

TEMPORARY CONSTRUCTION EASEMENT AND LEASE AGREEMENT

*map 12/16/15*  
This Real Property Temporary Construction <sup>Easement</sup> and Lease Agreement (the "Agreement") is entered into by and between: Diana P. Spitzer, Trustee of the Phyllis L. Pitts Living Trust Dated May 8, 1984, as amended, Denise L. Andrews, individually and as Co-Trustee of The Phyllis L. Pitts Children's Living Trust I Dated November 5, 1984, and Diana P. Spitzer, as Executor of the Estate of Phyllis L. Pitts, deceased (the "Grantor") and the County of Monterey, a Political Subdivision of the State of California (the "County"), collectively, shall hereafter be referred to as the "Parties".

A. WHEREAS, Grantor owns certain unimproved real property located in unincorporated Monterey County, State of California, containing approximately 2,190 acres identified as APN 421-221-001 (hereinafter the "Grantor's Property"); and

B. WHEREAS, County is in the process of implementing the Peach Tree Road at Pancho Rico Bridge Replacement Project ("Project") including without limitation the acquisition of a temporary construction easement during the term of the project; and

C. WHEREAS, County desires to lease a temporary construction easement over and upon a portion of Grantor's Property ("Easement Property"), subject to the terms and conditions set forth in this Agreement;

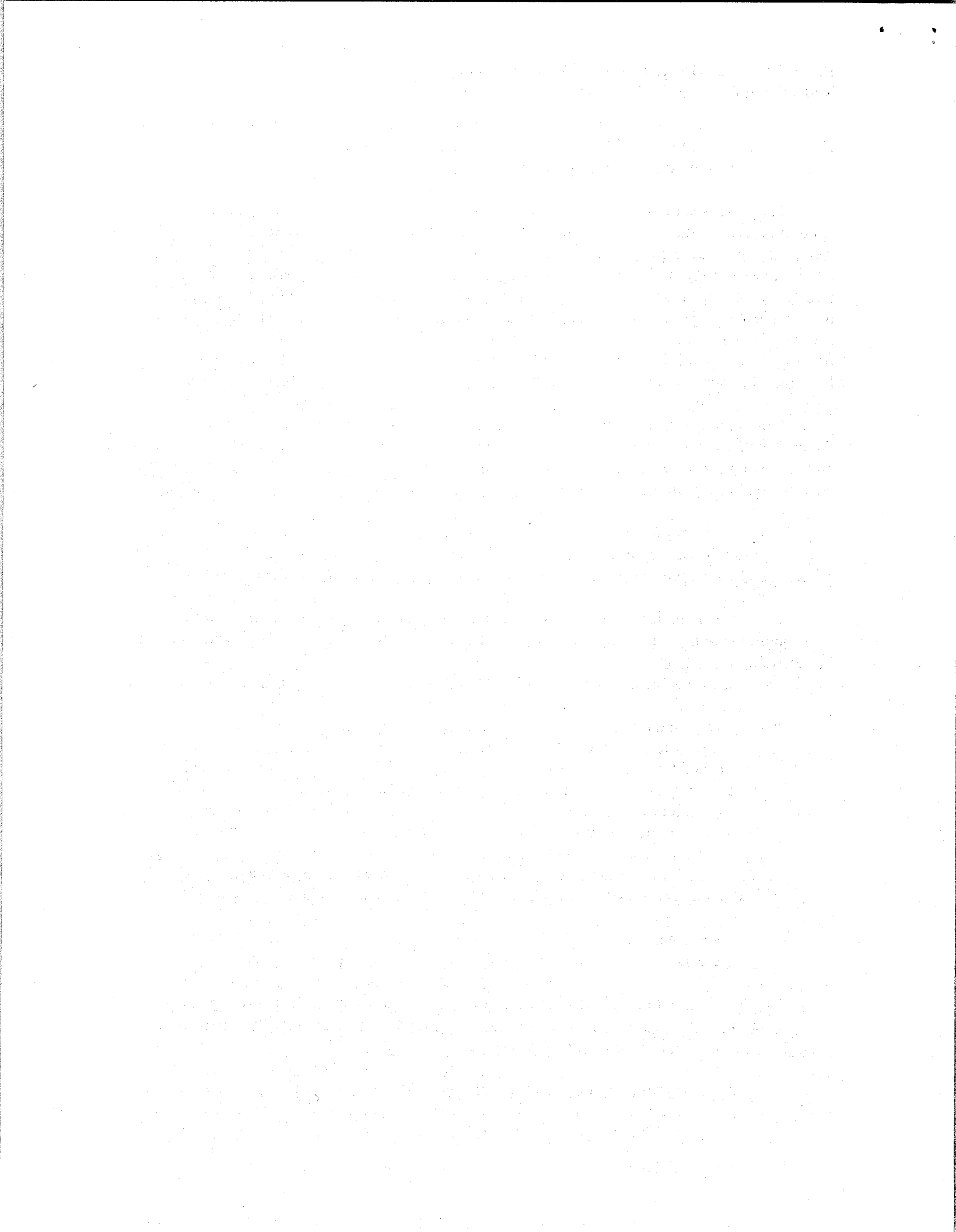
NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, County and Grantor hereby agree as follows:

