

**Sierra County
Board of Supervisors'
Agenda Transmittal &
Record of Proceedings**

MEETING DATE: March 20, 2020	TYPE OF AGENDA ITEM: <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Timed <input type="checkbox"/> Consent
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DEPARTMENT: Public Works and Transportation
APPROVING PARTY: Tim H. Beals, Director
PHONE NUMBER: 530-289-3201

AGENDA ITEM: Resolution approving Agreement for Possession and Use between Sierra County and Joanna M. Wentz for compensation for acquisition of a portion of property identified as Sierra County Assessor's Parcel 007-110-012, required for construction a portion of the Salmon Lake Road Bridge Replacement Project and authorizing signatory.

SUPPORTIVE DOCUMENTS ATTACHED: Memo Resolution Agreement Other

BACKGROUND INFORMATION: This agreement is the culmination of a lengthy negotiation for necessary right of way acquisition as well as authorization to utilize the parcel for purposes to construct the project. This agreement was ultimately negotiated by Bender Rosenthal Incorporated under Sierra County Agreement 2019-056.

FUNDING SOURCE: FHWA
GENERAL FUND IMPACT: No General Fund Impact
OTHER FUND:
AMOUNT: \$4900.00 N/A

ARE ADDITIONAL PERSONNEL REQUIRED?

Yes, -- --
No

IS THIS ITEM ALLOCATED IN THE BUDGET? Yes No

IS A BUDGET TRANSFER REQUIRED? Yes No

SPACE BELOW FOR CLERK'S USE

<p>BOARD ACTION:</p> <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____	Resolution 2020- _____ Agreement 2020- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus
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COMMENTS:

 CLERK TO THE BOARD _____
DATE

BOARD OF SUPERVISORS, COUNTY OF SIERRA, STATE OF CALIFORNIA

**RESOLUTION IN THE MATTER OF APPROVING
AGREEMENT FOR POSSESSION AND USE FOR
RIGHT OF WAY ACQUISITION FOR
SALMON LAKE ROAD BRIDGE PROJECT AND
AUTHORIZING SIGNATORY**

RESOLUTION 2020-_____

BE IT RESOLVED THAT, the Sierra County Board of Supervisors hereby approves the Agreement for Possession and Use between Sierra County and Joanna M. Wentz for compensation for acquisition of a portion of property identified as Sierra County Assessor's Parcel 007-110-012, required for construction a portion of the Salmon Lake Road Bridge Replacement Project and authorizing signatory

BE IT FURTHER RESOLVED the Sierra County Board of Supervisors authorizes Bryan Davey, Deputy Director of Transportation to execute on behalf of Sierra County the Agreement for Possession and Use between Sierra County and Joanna M. Wentz.

ADOPTED by the Board of Supervisors of the County of Sierra on the 20th day of March, 2020 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNTY OF SIERRA

JAMES BEARD
CHAIRMAN, BOARD OF

SUPERVISORS

ATTEST:

APPROVED AS TO FORM:

HEATHER FOSTER
CLERK OF THE BOARD

DAVID PRENTICE
COUNTY COUNSEL

AGREEMENT FOR POSSESSION AND USE

This Agreement for Possession and Use ("Agreement") is made on 3/12, 2020, by and between the County of Sierra ("County"), and Joanna M. Wentz, surviving joint tenant ("Owner"). The County and Owner shall be collectively referred to as the "Parties."

RECITALS

The County requires immediate possession and use of Owner's real property for the construction of the Salmon Lake Road Bridge Replacement Project ("Project"). Any delay in the start of construction of the Project is contrary to public interest. Owner's property is located near the intersection of Gold Lake Highway and Salmon Lake Road in Sierra County, California, legally described in the attached Exhibit "A" and identified on the Right-of-Way Easement map in the attached Exhibit "B" ("Property").

