

## **POSSIBLE FINDING OF NO SIGNIFICANT PUBLIC INTEREST VALUE AT PARCEL 840 IN THE BEAR RIVER PLANNING UNIT, NEVADA COUNTY**

### **INTRODUCTION**

The Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council) is a private, nonprofit foundation established in 2004 pursuant to a Settlement Agreement and a Stipulation Resolving Issues Regarding the Land Conservation Commitment approved by the California Public Utilities Commission (CPUC) in Decision 03-12-035 (Dec. 18, 2003).

The Stewardship Council was created to oversee PG&E's Land Conservation Commitment, as set forth in the Settlement and Stipulation to protect over 140,000 acres of Watershed Lands and to preserve and enhance, on an overall basis, the following six beneficial public values (BPVs): protection of the natural habitat of fish, wildlife, and plants; preservation of open space; outdoor recreation by the general public; sustainable forestry; agricultural uses; and historic values. Protecting the Watershed Lands will be accomplished through (1) PG&E's grant of conservation easements to one or more public agencies or qualified conservation organizations so as to protect the natural habitat of fish, wildlife, and plants, the preservation of open space, outdoor recreation by the general public, sustainable forestry, agricultural uses, and historic values (collectively the Beneficial Public Values), and in some cases, (2) PG&E's donation of the Watershed Lands in fee to one or more public entities or qualified conservation organizations, whose ownership would be consistent with these conservation objectives.

### **FINDINGS OF NO SIGNIFICANT PUBLIC INTEREST VALUE**

The Settlement Agreement and Stipulation anticipated the possibility that within these 140,000 acres, some parcels would not have a significant public interest value and not need to be protected by a conservation easement. Appendix E of the Settlement Agreement states:

In instances where PG&E has donated land in fee, some may be sold to private entities subject to conservation easements and others, without significant public interest value, may be sold to private entities with few or no restrictions.

Section 12.c. of the Stipulation states:

A transfer of fee simple title will include a conservation easement to preserve and/or enhance beneficial public values, as defined in Settlement Agreement paragraph 17 and Appendix E, unless: (1) the LCP includes a determination that the parcel does not have significant public value; or (2) for any other parcel, the chosen donee of fee title informs the Governing Board that applicable law or policy precludes its accepting such easement, and the Governing Board receives satisfactory assurance in another form that the parcel will be managed consistent with the purpose of the Land Conservation Commitment.

In December 2016, the Watershed Planning Committee, a committee comprised of members of the Stewardship Council Board of Directors, approved a process for making a finding of no significant public interest value (NSPIV) on select parcels or portions of parcels of Watershed Lands. Watershed Lands being considered for such a finding will be evaluated based on several criteria, including (1) an assessment of the physical condition of each parcel through review of existing information, satellite imagery, and a site visit; and (2) the review of applicable databases with historical information pertaining to biological and cultural resources that may be present on or in the immediate vicinity of the subject parcel.

## **BACKGROUND**

The 6,763-acre Bear River planning unit includes 44 legal parcels. Parcel 840 totals approximately 34 acres, of which approximately eight acres comprises the Highway 20 right of way (Parcel Cutout). The Parcel Cutout is a long narrow strip approximately 230 feet wide by 1,370 feet long that currently operates as a paved two-lane state highway with the remainder of the strip a steep forested landscape.

Parcel 840 includes portions that are subject to an asset sale with Nevada Irrigation District (NID), and the remainder of the parcel is being retained by PG&E. The portion that borders the Parcel Cutout is part of the asset sale to NID. Bear Yuba Land Trust (BYLT) is recommended to hold the conservation easement for both the NID and PG&E retained transactions that affect Parcel 840. BYLT is in support of excluding the eight acres from the Bear River (BYLT) retained transaction.

It has recently come to light that PG&E had intended to deed the Parcel Cutout to the California Department of Transportation (Caltrans) in the 1960's. The Parcel Cutout is disconnected/non-contiguous from any other PG&E retained lands included in the Bear River planning unit. PG&E has indicated it intends to deed the Parcel Cutout to Caltrans consistent with the deeds for all other portions of Highway 20 through the Bear River Planning Unit if the Stewardship Council makes a finding of NSPIV.

