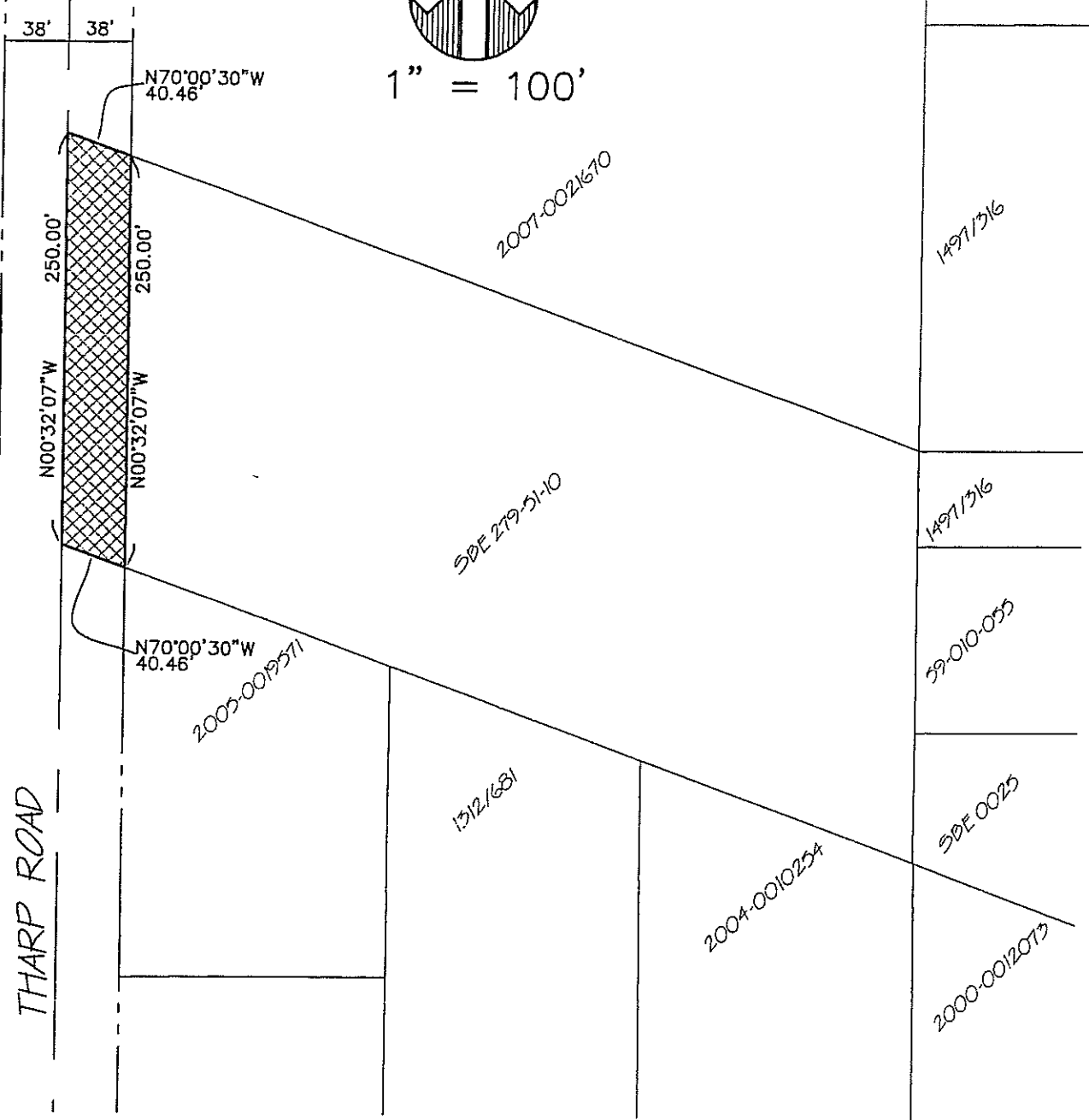
By: _____

Its: _____

EXHIBIT "A"
Pacific Property



1" = 100'



1497/316

SBE 279-51-10

1497/316

59-010-055

2003-0019571

1312/681


2004-0010224

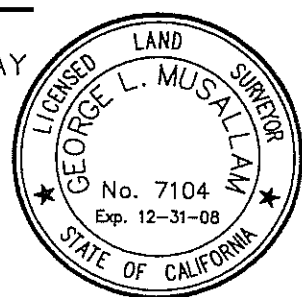
SBE 0025

2000-0012073

.218 acres

LEGEND

- EXISTING RIGHT of WAY
-  EASEMENT TO BE ACQUIRED BY CITY



acq att on Tharp.dwg

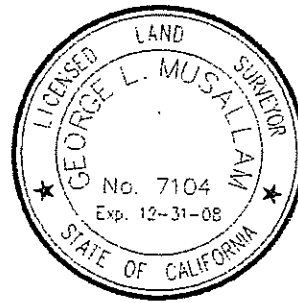
RESOLUTION No. _____		DOCUMENT NO. _____	
CITY of YUBA CITY			
AT & T			
ACQUISITION PLAT			
SBE No. 279-51-10			
SUBMITTED BY: <u>sal</u>		DATE DRAWN: <u>4-4-08</u>	DWG. No.
APPROVED _____		DRAWN BY: <u>sal</u>	XXXX A
APPROVED _____		CHECKED BY: <u>staff</u>	

EXHIBIT "B"
Easement Area

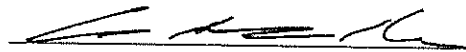
All that real property situated in the County of Sutter, State of California, being a portion of the Southwest quarter of Section 16, Township 15 North, Range 3 East, Mount Diablo, Base and Meridian, more particularly described as follows:

The southerly 250 feet (measured along the west line) of the westerly 40.46 feet of Lot 8, as shown on that certain map entitled "Harter Tract No. 2", filed in the Office of the County Recorder of the County of Sutter, State of California, on May 7, 1912 in Book 2 of Surveys at Page 41, and containing .218 acres more or less.

END OF DESCRIPTION



PREPARED BY



DATE: 4/8/08