- A. A portion of the Property designated by the County as Parcel No. 007-110-012-0 ("Parcel"). The Parcel is required for the purpose of constructing a portion of the Project. The purpose of this Agreement is to allow the County to proceed with construction of the Project without delay.
- B. The County has made a firm written offer to pay the total sum of \$4,900.00 to Owner and any other persons having an interest in the Parcel. This amount does not include compensation for any loss of business goodwill, pre-condemnation damages, loss of rent or any other claims for just compensation except for the County's appraised fair market value of the Parcel (and, if applicable, severance damages). This amount does not include reimbursement for relocation benefits which will be handled pursuant to state and federal regulations and policies. The Owner has not accepted this offer.
- C. It is the intent of the County to offer fair-market compensation to Owner for possession and use of the Parcel to construct the Project, and as consideration for the rights set forth in the paragraph entitled "Possession," below.

OPERATIVE PROVISIONS

In consideration of the sum to be paid to Owner and in consideration of the foregoing recitals and the promises, covenants and any other conditions set forth in this Agreement, the County and Owner agree as follows:

Possession

1. Owner grants to the County and its contractors, agents, representatives, employees and all others deemed necessary by the County, the irrevocable right to exclusive possession and use of the Parcel, including but not limited to, the right to remove and dispose of any and all improvements within and/or straddling the right-of-way. In consideration for this irrevocable grant of possession and use, the County will tender into escrow the sum of \$4,900. The County, and its contractors, agents, representatives, employees and all others deemed necessary by the County, shall have the right to possess the Parcel and begin construction of the Project on the date the sum is paid into escrow.

Just Compensation and Appraisal

2. Owner acknowledges that the sum referenced in paragraph 1 represents the full amount of the approved appraisal of what the County believes is just compensation owed for the acquisition of the Parcel(s). Should the Parties fail to reach a settlement and it becomes necessary for the County to consider filing a condemnation action to acquire the Parcel(s), the Parties agree the amount deposited into escrow shall not be admissible as evidence of value in such condemnation proceeding. The Parties agree that the deposit and payment under this Agreement shall be equivalent to a deposit and payment under California Code of Civil Procedure section 1255.010 and that the basis for such deposit and payment, including but not limited to any appraisal, shall be governed by Code of Civil Procedure section 1255.060. Accordingly, the Parties agree that the amount deposited or withdrawn under this Agreement may not be given in evidence or referred to in any trial on the issue of compensation and further agree that any appraiser who prepared any report or statement concerning the deposit may not be called to testify at any such trial.

Escrow

3. This transaction will be handled through an escrow with an escrow company of the County's choice. The County shall cause to be paid all escrow fees incurred in this transaction. Any unearned rents will be prorated in escrow

and the County shall be credited with any outstanding security deposits. Owner shall not be entitled to receive any proceeds until:

- a. All holders of liens and encumbrances on the Parcel have received full payment for all principal and interest due to them and have executed a reconveyance of their interests in the Parcel; and
 - b. All other parties having interests in the Parcel have received payment or have consented to a payment to Owner; and
 - c. The County has acknowledged in writing that it concurs that all other parties having interests in the Parcel have received full payment or have consented to Owner's withdrawal.
4. This escrow shall remain open until either a final settlement, or until termination of this Agreement, or until a Final Order of Condemnation under section 1268.030 of the California Code of Civil Procedure is entered by the court and recorded. Any sum disbursed to Owner from this escrow shall be deducted from the ultimate amount received by Owner as a result of any settlement, award, or verdict of just compensation for the Parcel(s).

Effective Date

5. This Agreement is effective upon execution by both Parties ("Effective Date"). From and after the Effective Date, Owner shall not assign, sell, encumber or otherwise transfer all or any portion of their interest in the Parcel, or the property, without first obtaining the County's prior written consent.

Owner Representations

6. Owner Represents and Warrants:
- (A) Owner has full right, power and legal County to enter into this Agreement, to transfer and convey the possession of the Parcel to County under this Agreement and to carry out Owner's obligations under this Agreement.
 - (B) The only outstanding current interests in or encumbrances on the Parcel are listed: _____
 - (C) No legal, administrative, or other proceeding or inquiry is pending against the Property or against Owner which could affect Owner's title to the Property or the value of the Property and Parcel(s), or subject Owner to liability other than those listed in subparagraph (B) above.
 - (D) No attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending against Owner other than those listed in subparagraph (B) above.
 - (E) Owner has not entered into any other contracts for the sale of the Property other than those listed in subparagraph (B) above.
 - (F) Owner is not bound by any agreement, contract, or lease of any kind relating to the Property which would impose an obligation on the County or otherwise affect marketability of title to the Property other than those listed in subparagraph (B) above.

