

RESOLUTION NO. 2010-65

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO SIGN A JOINT USE AND MAINTENANCE
EASEMENT AGREEMENT WITH THE COSUMNES COMMUNITY SERVICES
DISTRICT FOR LAGUNA CREEK TRAIL BRIDGE PROJECT**

WHEREAS, the City of Elk Grove ("City") began construction on the Safe Routes to School - Laguna Creek Trail Bridge Project, Capital Improvements Project ID PT0065 ("Project") which included the construction of a bike / pedestrian bridge over Laguna Creek with minor improvements to the Laguna Creek trail connection at Hill Park; and

WHEREAS, the newly constructed Laguna Creek Trail Bridge spans two parcels, one owned by the City of Elk Grove, and the other owned by the Cosumnes Community Services District ("CCSD"); and

WHEREAS, CCSD provided temporary "Permission to Enter and Construct" in CCSD right-of-way from June 1, 2008 to December 31, 2009 for the construction phase of the project; and

WHEREAS, on September 28, 2009, City received approval of the Notice of Completion for the Laguna Creek Trail Bridge; and

WHEREAS, the proposed Joint Use and Maintenance Easement Agreement between the City and CCSD affirms the City's maintenance responsibility of the bridge structure and associated trail connection at Hill Park; and

WHEREAS, the proposed Joint Use and Maintenance Easement agreement grants a maintenance easement to the City in, upon, over, and across the Easement Area for ingress, egress, and all other activities reasonably related to the specific purpose of maintaining the bicycle / pedestrian bridge and trail of the Easement Area identified in Exhibits A and A-1 and Exhibits B and B-1 of the agreement; and

WHEREAS, the Joint Use and Maintenance Easement agreement also articulates that City and CCSD desire joint use of the property for at least twenty years for public recreation operation, including specifically bicycle / pedestrian recreation, and to make no other use, sale, or other disposition of the property, except as authorized by a specific act of Legislature; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager to sign a Joint Use and Maintenance Agreement with the Cosumnes Community Services District for the Laguna Creek Trail Bridge Project.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 14th day of April 2010.


SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:


SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:


SUSAN COCHRAN, CITY ATTORNEY

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2010-65**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)


I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on April 14, 2010 by the following vote:

AYES : **COUNCILMEMBERS:** *Scherman, Detrick, Cooper, Davis, Hume*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN : **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*



Susan J. Blackston, City Clerk
City of Elk Grove, California

EXHIBIT A

Location Map - Laguna Creek Bridge



City of Elk Grove



ELK GROVE
A CITY OF CALIFORNIA

The City of Elk Grove makes no warranty of the accuracy of the information contained on this map. The City of Elk Grove will not be held liable for any misuse or misinterpretation of the information.

EXHIBIT B

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Cosumnes Community Services District
Department of Parks and Recreation
8820 Elk Grove Blvd., Suite 3
Elk Grove, California 95624

APN: 127-0160-033

Space above this line for Recorder's Use
No Recording Fee Pursuant to Gov. Code § 27383

JOINT USE AND MAINTENANCE EASEMENT

This JOINT USE AND MAINTENANCE EASEMENT ("Easement") is entered into by and between the Cosumnes Community Services District, a special district ("Grantor") and the City of Elk Grove, a California municipal corporation ("Grantee"), and is entered into with respect to the following recitals:

RECITALS

- A. Grantor is the owner of certain real property located in the City of Elk Grove, Sacramento County, California, which is more particularly described in Exhibit A and B (Legal Description) and depicted in Exhibit A-1 and B-1 attached hereto (the "Easement Area").
- B. Grantor desires to dedicate an easement and right-of-way to Grantee for the specific purpose of maintaining the bike/pedestrian bridge and trail, over, under, and on the Easement Area.
- C. Grantor desires joint use of the property with Grantee for at least twenty years for public recreation operation, including specifically bicycle/pedestrian recreation, and to make no other use, sale or other disposition of the property, except as authorized by a specific act of the Legislature.