## **EVALUATION**

The assessment of Parcel 840 was conducted using multiple resources, including but not limited to, aerial photos using Google Earth and CalTopo, a staff site visit by Steve Schweigerdt on October 29, 2020, consultation with the prospective conservation easement holder, review of the Draft Baseline Data Report and Background Information Packet, review of the Volume II of the Land Conservation Plan including public comments that were submitted at the time of the Volume II development, email communication with Caltrans, and review of state cultural and biological resource databases including:

- the California Natural Diversity Database (CNDDB) for the occurrence of potential special status biological resources, and
- the California Historical Resources Information System (CHRIS), and

- the Native American Heritage Commission (NAHC) inventory of Native American sacred sites.

The following considerations will inform the evaluation of each subject parcel with regard to its public interest value.

1. The existing and potential future beneficial public values associated with the parcel.
2. The existing and potential future public use of the parcel.
3. The potential for future development of the site based primarily on its proximity to roads, infrastructure, and other development.
4. The size and location of the parcel with respect to other parcels in the planning unit subject to a conservation easement.
5. The ownership and use of surrounding lands.
6. The ease or difficulty of access in and around the parcel by the conservation easement holder for the purposes of monitoring.
7. The necessity of a conservation easement to protect against adverse risk to beneficial public values existing on the property.
8. Expressly stated public interest in having the property conserved.

## 1. Existing and Potential Beneficial Public Values

**Habitat and Forest Resources:** The Parcel Cutout contains a well-maintained two-lane asphalt State Highway with 100-foot right of way buffers on both sides of the road from edge of pavement. The pavement is approximately 30 feet wide. The highway is on a steep cross slope and there are graded cuts and fills along the alignment. Outside of and adjacent to the Parcel Cutout, on the upslope and downslope sides, vegetation is mostly undisturbed forest comprised of conifers and oak trees. There is no aquatic habitat known to exist within the Parcel Cutout.

The US Fish and Wildlife Service's Wetland Inventory Mapper (USWS 2020), shows that there are no wetlands within the Parcel Cutout through there is a wetland 0.22 miles south of the Parcel Cutout classified as a freshwater emergent wetland. Steephollow Creek is found 0.48 miles north of the Parcel Cutout and an irrigation canal is located 0.1 miles south of the Parcel Cutout; both waterways are classified as riverine habitats.

Riverine and wetland habitats do not occur within the 8-acre portion of parcel #840 but are anticipated within one-tenth of a mile (i.e., approximately 500 feet). Any wetlands alteration by adjacent landowners would require consultation with the US Army Corps of Engineers and the Regional Water Quality Control Board.

Although much of the land within the Bear River planning unit serves as a migratory corridor and winter range for regional deer populations, Highway 20 and Zeibright Road bisect parcel #840 resulting in low-quality habitat and a barrier for wildlife.

An analysis of special status biological resources based on the California Natural Diversity Database (CNDDDB) was conducted on October 12, 2020. A CNDDDB search with variable buffers around the parcels was completed, and two buffer distances were utilized to capture the type of species with potential to occur on the site: a 1/4-mile buffer and a 2-mile buffer. The results are attached, described below, and a table is provided that summarizes special status species and potential for presence on site.

The Parcel Cutout, due to some forested habitat along the road buffer, demonstrates appropriate habitat for presence of the following species:

- Sierra blue grass - There is limited habitat on the fringes of the Parcel Cutout that could potentially support Sierra blue grass, but it generally prefers lower montane coniferous forest in shady, moist, rocky slopes, which are not included in the sunny south facing Parcel Cutout.
- Southern long-toed salamander yellow-legged frog - There is limited habitat available on the fringes of the Parcel Cutout for the Southern long-toed salamander, though regular high velocity vehicle traffic make most of the Parcel Cutout unsuitable.

The CNDDDB search revealed that although there is no documented presence, there are two sensitive status species that may occur on the 8-acre site due to potential for suitable habitat. This information presented in grid format in **Table 1**.

- Given the lack of aquatic habitat, there is no potential for the Sierra Nevada mountain beaver or Foothill yellow-legged frog to occur on the Parcel Cutout.
- Sierra Nevada red fox occurs at elevations greater than 7,000 ft and populations are declining. Therefore, the species is rare and not expected to occur within the Parcel Cutout, which is much lower in elevation.