1. Grantor agrees to lease to County from Grantor the Easement Property subject to the terms and conditions set forth in this Agreement.

2. The Easement Property is shown as a plat drawing in Attachment 1 attached hereto and hereby incorporated by reference.

3. The parties have herein set forth the whole of their agreement and no obligations other than those set herein, unless amended in writing, will be recognized. The performance of this Agreement constitutes the entire consideration for the Easement Property delivered to the County.

4. Grantor conveys to County a Temporary Construction Easement (TCE) over and across the Easement Property for the purpose of facilitating project construction, including but not to limited to, access to the construction site, storage of materials and equipment, and installation of temporary utilities. Said Temporary Construction Easement (TCE) shall commence upon the date project construction starts as indicated in a written notice to Grantor and shall expire upon satisfactory completion of said construction project not to exceed 18 months in duration from the start of construction. The amount payable as shown in Clause 5 below includes payment for this Temporary Construction Easement (TCE).



Peach Tree Road Bridge Project – Monterey County  
MONTEREY COUNTY 10-22-15

5. The County shall pay the Grantor the sum ("Purchase Price") of Eight Thousand four Hundred Fifty Dollars (\$8,450.00), all cash, and is payable upon County's final acceptance of this Agreement and subsequent close of escrow.

6. To the best of Grantor's actual knowledge, Grantor warrants that there are no unrecorded encumbrances, including, but not limited to, liens, oral or written leases exceeding a period of one month, other than the grazing lease held in favor of Mr. Jonathan Wooster, easements or licenses on all or any portion of the Easement Property. Grantor further agrees to hold the County harmless and defend and reimburse the County for any and all of its losses and expenses including reasonable attorney fees, occasioned by Grantor's breach of this warranty. If the Easement Property is leased for a period exceeding one month, Grantor will obtain a Consent to County's proposed use from all lessees or take all necessary steps to evict the lessees occupying the Easement Property. County acknowledges Grantor's lease with Mr. Wooster for grazing purposes.

Grantors represent and warrant that they are the owner of the Easement Property and have the exclusive right and power to grant the Easement Property. The undersigned grantors covenant and agree to indemnify and hold the County harmless from any and all claims that other parties may make or assert on the title to the Easement Property.

Each representation and warranty contained in Clause 6 shall survive the closing date of escrow, and shall not merge with delivery to County of the Agreement; is material and is being relied upon by the other party; and is true in all respects as of the effective date of this Agreement.

7. It is also understood and agreed by and between the parties hereto that County will at no expense to Grantor and at the time of project construction perform work, including but not limited to the following:

- a. Provide vehicle access to the Grantor's Property at all times during the construction of the project.
- b. Providing temporary fence to protect the existing spring.
- c. Locate poles that need to be moved temporarily for the project, as shown in Exhibit "A" attached hereto, away from existing water lines and spring. Upon completion, the temporary pole will be removed from the easement project.
- d. At completion of the project, construct and conform private driveway serving Grantor's Property to new roadway to an alignment similar to what presently exists. The driveway shall be at least 12 feet in width.
- e. At completion of the project, relocate or reconstruct in kind, as necessary, all existing property fencing, gate, mail box, water lines, and other such owner impacted property, if any, as per Project plans on file with the Resources Management Agency-Public Works Department and hereby incorporated by reference.

8. This transaction will be handled through an internal escrow by Monterey County, 168 West Alisal Street, 2<sup>nd</sup> Floor, Salinas, California 93901. County shall pay any title insurance premiums, escrow, and cancellations and all other closing costs.

