

**FREEWAY MAINTENANCE AGREEMENT
BETWEEN THE STATE OF CALIFORNIA
AND
COUNTY OF EL DORADO
FOR UNITED STATES HIGHWAY 50 AND SILVA VALLEY PARKWAY
INTERCHANGE
IN THE COUNTY OF EL DORADO**

This Freeway Maintenance Agreement (hereinafter "AGREEMENT"), is made effective this ____ day of _____, 2012, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE" and the County of El Dorado, a political subdivision of the State of California, hereinafter referred to as "COUNTY". Hereinafter, STATE and COUNTY may be collectively referred to as "PARTIES."

RECITALS:

WHEREAS, on June 6, 2012, Cooperative Agreement No. 03-0459 was executed between STATE and El Dorado County, to construct a new freeway connection interchange at the intersection of the proposed Silva Valley Parkway and United States Highway 50 (U.S. 50) (hereinafter "PROJECT"). Exhibit A, depicts the area of U.S. 50 and Silva Valley Parkway Interchange within the scope of this AGREEMENT; and

WHEREAS, the PARTIES hereto mutually desire to clarify the division of maintenance responsibility for the PROJECT upon its completion, as defined in Section 27 of the California Streets and Highways Code for the areas depicted in Exhibit A

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. This AGREEMENT shall supersede the existing Freeway Maintenance Agreement for the same PROJECT site between STATE and COUNTY dated May 25, 2004 only as it relates to the Silva Valley Parkway Interchange Project Area identified in this Agreement and shall become effective:
 - A. No earlier than the date the PROJECT is completed and accepted by STATE in accordance with the construction contract, and
 - B. Following written notification by COUNTY and determination by STATE that work has been completed in accordance with the plans and specifications,

2. COUNTY agrees to continue its control and maintenance of each of the affected relocated, reconstructed, newly constructed County streets and roads as shown on the shaded area on the plan maps attached hereto as Exhibit A and made a part hereof by this reference.
3. Unless otherwise noted, STATE agrees to continue control and maintenance of those portions of the freeway adopted as a part of US 50 Freeway proper as shown in Exhibit A.
4. TERM

The term of this AGREEMENT is from the date the PROJECT is completed and shall remain in full force and effective until terminated by the mutual consent of the PARTIES thereto upon thirty (30) days' written notice to the other.

5. EXHIBIT A

- A. Exhibit A delineates the areas within STATE right of way, which are the responsibility of COUNTY to maintain in accordance with this AGREEMENT and California Streets and Highway Code Section 27. COUNTY shall be responsible to maintain all facilities as described in this AGREEMENT located with the shaded areas of Exhibit A. STATE owns all facilities within its right-of-way. The degree or extent of maintenance work to be performed, and the standards therefore, shall be in accordance with the provisions of Section 27 of the Streets and Highways Code and the then current edition of the State Maintenance Manual. COUNTY maintenance obligation under this AGREEMENT shall not include any construction, reconstruction, structural repairs, or capital improvements to any STATE facility as further set forth in California Streets and Highways Code Section 27.
- B. When a planned future highway improvement has been constructed and/or a minor revision has been effected within the limits of the freeway herein described, which will affect the PARTIES' division of maintenance responsibility as described herein, the STATE will provide an updated and revised Exhibit A, which when executed by both PARTIES, pursuant to Section 15 of this AGREEMENT, shall be made a part hereof by this reference and supersede the attached original Exhibit A.
- C. COUNTY must obtain the necessary Encroachment Permits from STATE's District 3 Encroachment Permit Office prior to entering areas reserved for freeway use to perform COUNTY maintenance responsibilities. This permit will be issued at no cost to the COUNTY.

6. SILVA VALLEY PARKWAY OVERCROSSING

- A. STATE will maintain, repair, and replace as necessary, at STATE's expense, all STATE facilities and the entire structure of Silva Valley Parkway Overcrossing below the deck surface except as hereinafter provided.

STATE shall perform maintenance inspections in accordance with STATE policy and provide recommendations for those items that are the responsibility of COUNTY.