Taxes

7. Owner agrees to submit payment, when due, to the County tax collector for all taxes and special assessments on the Parcel that are due during the period from the date of possession (as set forth in paragraph 1 of this Agreement) to the date title transfers to the County. Title transfers to the County on the date the Grant Deed or Final Order of Condemnation is recorded in the office of the County recorder. Owner shall not be required to pay taxes or special assessments on the Parcel on or after the date title transfers to the County. After the date title transfers, the County will request that the County tax collector cancel taxes and/or special assessments for the period from the date of possession to the date title transferred to County. After the tax cancellation request is made by the County, Owner may file a claim with the County tax collector for a refund of any tax overpayment. Notwithstanding any other provision of this Agreement, no cancellation shall be made of all or any portion of any taxes that were due prior to the date of possession but which were unpaid; escrow shall pay in a timely manner all delinquent property taxes due from the sums deposited into escrow. (California Revenue and Taxation Code section 5084.)

Eminent Domain Proceedings

8. This Agreement is made with the understanding that the County will cause negotiations to continue in good faith with Owner to acquire its interest in the Parcel by direct purchase. It is further understood that in the event an agreement for purchase is not reached within _____ months of the Effective Date of this Agreement, such failure will be an acknowledgement that the negotiations to acquire the Parcel have proved futile, and the County may exercise its right to pursue a resolution of necessity in accordance with California Code of Civil Procedure sections 1245.210 and 1245.220 and commence an eminent domain proceeding to acquire title to the Parcel(s).
9. If the County begins proceedings in eminent domain, it is understood and agreed that this Agreement shall continue in effect until either a settlement is reached or a Final Order of Condemnation under section 1268.030 of the California Code of Civil Procedure is entered by the court and recorded.

Waiver Notice Pursuant to Code of Civil Procedure Section 1245.235

10. Section 1245.235 of the California Code of Civil Procedure requires that each person whose property is to be acquired by eminent domain be provided with notice and a reasonable opportunity to appear before the Public Works Board and be heard on the matters referred to in section 1240.030 of the Code of Civil Procedure, which provides:
“The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:
 - a. The public interest and necessity require the project.
 - b. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
 - c. The property sought to be acquired is necessary for the project.”
11. By granting this irrevocable right to possession and use of the Parcel to the County, Owner agrees to the following:
 - a. Owner specifically waives the notice required by Code of Civil Procedure section 1245.235 of the hearing on the matters referred to in Code of Civil Procedure section 1240.030, and, to the extent the PWB considers adopting a resolution of necessity, Owner shall not object to the adoption of the resolution of necessity authorizing the taking of the Parcel described in Exhibit “C”.
 - b. Owner shall not object to the filing of an eminent domain proceeding to acquire the property described in Exhibit “C.”
 - c. In any eminent domain action filed by the County to acquire the Parcel described in Exhibit “C,” Owner shall not challenge the County’s right to acquire such property, and the only issue shall be the amount of just compensation for the Parcel(s).

Refund

12. In the event the ultimate amount of any settlement, award, or verdict is less than the total of the sums paid to and withdrawn by Owner, reconciliation shall be pursuant to Code of Civil Procedure section 1255.280.

Waiver

13. Owner waives any right to challenge the County’s right to possess and use the Parcel in any subsequent eminent domain proceedings filed by the County. Owner also waives all claims and defenses in its favor in any subsequent eminent domain proceeding, except a claim for greater compensation.

Date of Valuation

14. In the event proceedings in eminent domain are begun, the date of valuation for determining the amount of just compensation for the Parcel shall be _____.

Interest

15. Compensation awarded in an eminent domain proceeding shall draw interest as prescribed by the California Code of Civil Procedure section 1268.310 et seq.. Owner shall be entitled to receive interest on any sum received as compensation for its interest in the Parcel(s), whether pursuant to this Agreement, a subsequent settlement or court judgment, beginning on the date the County takes possession of the Parcel pursuant to this Agreement and ending on the earliest of the dates as provided in Code of Civil Procedure section 1268.320.