9. Grantor is providing the Easement Property to County "As Is" in its current condition with all faults and without representation or warranty. Grantor makes no representation or warranty as to the suitability of the Easement Property for County's project or purposes.

10. If any provision of this Agreement is held by a court of competent jurisdiction to be



Peach Tree Road Bridge Project – Monterey County

MONTEREY COUNTY 10-22-15

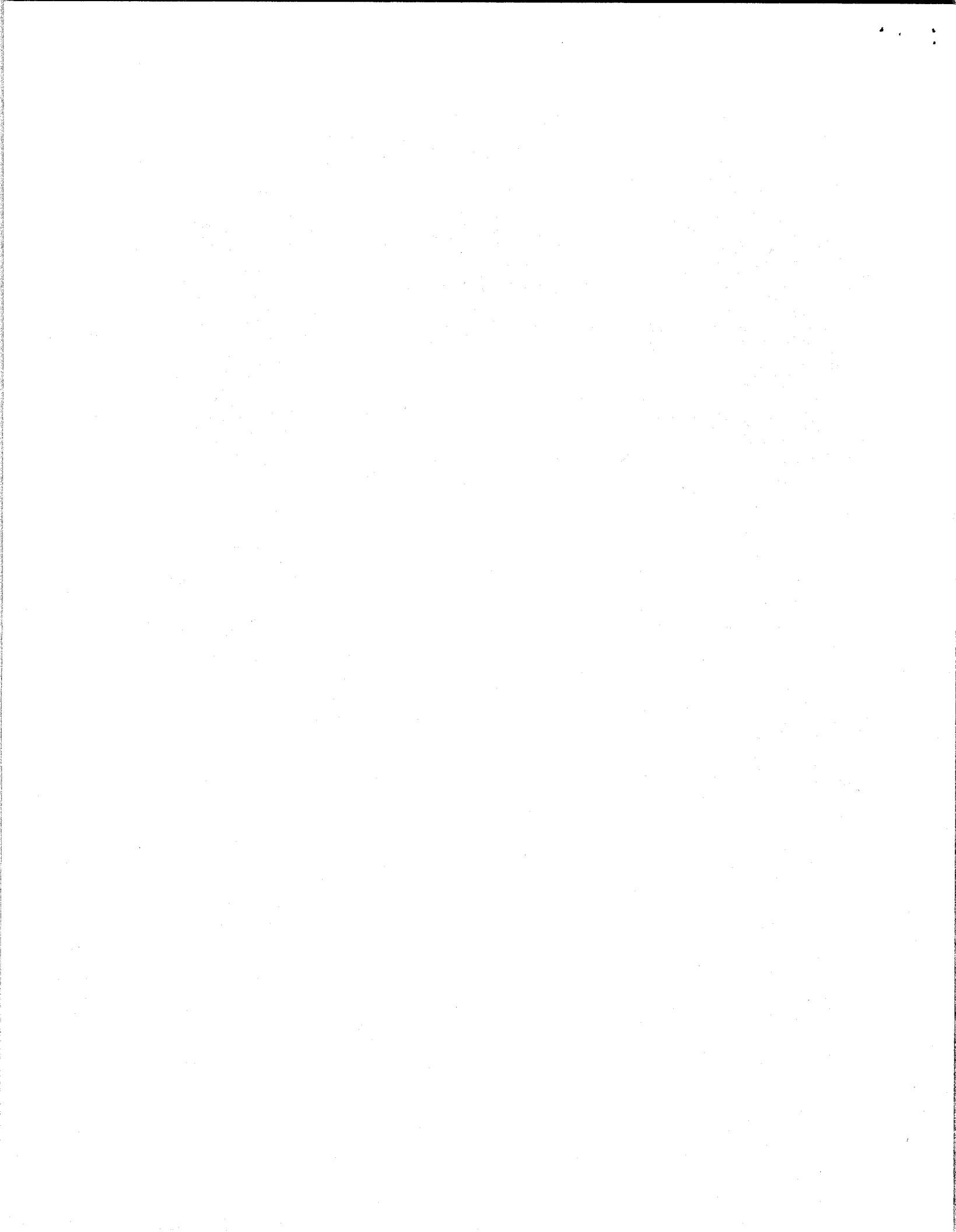
invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

11. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

12. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

This Agreement includes the following, which are attached hereto and made a part hereof:

Attachment 1 – Temporary Construction Easement Plat



Peach Tree Road Bridge Project – Monterey County  
MONTEREY COUNTY 10-22-15

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written below.