- B. COUNTY will maintain, at COUNTY's expense, the top of the deck surface and shall perform such work as may be necessary to ensure an impervious and/or otherwise suitable surface together with any surface treatment thereon, the lighting installations, as well as all traffic service facilities, including but not limited to: traffic signals, controller cabinets, service cabinets, pull boxes, sidewalks, signs, pavement markings, and bridge rails that may be required for the benefit or control of traffic using that overcrossing. COUNTY will also provide weed abatement, graffiti removal, and sweeping and litter removal. Areas and facilities to be maintained by COUNTY pursuant to this Section are depicted in Exhibit A. County shall maintain all items it is responsible for in accordance with current State standards.
- C. COUNTY will maintain, at COUNTY expense the Silva Valley Parkway Overcrossing roadway approaches including, but not limited to: roadway surface, sidewalks, bike lanes, signing, striping, delineation, traffic signals, and lighting, and perform maintenance inspections in accordance with STATE policy, and timely repair of the features subject to its control within the areas as depicted in Exhibit A.

7. UNDERCROSSINGS AND BRIDGES

- A. STATE will maintain, repair, and replace as necessary, at STATE's expense, all STATE facilities and the entire structure of all ramp undercrossings and bridges within the Silva Valley Parkway Interchange. Such structures include the Silva Valley Westbound Offramp Bridge, the Silva Valley Westbound Onramp Undercrossing, the Silva Valley Eastbound Offramp Undercrossing, and the Silva Valley Eastbound Onramp Bridge.

8. RETAINING WALLS

STATE will maintain, at STATE's expense, the structural adequacy of the retaining walls and will be responsible for removing graffiti from retaining walls.

9. LANDSCAPED AREAS

COUNTY will maintain, at COUNTY'S expense, any plantings or other types of roadside development lying outside of the area reserved for exclusive freeway use, unless otherwise specified as depicted in Exhibit A.

10. INTERCHANGE OPERATION

It is the responsibility of STATE to provide efficient operation of freeway interchanges including ramp connections to local streets and roads. Timing of traffic signals shall be the responsibility of STATE.

The maintenance and energy costs of safety lighting, traffic signals or other necessary electrically operated traffic control devices at ramp connections to Silva Valley Parkway shall be the responsibility of COUNTY.

11. FUTURE INTERCHANGE IMPROVEMENTS

COUNTY will be responsible for any costs to relocate or modify the electrical transmission line or poles due to future improvements to the US 50/Silva Valley Parkway Interchange undertaken by COUNTY, exclusive of US 50/Silva Valley Parkway Interchange Phase 2 (Eastbound Onramp Bridge, Eastbound Diagonal Onramp Retaining Wall, and Westbound Loop Onramp Retaining Wall).

12. NO THIRD PARTY BENEFICIARY

This AGREEMENT shall not be construed or deemed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

13. INDEMNIFICATION AND HOLD HARMLESS

A. Neither COUNTY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction conferred upon STATE arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless COUNTY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.

B. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction conferred upon COUNTY and arising under this Agreement. It is understood and agreed that COUNTY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by COUNTY under this Agreement.

- C. With the exception that this Section 13(C) shall not be construed to require indemnification by the COUNTY to a greater extent than permitted by law, COUNTY shall also defend, indemnify and hold harmless STATE, its officers, directors, agents and employees against all claims, losses, or liability (“Claims”). COUNTY shall also defend, indemnify and hold harmless State, its officers, directors, agents and employees against all claims, losses or liabilities, whether in law or in equity, (Claims) related in any way or arising out of the existence of, placement of, and/or design of the two 115 kilovolt electrical transmission line poles within STATE access controlled right of way, as depicted in the cross hatched areas in Exhibit A. ,.
- D. The parties obligation to defend, indemnify and hold harmless of the other party, it's officers, directors, agents and employees arising out of Section 13 (A), Section 13 (B), and Section 13(C) above for personal injury claims includes bodily injury, sickness or disease, emotional injury or death to persons, including but not limited to the public, any employees or agents of the other party and damage to property of anyone, including loss of use thereof.

14. INSURANCE

COUNTY shall carry General Liability and Umbrella or Excess Liability Insurance covering all operations and obligations under this Agreement by or on behalf of COUNTY with respect to the US 50 / Silva Valley Parkway Interchange providing insurance for bodily injury liability and property damage liability as follows:

The limits of liability shall be at least:

- (a) \$2,000,000 for each occurrence (combined single limit for bodily injury and property damage)
- (b) \$2,000,000 aggregate for products-completed operations
- (c) \$4,000,000 general aggregate
- (d) \$10,000,000 umbrella or excess policy

The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted. STATE, including its officers, directors, agents and employees shall be named as additional insureds under the General Liability and Umbrella Policies with respect to liability arising out of, in whole or in part, or in connection with the existence of the two 115 kilovolt electric transmission line poles as depicted in the cross hatched areas in Exhibit A, as well as the County of El Dorado's maintenance and design obligations as set forth in this AGREEMENT. The policies shall state that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance or self insurance maintained by Caltrans will be excess only and shall not be called upon to contribute with this insurance.