TERMS AND CONDITIONS

1. **Grant of Joint Use and Maintenance Easement.**
 - (a) Grantor hereby grants to Grantee a maintenance easement in, upon, over and across the Easement Area for ingress, egress, and all other activities reasonably related to the specific purpose of maintaining the bicycle/pedestrian bridge and trail of the Easement Area.
 - (b) Grantor and any successors thereto, in the exercise of any rights retained, as fee titleholder shall:

(1) Notify the Grantee, in writing (including e-mail), at least Forty Eight (48) hours prior to the commencement of any work in the Easement Area unless an emergency exists. Should an emergency exist where life or property are at risk, notice shall be provided to the Grantee within forty-eight (48) hours of commencing the work.

Upon completion of any work in the Easement Area, return all landscaping, sidewalks, walls, irrigation systems and appurtenances thereto, to the same, or reasonably similar to the preexisting condition that existed before Grantor exercised any of its retained rights. Any additional improvements undertaken by Grantor excluding repairs and replacement work in the Easement Area shall be inspected and approved by Grantee.

(2) Coordinate with Grantee any work or modification to the existing landscaping or irrigation system in the Easement Area.

(c) Grantor is in agreement with Grantee regarding the joint use of the bicycle/pedestrian bridge and trail for public recreation operation, including bicycle/pedestrian recreation, for a period of no less than twenty years from the date of this agreement. Furthermore, Grantor and Grantee will make no other use, sale, or other disposition of the property, except as authorized by a specific act of the Legislature.

2. **Mutual Indemnification**

(a) Grantor agrees to indemnify, defend, and hold harmless Grantee and **Grantee's officials, officers, agents, and employees from and against any and all third party suits, demands, claims, causes of action, losses, liabilities, penalties, charges, costs and expenses, including reasonable investigation costs, attorneys' fees and disbursements, and fees of consultants and expert witnesses that may be imposed on, incurred by or asserted against Grantee in connection with any acts, omissions, intent or negligence, whether active or passive, excepting only such loss, damages, and/or liability as may be caused by the intentional acts or sole negligence of Grantee.**

(b) Grantee agrees to indemnify, defend, and hold harmless Grantor and **Grantor's officials, officers, agents, and employees from and against any and all third party suits, demands, claims, causes of action, losses, liabilities, penalties, charges, costs and expenses, including reasonable investigation costs, attorneys' fees and disbursements, and fees of consultants and expert witnesses that may be imposed on, incurred by or asserted against Grantor in connection with any acts, omissions, intent or negligence, whether active or passive, excepting only such loss, damages, and/or liability as may be caused by the intentional acts or sole negligence of Grantor.**

3. **Notice to the Parties.** For the purpose of this Easement, communications and notices between the parties shall be in writing and shall be deemed to have been given when actually delivered, if given by personal delivery or transmitted by overnight courier service, or if

mailed, when deposited in the United States Mail, First Class, postage prepaid, return receipt requested and addressed as follows:

To Grantor: Cosumnes Community Services District
Department of Parks and Recreation
8820 Elk Grove Blvd., Suite 3
Elk Grove, CA 95624

To Grantee: City of Elk Grove
Attention: Public Works Director
Public Works Department
8401 Laguna Palms Way
Elk Grove, CA 95758

4. **General Provisions.**

(a) **Severability.** If a court of competent jurisdiction voids or invalidates any provision of this Easement, such action shall not affect the remainder of this Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Easement to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(b) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(c) **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Easement Area.

(d) **Attorney Fees.** If any action or suit by a party to this Easement is brought against another party to this Easement by reason of any breach of any of the covenants, agreements or provisions on the part of the other party arising out of this Easement, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action or suit, any appeals therefrom, and enforcement of any judgment in connection therewith, **including reasonable attorneys' fees.**

(e) **Entire Agreement.** This Easement (including all Exhibits attached to this Easement) contains the final expression of, and the entire agreement between, the parties with respect to the subject matter of this Easement and supersedes all prior understandings with respect to such subject matter. This Easement may not be modified, changed, supplemented or terminated, nor may any obligations under this Easement be waived, except by written

instrument signed by the Grantee to be charged or by its agent duly authorized in writing or as otherwise expressly permitted in this Easement.