Abandonment of Proceeding

16. Under California Code of Civil Procedure section 1268.510, at any time after the commencement of proceedings in eminent domain, the County reserves the right to abandon the proceeding in whole or in part.

County to Execute and Bind

17. Each of the Parties represents and warrants that each of the persons executing this Agreement has full and complete legal County to do so and thereby binds the party to this Agreement.

Entire Agreement

18. This Agreement reflects the entire agreement between the Parties and shall supersede all prior or contemporaneous oral or written understandings, statements, representations or promises between the Parties concerning the matters contained herein.

Governing Law

19. This Agreement shall in all respects be interpreted, enforced and governed under the laws of the State of California. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the Parties.

Successors in Interest

20. This Agreement shall be binding upon and inure to the benefit of the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the Parties.

Understanding of Agreement

21. This Agreement has been negotiated in good faith and each party warrants and represents that in executing this Agreement, they are not relying upon any representation, promise, inducement or statement made in negotiation that has not been included in the terms of this Agreement.

Fees and Costs

22. Except as otherwise provided in this Agreement, each party shall bear all costs (including expert and appraisal fees but excluding appraisal fees not to exceed \$5,000 pursuant to section 1263.025 of the California Code of Civil Procedure) and attorneys' fees individually incurred in connection with negotiating the matters described in this Agreement.

Severability

23. In case any part, term, portion or provision of this Agreement is determined to be illegal, invalid or unenforceable, the remaining parts, terms, portions and provisions shall remain valid, enforceable, and in full force and effect.

Amendment to Agreement

24. This Agreement may only be amended by written agreement, executed by all Parties.

Counterparts

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

Memorandum of Agreement

26. County shall record a memorandum of this Agreement.

NO OBLIGATIONS OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

IN WITNESS WHEREOF, the Parties have executed this Agreement.

OWNER

Joanna M. Wentz, surviving joint tenant

By: Joanna M. Wentz
Joanna M. Wentz

Date: 3/12/2020

COUNTY OF SIERRA

By: _____

Bryan Davey, Deputy Director
Department of Transportation

Date: _____

EXHIBIT 'A'
RIGHT-OF-WAY EASEMENT

All that real property situate in the County of Sierra, State of California, being a portion of the lands of the Oliver W. Wentz and Joanna M. Wentz, as said lands are described in that certain Grant Deed dated April 5, 2001, recorded as Document Number 2001-132058, Official Records of Sierra County, also being in Section 28, Township 21 North, Range 12 East, M.D.B.M., said real property being described as follows:

COMMENCING at the Center Quarter corner of said Section 28 as shown on that certain Record of Survey, dated January 16, 1991, recorded in Book 9 of Maps and Surveys, at Page 20 and 21, Sierra County Records; thence along the Quarter Section line of said Section 28, North 89°08'30" East 755.89 feet to the **POINT OF BEGINNING**; thence leaving said Quarter Section line along the following two (2) courses and distances:

- 1) North 00°51'30" East 80.00 feet;
- 2) North 85°17'08" East 446.11 feet to a point on the westerly right-of-way for Gold Lakes Highway and the beginning of a non-tangent curve to the left, concave easterly, having a radius of 1223.45 feet and to which a radial line bears North 86°05'48" E; thence southerly along said right-of-way, through a central angle of 5°10'42", an arc distance of 110.58 feet to a point on the said Quarter Section line; thence along said Quarter Section line, South 89°08'30" West 455.95 feet to the **POINT OF BEGINNING**.

containing 42,791 square feet (0.982 acres), more or less.

The above-described real property is identified on Exhibit 'B' attached hereto and made a part hereof.

The basis of bearings for this description is identical to that of the Record of Survey recorded in Book 9 of Maps and Surveys at Pages 20 and 21, Sierra County Records.