**Table 1: Parcel 840, 8-acre cutout, CNDDDB Occurrence for Special Status Species**

	Occurrence Within ¼ mile buffer	Occurrence Within 2 mile buffer	Potential Habitat on Site	Not Expected/ Low Priority
<i>Sierra Nevada mountain beaver</i>	X	X		X
<i>Sierra blue grass</i>		X	X, low regional occurrence	
<i>Foothill yellow- legged frog</i>		X		X
<i>Southern long- toed salamander</i>		X	X	
<i>Sierra Nevada Red Fox</i>		X		X

Sources: CNDDDB 2020 and CNPS 2020

**Open Space:** The Parcel Cutout offers scenic views across the open space of Bear Valley and Bear Meadow, arguably the most significant and biodiverse habitat in the planning unit. Views across the meadow look toward Emigrant Gap. However, the Parcel Cutout is developed as a State Highway, designated as a Scenic Byway, which affords protections against future development that may impede the scenic viewshed from Highway 20.

**Outdoor Recreation:** No recreational facilities are located on the Parcel Cutout or compatible with the highway use of the corridor.

**Cultural and Historical Resources:** The NAHC found no specific site information in the Sacred Lands File pertaining to the subject area, but provided a list of Native American tribes to be contacted. These tribes will be contacted by the Stewardship Council following the Watershed Planning Committee's approval of the release of the No Significant Public Interest Value (NSPIV) finding for a 30-day public review and comment period.

The CHRIS report indicates no known cultural resources within the Parcel Cutout. Within a quarter mile 11 studies have been done, showing presence of 7 historic resources within a quarter mile related to hydro operations as well as an original portion of the highway and the Truckee Trail portion of the Overland Immigrant Trail. There are no documented resources associated with Native American presence. The Parcel Cutout has been the subject of four cultural resource investigations and the entire parcel has been investigated in these studies, of which three were prepared for timber harvesting purposes, and the other by Caltrans in 2008 during a focused study of rural highways.

**Agriculture:** No agricultural uses are present in the Bear River planning unit.

## **2. Existing and Potential Public Use**

The Parcel Cutout operates as a paved State highway, is actively used as a regional route, and includes graded shoulders of the Highway 20 right of way. Highway 20 is a designated Scenic Byway and its development is therefore restricted to protect the scenic viewsheds, as required by the State of California. This is consistent with the intent of the conservation easement for the Bear River (BYLT) retained transaction, by limiting or preventing intensification of uses that would impair the viewshed. There are no recreational facilities within the Parcel Cutout, though the multiple use Pioneer Trail is downslope of the Parcel Cutout.

## **3. Potential for Future Development**

The Parcel Cutout is developed as a State Highway and regional thoroughfare. Considering Highway 20's designation as a Scenic Byway with steep forested slopes on both sides, and the zoning designation of TPZ, it is unlikely the site would be developed, that infrastructure would be added, or policies changed that would encourage development within a Caltrans right of way. The surrounding area is included in the Deer Creek NID asset sale that will be

subject to a conservation easement that prevents road construction, residential, and commercial development.

#### **4. Size, Location, and Parcel Dispersion**

Parcel 840 is approximately 34 acres of which approximately 8 acres comprises the Highway 20 alignment (“Parcel Cutout”) and are the subject of this NSP/IV analysis. The parcel is located at about 5,000 feet above mean sea level, surrounded by public lands and includes access via a county roadway, Zeibright Road. The eight acres is an approximately 230-foot wide strip that goes through #840, adjoined on its southwest borders by parcel #839 - the largest parcel in the Bear River (BYLT) planning unit. Approximately 50 percent of the boundary of #840 touches #839. The approximately 8 acres is surrounded by lands approved by the Stewardship Council for donation to NID in the Lake Spaulding planning unit and part of the PG&E NID asset sale, and bordered by Caltrans ownership of Highway 20 on the ends of the alignment. Map 1 for the Bear River Planning Unit shows parcel ID #840 and is presented at the end of this document.

Highway 20 is designated as the Donner Scenic Byway and is semi parallel with the historic Pioneer Trail on the western slope of Lowell Hill Ridge. Parcel #840 is in the heart of the patchwork of public and private lands of the Tahoe National Forest. Emigrant gap is just over a mile away on the other side of Bear Valley southeast from the Parcel Cutout.

#### **5. Ownership and Use of Surrounding Lands**

The Parcel Cutout will be bordered by NID property on the north and south once the Deer Creek asset sale is complete. The land to the west is owned by the US Forest Service and the land to the east is owned by CalTrans as a portion of the alignment that was previously deeded. Surrounding land uses are primarily preserved open space and forest lands, with some nearby residences on Zeibright Road.