Executed this ___ day of _____, 2010 in Elk Grove, California.

GRANTEE:

GRANTOR:

City of Elk Grove

Cosumnes Community Services District

By: _____
Laura S. Gill,
City Manager

By: Michelle Orrock
Michelle Orrock
Vice President

Attest:

Attest:

By: _____
Susan J. Blackston
City Clerk

By: Jeff Ramos
Jeff Ramos
Secretary to the Board

Approved as to form:

By: Jennifer Alves
Susan Cochran
City Attorney *for*

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California
County of Sacramento

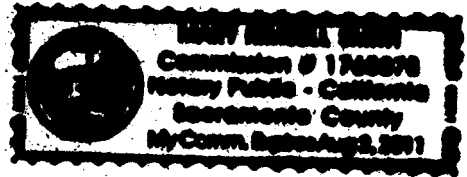
On April 7, 2010 before me, Mary Kimbell Smith, Notary Public, personally appeared Michelle Orrock and Jeff Ramos who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons 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

Mary Kimbell Smith
Notary Public



(Seal)

Exhibit "A"
Legal Description
Laguna Creek Maintenance Easement

Being a portion of the Northeast Quarter of Section 31, Township 7 North, Range 6 East, Mount Diablo Base and Meridian, in the City of Elk Grove, County of Sacramento, State of California as described in deed to the Elk Grove Community Services District recorded in Book 19950511 Page 175, Official Records of Sacramento County described as follows:

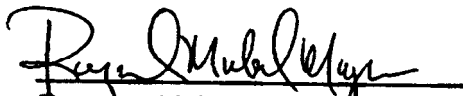
Commencing at a point in the westerly line of said deed having a bearing and distance of North 09° 40' 16" East, 270.00 feet distant thereon northeasterly 173.56 feet from the southerly terminus thereof; thence leaving said westerly line South 39° 01' 51" East a distance of 100.08 feet to the **True Point Of Beginning**; thence the following courses:

- 1) South 28° 14' 21" West a distance of 12.20 feet; thence
 - 2) South 23° 43' 01" East a distance of 13.91 feet; thence
 - 3) South 46° 56' 08" East a distance of 38.34 feet; thence
 - 4) South 29° 54' 37" West a distance of 6.92 feet; thence
 - 5) South 70° 27' 37" West a distance of 28.07 feet; thence
 - 6) North 84° 25' 14" West a distance of 16.58 feet; thence
 - 7) South 78° 51' 01" West a distance of 7.86 feet; thence
 - 8) South 31° 54' 06" West a distance of 7.35 feet; thence
 - 9) South 13° 02' 44" West a distance of 9.14 feet; thence
 - 10) South 80° 41' 05" East a distance of 14.21 feet; thence
 - 11) North 46° 37' 40" East a distance of 7.36 feet; thence
 - 12) South 89° 50' 32" East a distance of 16.20 feet; thence
 - 13) North 83° 00' 38" East a distance of 32.18 feet; thence
 - 14) North 65° 30' 52" East a distance of 20.50 feet; thence
 - 15) South 80° 12' 04" East a distance of 18.47 feet; thence
 - 16) South 87° 24' 26" East a distance of 56.54 feet; thence
 - 17) South 80° 40' 40" East a distance of 61.71 feet; thence
 - 18) North 05° 31' 35" East a distance of 19.34 feet; thence
 - 19) North 82° 15' 23" West a distance of 14.83 feet; thence
 - 20) North 80° 31' 43" West a distance of 49.18 feet; thence
 - 21) North 77° 36' 08" West a distance of 51.24 feet; thence
 - 22) North 59° 48' 49" West a distance of 19.19 feet; thence
 - 23) North 32° 27' 44" West a distance of 46.83 feet; thence
 - 24) North 61° 34' 25" West a distance of 9.44 feet; thence
 - 25) North 88° 36' 41" West a distance of 11.34 feet; thence
 - 26) South 57° 48' 28" West a distance of 3.59 feet; thence
 - 27) South 39° 01' 51" East a distance of 16.22 feet; thence
 - 28) South 50° 58' 09" West a distance of 18.00 feet; thence
- North 39° 01' 51" West a distance of 15.77 feet to the **True Point of Beginning**.