Grantor

County

DIANA P. SPITZER, DENISE L. ANDREWS, THE PHYLLIS L. PITTS LIVING TRUST DATED MAY 8, 1984, AND THE PHYLLIS L. PITTS CHILDREN'S LIVING TRUST I DATED NOVEMBER 5, 1984

COUNTY OF MONTEREY

By Diana P. Spitzer  
Diana P. Spitzer,  
as Co-Trustee The Phyllis L. Pitts Children's Living Trust I, The Phyllis L. Pitts Living Trust, and Individually

By Carl P. Holm  
Carl P. Holm, AICP  
RMA Director

Date 11/25/15

Date 1/26/2016

By Denise L. Andrews  
Denise L. Andrews,  
as Co-Trustee of The Phyllis L. Pitts Children's Living Trust I and Individually

Date 11/17/15

ESTATE OF PHYLLIS L. PITTS  
By Diana P. Spitzer  
Executor of the Estate of Phyllis L. Pitts

Date 11/25/15

APPROVED AS TO FORM:

CHARLES J. MCKEE, County Counsel

By Leslie J. Girard  
Leslie J. Girard  
Chief Assistant County Counsel

Dated: 12/18/15

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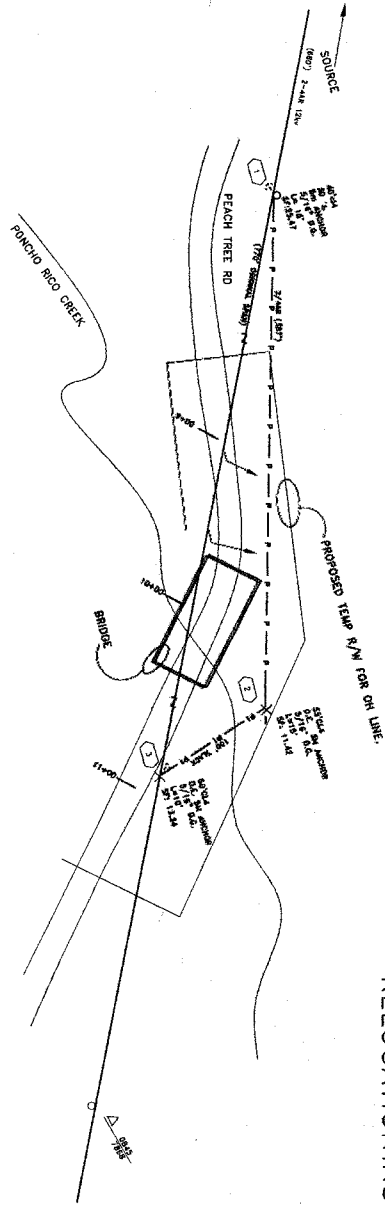
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**EXHIBIT "A"**