End of Description


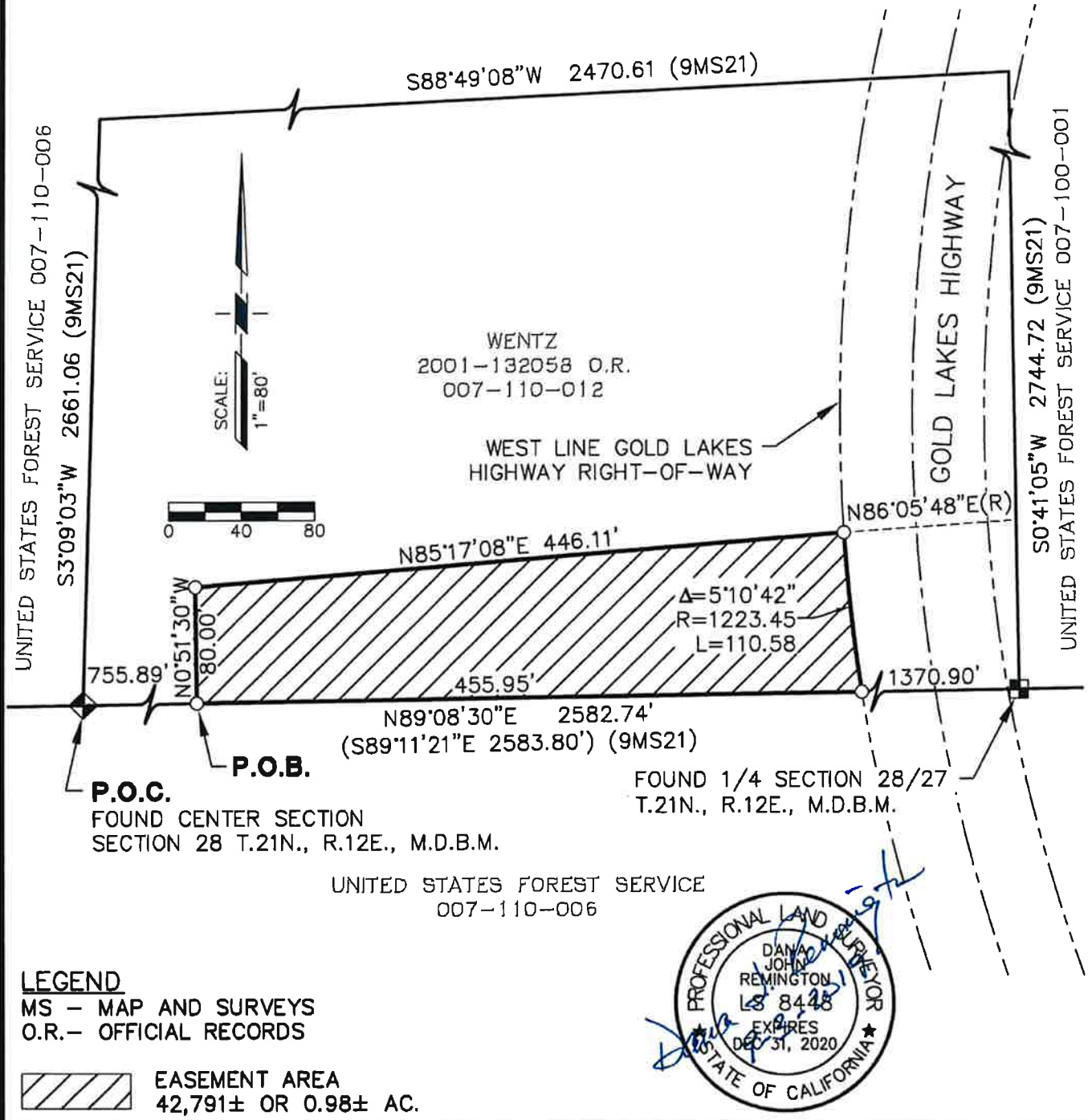

Dana J. Remington LS No. 8448



EXHIBIT 'B'



RIGHT-OF-WAY EASEMENT WENTZ

COUNTY OF SIERRA

STATE OF CALIFORNIA

DATE: 09/3/2019

SCALE: 1" = 100'

DRWN. BY: TRS CHK. BY: DJR

SHEET 1 OF 1

PSOMAS

11661 Blocker Drive, Suite 200
 Auburn, Ca. 95603
 (530) 885-7072 (530) 885-5798 (FAX)

Plotted: Sep/03/2019 11:34 AM | By: Tim.schooss
 DWG: N:\BMGE010100\Survey\DESIGN\BMGE010100-EX.dwg

EXHIBIT C

LEGAL DESCRIPTION

All of the Northeast quarter of Section 28, Township 21 North, Range 12 East, M.D.M.