Containing 7,069 square feet more or less.

Exhibit "A-1" is attached hereto and made a part hereof for the purpose of information only. Any discrepancy between the legal description and "Exhibit A-1", the legal description shall prevail.

This Legal Description was prepared by me or under my direction pursuant to the requirements of the Professional Land Surveyor's Act.



Raymond Michael Manger

L.S. No. 5154

Registration Expires: June 30, 2011



MAY 15, 2010
Date:

EXHIBIT "A-1"
EASEMENT AREA
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR INFORMATION PURPOSES ONLY



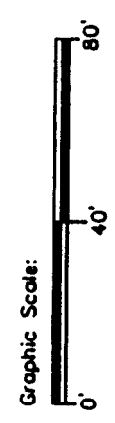
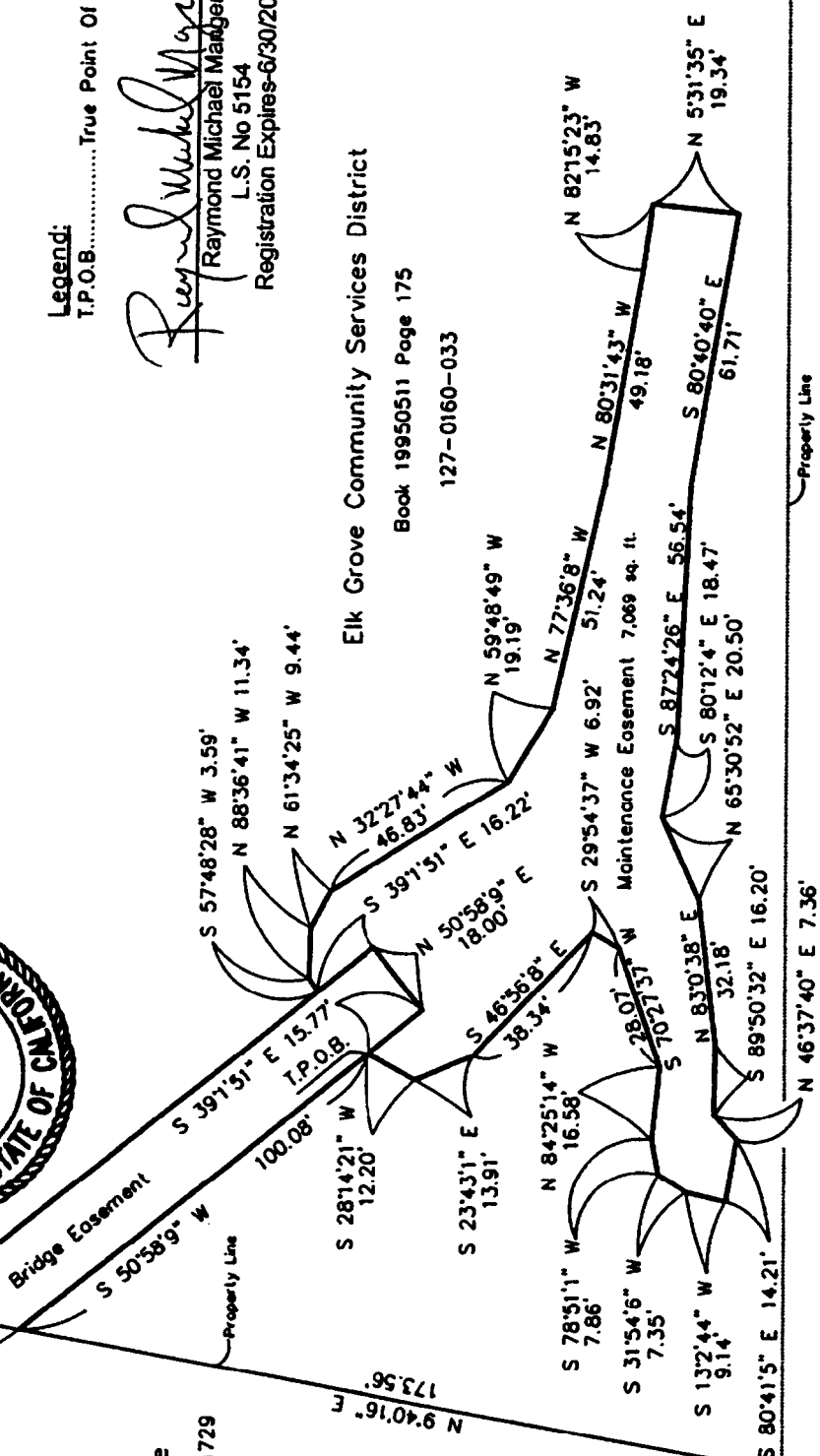
POINT OF COMMENCEMENT