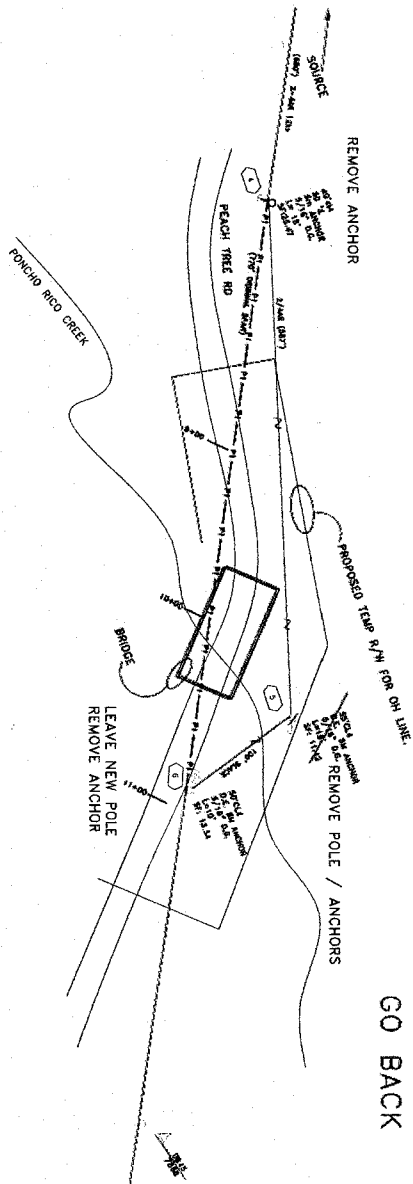
RELOCATIONINSTALL



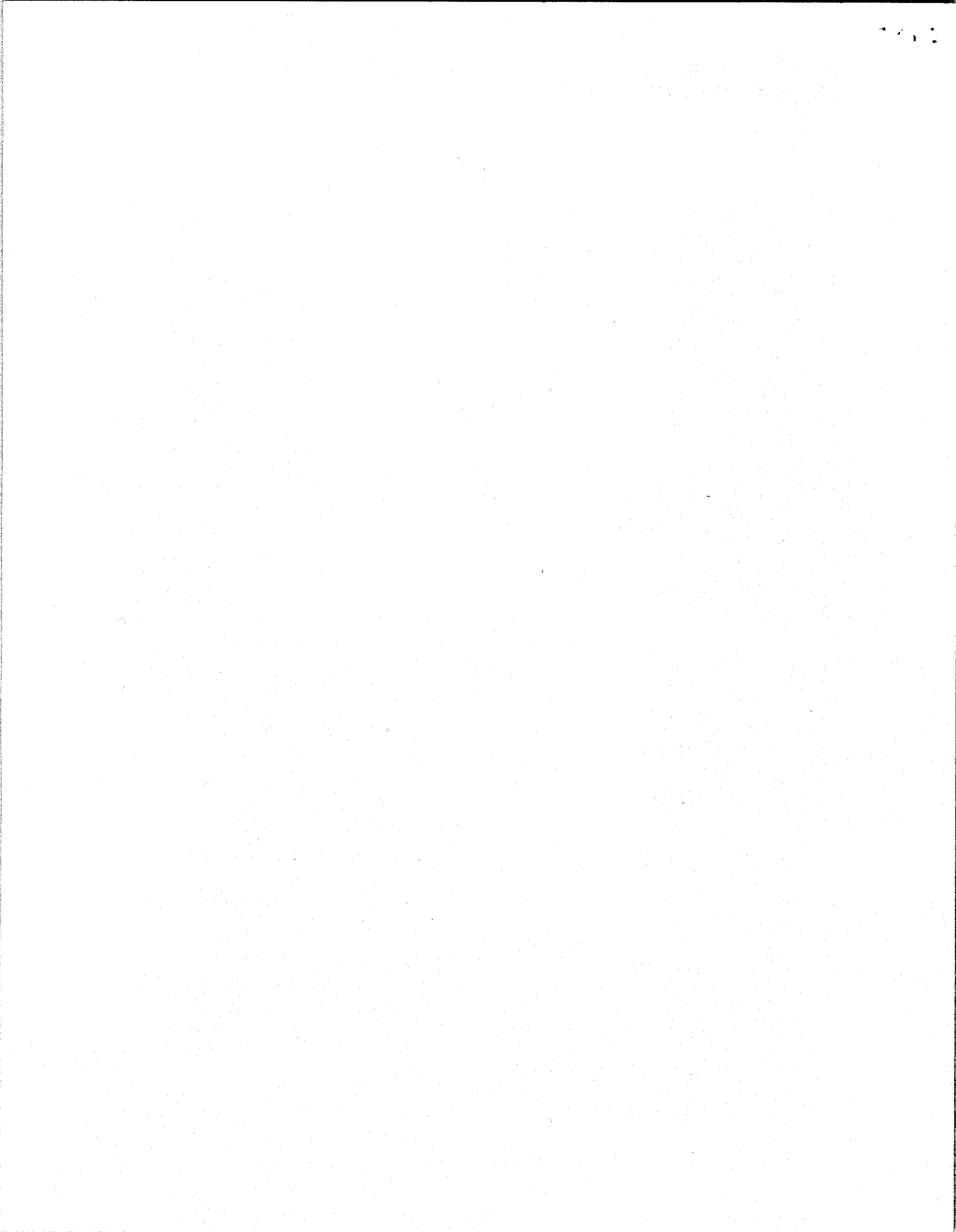
RELOCATIONINSTALL

POLE LOCATIONS ARE STAKED IN THE FIELD.  
 'GO BACK' LOCATIONS - LEAVE POLE AT LOC. 3.