EXCEPT THEREFROM the following described property: The Northeast quarter of the Northeast quarter of the Northeast quarter and the Southeast quarter of the Southeast quarter of the Northeast quarter of said Section 28, Township 21 North, Range 12, East, M.D.M.

ALSO EXCEPTING THEREFROM: Lots numbered 1 thru 17 of the Diamond L Resort subdivision, filed September 14, 1914, in Book 1 of Subdivisions, page 9.

APN: 007-110-012

Recorded at the request of

County of Sierra

When Recorded Mail to:

Bender Rosenthal, Inc.
Attn: Betsey Cline
2825 Watt Avenue, Suite 200
Sacramento, CA 95821

Space Above this line for Recorder's Use

This document is recorded for the benefit of the County of Sierra and is therefore exempt from the payment of a recording fee pursuant to Government Code Section 27383 or filing fee pursuant to Government Code Section 6103, and from the payment of the documentary transfer tax pursuant to Revenue and Taxation Code Section 11922.

007-110-012-0

APN

MEMORANDUM OF AGREEMENT FOR POSSESSION AND USE

This Memorandum of Agreement for Possession and Use ("Memorandum of Agreement") is made on _____, 20____, by and between the County of Sierra ("County") and Joanna M. Wentz, surviving joint tenant ("Owner"), who shall be collectively referred to as the "Parties."

The County entered into an Agreement for Possession and Use with Owner dated as of 3-12, 2020 ("Agreement") in which County and Owner agreed, among other things, to the following:

- Affected Real Property:** Owner granted the County the permission to enter and use Owner's real property to construct the Salmon Lake Road Bridge Replacement Project (the "Project"). Owner's property is located in Sierra County, California, legally described in the attached Exhibit "A." A portion of property designated by the County as Parcel No. 007-110-012-0 (the "Parcel"), legally described in the attached Exhibit "B," is to be acquired for the Project.
- Right of Possession:** Owner granted to the County and its contractors, agents, representatives, employees and all others deemed necessary by the County, the irrevocable right to exclusive possession and use of the Parcel, including but not limited to, the right to remove and dispose of any and all improvements within and/or straddling the right of way. This Agreement shall be binding and inure to the benefit of the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the Parties.
- Purpose of Memorandum of Possession and Use Agreement:** The purpose of this Memorandum of Agreement is for recordation only and is not intended to be a summary of the Agreement and is subject to the terms of the Agreement. In the event of conflict between this Memorandum of Agreement and the Agreement, the Agreement shall control.

SIGNATURE PAGE FOLLOWS

EXHIBIT 'A'
RIGHT-OF-WAY EASEMENT

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containing 42,791 square feet (0.982 acres), more or less.

The above-described real property is identified on Exhibit 'B' attached hereto and made a part hereof.