#### **6. Ease of Access**

The Parcel Cutout is a public roadway, Highway 20, under jurisdiction of Caltrans. Caltrans holds deed to contiguous segments of Highway 20, except through parcel 840. The intent is to provide Caltrans ownership of the highway corridor with PG&E deeding this Parcel Cutout to Caltrans if the site qualifies as having NSP/IV.

#### **7. Necessity of a CE**

As noted in section 1 above, the BPVs on the Parcel Cutout are limited to the forested fringes of the parcel where there is some limited potential for habitat. The size of the Parcel Cutout precludes commercial forestry. Given the use as an important regional highway designated as a Scenic Byway significant changes to that use are unlikely.

- 8. Expressly stated public interest in having the property conserved:** Staff reviewed the LCP Volume II, public comments, and feedback from the July 2011 public meeting and there were no public comments or references to this specific parcel.

### **CONSULTATION WITH PROSPECTIVE CE HOLDER**

Staff has discussed with Bear Yuba Land Trust the concern with Highway 20 and the historic intent to convey it to Caltrans. BYLT is agreeable to this process and unconcerned about keeping the Parcel Cutout in the Bear River (BYLT) PG&E retained transaction. The approximately 8 acres is developed, managed by a State entity, and is disconnected from the other parcels PG&E would retain interest. BYLT would maintain legal access to their portion of parcel #840 via Zeibright Road.

### **CONCLUSION**

Based on evaluation of the Parcel Cutout, and the surrounding environment, staff believes the parcel qualifies for NSPIV designation. There are two concerns which relate to the fact that this site is at the edge of a biodiverse and aesthetic wet meadow system: a) the scenic viewshed from a public road, and b) potential for occurrence of a special status species on site. However, the existing scenic byway designation by the State of California affords protections from any proposed developments along the Highway 20 corridor and its viewshed. The Beneficial Public Values of habitat, sustainable forestry, and historic values are insignificant within the proposed NSPIV footprint, and are consistent with potential for a finding of NSPIV.

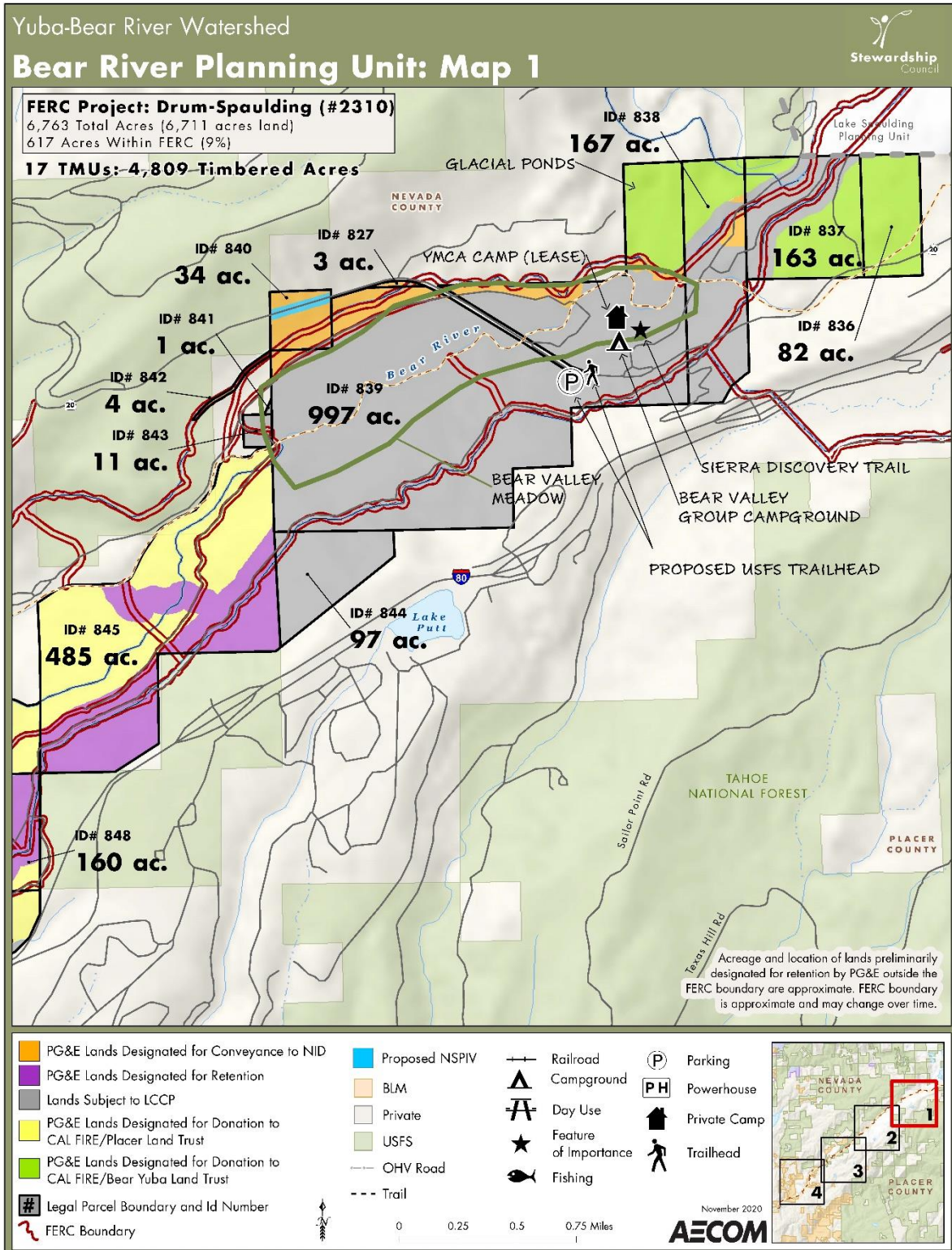
### **PROPOSED STEWARDSHIP COUNCIL BOARD ACTION**