GO BACK



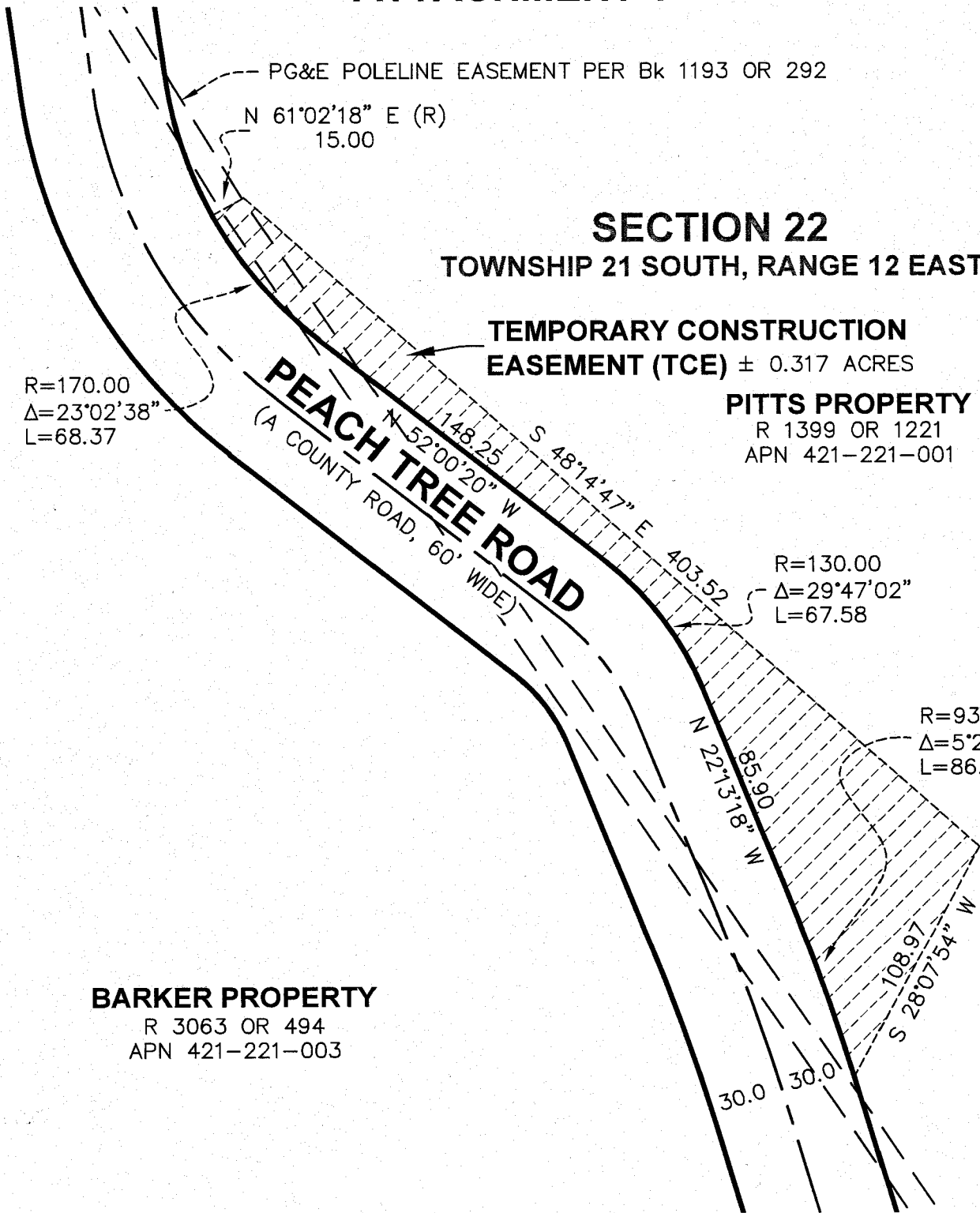
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# ATTACHMENT 1



## SECTION 22 TOWNSHIP 21 SOUTH, RANGE 12 EAST



**COUNTY OF MONTEREY**  
**RESOURCE MANAGEMENT AGENCY**  
**DEPARTMENT OF PUBLIC WORKS**  
 OFFICE OF THE COUNTY SURVEYOR  
 168 WEST ALISAL STREET, 2ND FLOOR  
 SALINAS, CALIFORNIA 93901  
 (831) 755-4800/FAX (831) 755-4958

### ATTACHMENT 1

PEACH TREE BRIDGE  
 PITTS PROPERTY

### TEMPORARY CONSTRUCTION EASEMENT

DATE 06/17/14	DRAWING	SHEET 1 OF 1
SCALE 1"=60'	VIEW PITTS TCE	