City of Elk Grove
Book 20040809 Page 1729
127-0160-046

Legend:
T.P.O.B.....True Point Of Beginning

Raymond Michael Manger
Raymond Michael Manger
L.S. No 5154
Registration Expires-6/30/2011

Elk Grove Community Services District
Book 19950511 Page 175
127-0160-033



DATE:	SCALE
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REVISION BY	APPROVED DATE

CITY OF ELK GROVE - PUBLIC WORKS

MAINTENANCE EASEMENT
CONSUMNES COMMUNITY SERVICE DISTRICT
TO CITY OF ELK GROVE

Job Number: PT0065
Drawn By: R.M.M.
Checked By: R.M.M.
Date: 10/12/2009

Exhibit "B"
Legal Description
Laguna Creek Pedestrian Bridge Easement

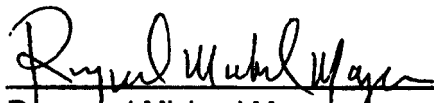
Being a portion of the Northeast Quarter of Section 31, Township 7 North, Range 6 East, Mount Diablo Base and Meridian, in the City of Elk Grove, County of Sacramento, State of California as described in deed to the Elk Grove Community Services District recorded in Book 19950511 Page 175, Official Records of Sacramento County described as follows:

Beginning at a point in the westerly line of said deed having a bearing and distance of North 09° 40' 16" East, 270.00 feet distant thereon northeasterly 173.56 feet from the southerly terminus thereof; thence leaving said westerly line South 39° 01' 51" East a distance of 115.85 feet; thence North 50° 58' 09" East a distance of 18.00 feet; thence North 39° 01' 51" West a distance of 131.66 feet to said westerly line; thence along said westerly line South 09° 40' 16" West a distance of 23.96 feet to the **True Point of Beginning**.

Containing 2,227 square feet more or less.

Exhibit "B-1" is attached hereto and made a part hereof for the purpose of information only. Any discrepancy between the legal description and "Exhibit B-1", the legal description shall prevail.

This Legal Description was prepared by me or under my direction pursuant to the requirements of the Professional Land Surveyor's Act.



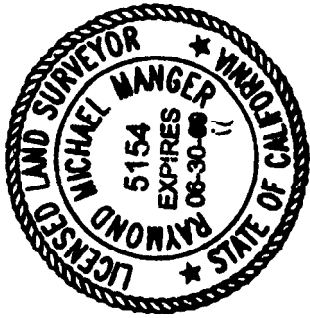
Raymond Michael Manger
L.S. No. 5154
Registration Expires: June 30, 2011



March 15, 2010
Date:



EXHIBIT "B-1"
EASEMENT AREA
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR INFORMATION PURPOSES ONLY

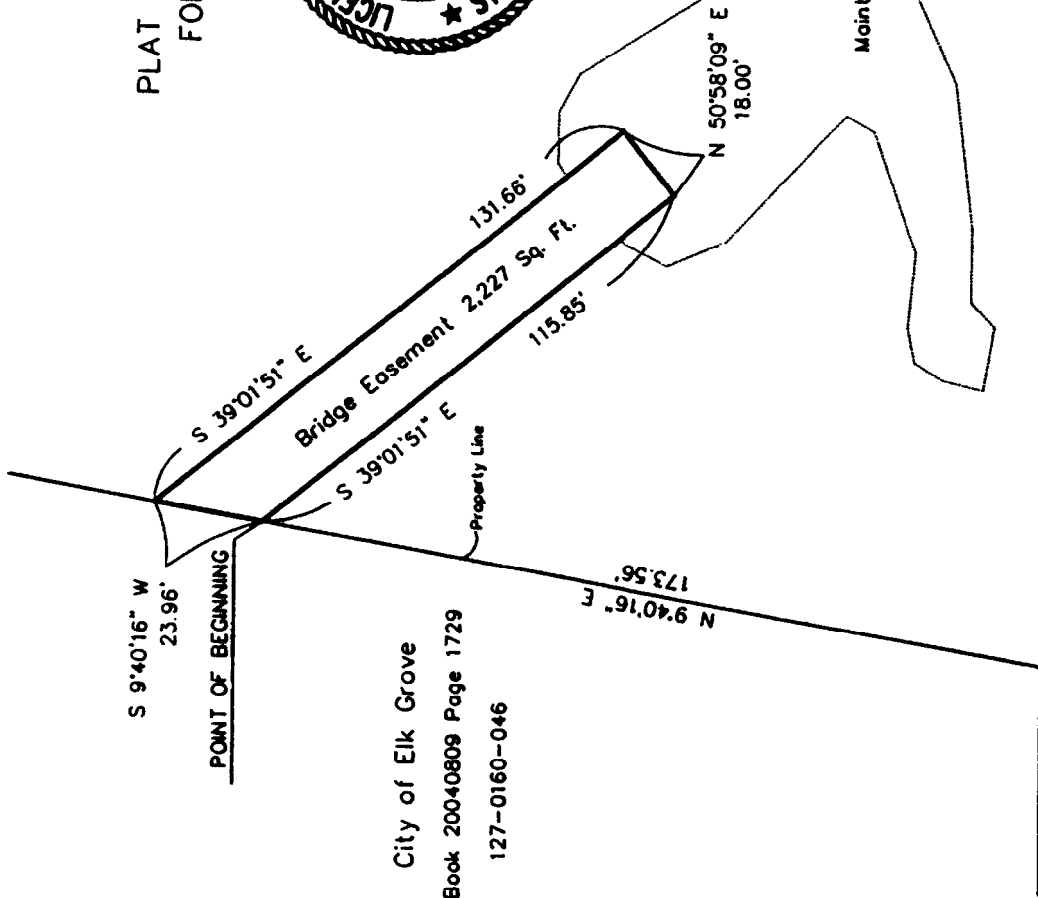


Raymond Michael Manger
Raymond Michael Manger
L.S. No 5154
Registration Expires-6/30/2011

Elk Grove Community Services District

Book 19950511 Page 175

127-0160-033

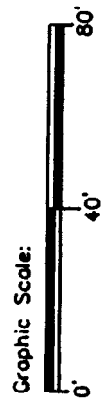


City of Elk Grove

Book 20040809 Page 1729

127-0160-046

DATE:		SCALE
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REVISION	BY	APPROVED
		DATE
CITY OF ELK GROVE - PUBLIC WORKS		
BRIDGE EASEMENT		
CONSUMNES COMMUNITY SERVICE DISTRICT		
TO CITY OF ELK GROVE		



Job Number: PT0065
Drawn By: R.M.M.
Checked By: R.M.M.
Date: 10/12/2009