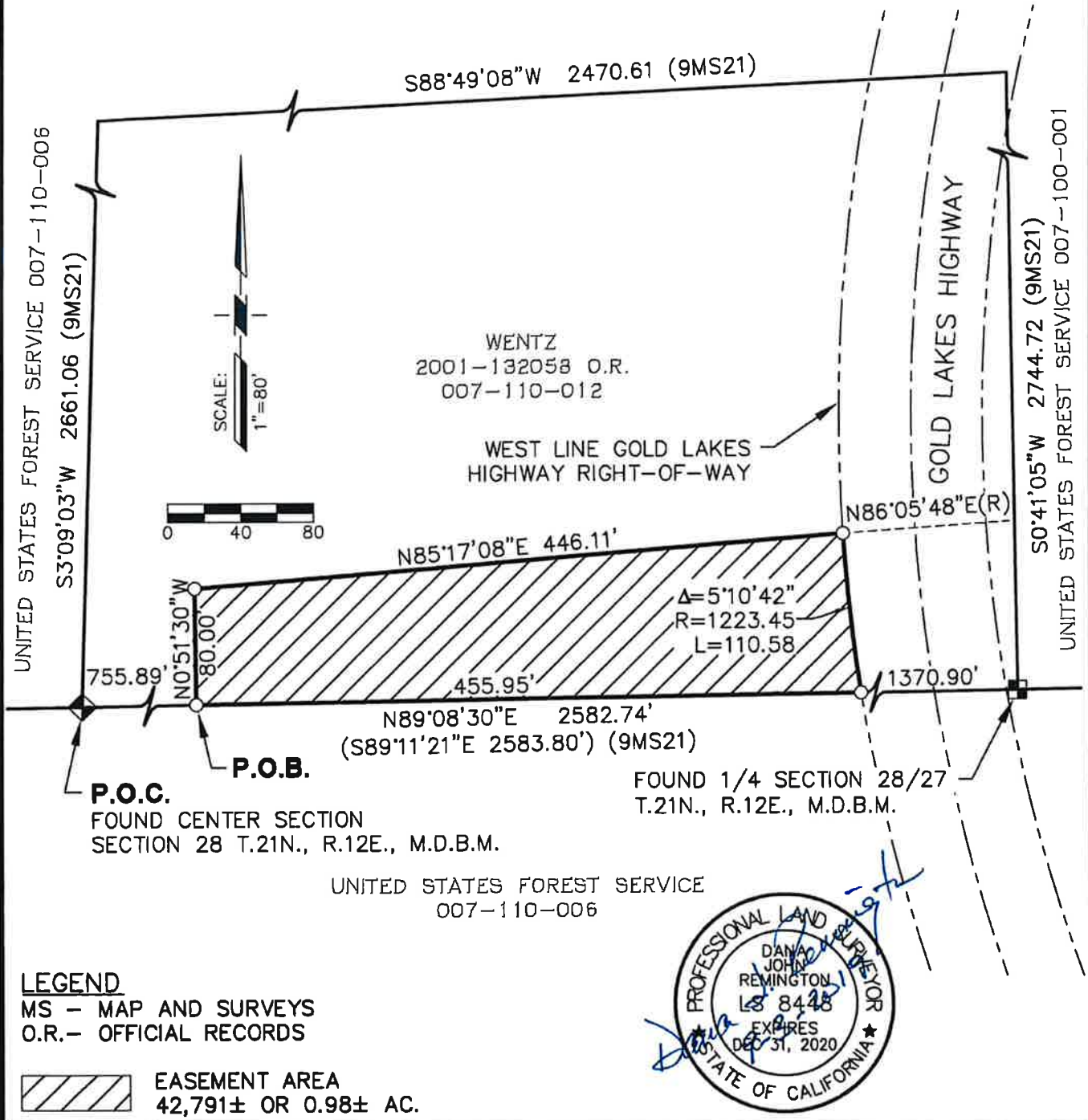
The basis of bearings for this description is identical to that of the Record of Survey recorded in Book 9 of Maps and Surveys at Pages 20 and 21, Sierra County Records.

End of Description


Dana J. Remington LS No. 8448



EXHIBIT 'B'



RIGHT-OF-WAY EASEMENT WENTZ

COUNTY OF SIERRA STATE OF CALIFORNIA

DATE: 09/3/2019	SCALE: 1" = 100'
DRWN. BY: TRS CHK. BY: DJR	SHEET 1 OF 1
<small>Plotted: Sep/03/2019 11:34 AM By: Tim.achooze DWG: N:\6MGE010100\Survey\DESIGN\6MGE010100-EX.dwg</small>	

PSOMAS
 11861 Blocker Drive, Suite 200
 Auburn, Ca. 95803
 (530) 885-7072 (530) 885-5788 (FAX)

OWNER: Joanna M. Wentz, surviving joint tenant

By: Joanna M. Wentz Date: 3/12/2020
Joanna M. Wentz

COUNTY OF SIERRA

By: _____ Date: _____
Bryan Davey, Deputy Director
Department of Transportation

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of ~~California~~ Oregon)
County of Wallowa)

On 3-12-2020 before me, Angela Gwen Seuffer, Notary,
Date Here Insert Name and Title of the Officer

personally appeared Joanna M. Wentz
Name(s) of Signer(s)

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~~ Oregon that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Angela Gwen Seuffer
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____