At its November 4, 2020 meeting, the Planning Committee recommended a NSPIV finding pertaining to an approximately 8-acre portion of Parcel 840 in the Bear River planning unit, and therefore, recommending the 8-acre portion not be encumbered by a conservation easement. This document is included with the recommended finding released on November 5, 2020 for a 30 day public review and comment period to stakeholders including Native American tribes.

At its December 9, 2020 meeting, the Stewardship Council Board of Directors will review the recommendation from the Planning Committee and decide whether to make a finding of No Significant Public Interest Value. All stakeholders, including tribes, have an opportunity to comment on the proposed NSPIV finding prior to the board meeting. There will also be opportunity to comment in person at the board meeting.

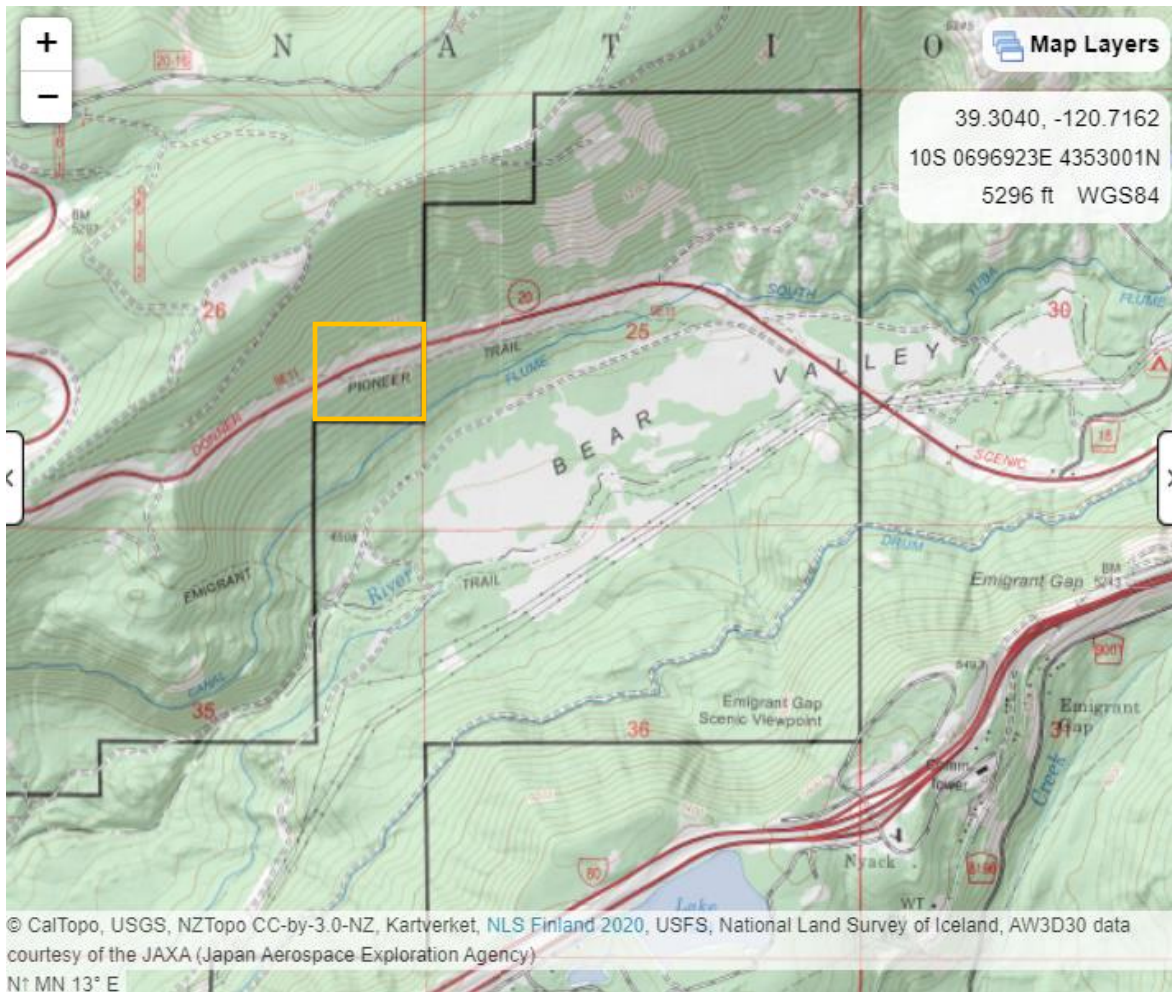
## Maps and Site Photos

### Bear River Planning Unit, Map 1

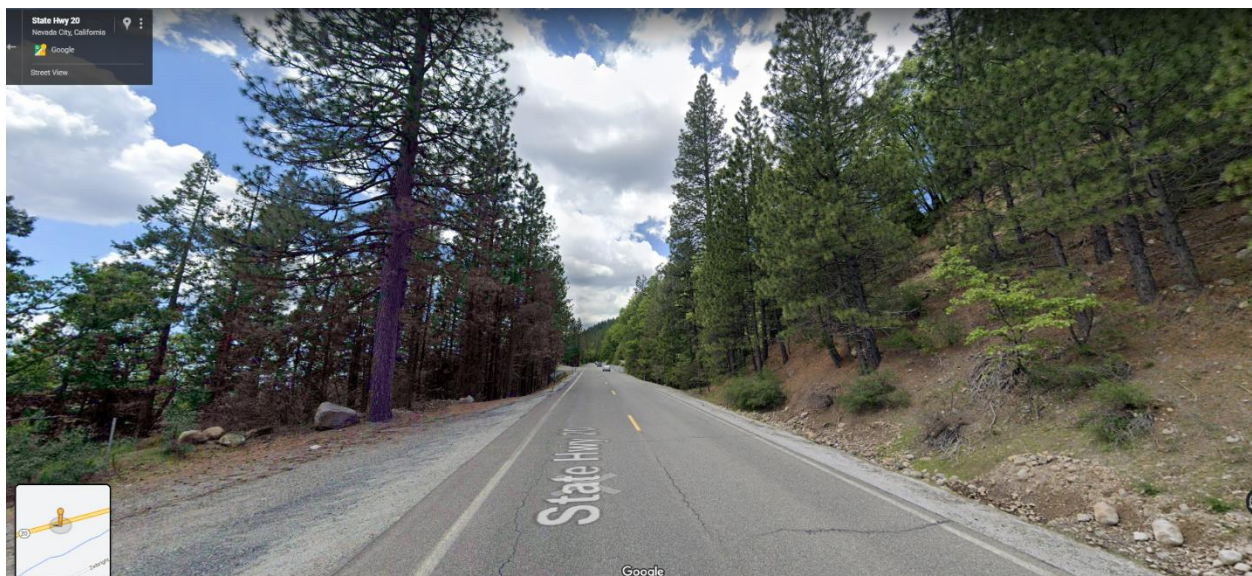




### Parcel 840 and Hwy 20 on USGS Quad



### View westbound





### View Eastbound from Hwy 20



### Aerial photo of Parcel Cutout