Authority to Self-Insure. The requirements of this section may be satisfied by the provision of similar coverage through self-insurance program and such self-insurance shall be certified in writing with an "Affidavit of Insurance". Such certification shall be provided to the STATE upon execution of this AGREEMENT and annually thereafter. Failure to comply with these insurance requirements by the County may be treated by the State as a material breach of this Agreement.

15. BINDING FUTURE PARTIES

The parties acknowledge they are aware that both are public entities and, as such, are precluded by the California State Constitution and other laws from entering into obligations which financially bind future governing bodies. Accordingly, nothing in this Agreement shall constitute an obligation of future legislative bodies of either STATE or COUNTY to appropriate funds for the purposes of this Agreement, nor shall STATE's or COUNTY's failure to appropriate funds be considered a default hereunder.

16. AMENDMENTS

No alteration of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties hereto. Any amendments must be approved by COUNTY's Board of Supervisors and STATE.

17. NOTICES

Any notice which is required to be given hereunder, or which either COUNTY or STATE may desire to give to the other, shall be in writing and may be personally delivered or mailed by registered or certified United States mail, postage prepared, to the following addresses:

To COUNTY: KIMBERLY A. KERR
Interim Director of Transportation
County of El Dorado
2850 Fairlane Court
Placerville, CA 95667

To STATE: STEVE KIRKPATRICK
Deputy District Director of Maintenance and Traffic Operations
State Department of Transportation
703 B Street
Marysville, CA 95901

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the U.S. mail.

18. SEVERABILITY CLAUSE

In case anyone or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

19. CAPTIONS

The captions of the various sections, paragraphs and subparagraphs of this AGREEMENT are for convenience only and shall not be considered nor referred to for resolving questions of interpretation of this AGREEMENT.

20. STATUTES AND GOVERNING LAW

This AGREEMENT shall be governed and construed in accordance with the statutes and laws of the State of California.

21. VENUE

In the event that suit shall be brought by either party to this AGREEMENT, the parties agree that venue shall be exclusively vested in the state courts of the County of El Dorado, or if federal jurisdiction is appropriate, exclusively in the United States District Court, for the Northern District of California, in Sacramento, California.

22. WAIVER

Waiver of any term, condition or covenant, or breach of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant or breach of any other term, condition or covenant.

23. ENTIRE AGREEMENT

This AGREEMENT contains the entire AGREEMENT between COUNTY and STATE. Any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT are of no force or effect.

24. COUNTERPARTS

This AGREEMENT may be executed in counterparts and will be binding as executed.

25. OTHER AGREEMENTS

This AGREEMENT shall not prevent either party from entering into similar agreements with others.

The PARTIES acknowledge and accept the terms and conditions of this AGREEMENT as evidenced by the following signatures of their duly authorized representatives. It is intent of the PARTIES that this AGREEMENT shall become operative on the effective date.

IN WITNESS WHEREOF, the PARTIES hereto have set their hands and seals the day and year first above written.

COUNTY OF EL DORADO

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
JOHN R. KNIGHT Date
Chair, Board of Supervisors

MALCOLM DOUGHERTY
Director of Transportation

By: _____
KIMBERLY A. KERR Date
Interim Director
Department of Transportation

By: _____
JODY JONES Date
District Director

Approved as to form:

County Attorney


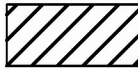




Attest:

By: _____
TERRI DALY Date
Acting Clerk of the Board of Supervisors

By: _____
Legal Attorney
Department of Transportation



LEGEND:

-  PROPOSED STATE ACCESS CONTROL R/W (COUNTY MAINTAINS AT COUNTY EXPENSE)
-  PROPOSED STATE ACCESS CONTROL R/W (COUNTY MAINTAINS AT COUNTY EXPENSE)
-  PROPOSED STATE ACCESS CONTROL R/W (STATE MAINTAINS AT STATE EXPENSE)
-  EXISTING STATE ACCESS CONTROL R/W (STATE MAINTAINS AT STATE EXPENSE)
-  EXISTING 115kV LINE
-  EXISTING PG&E EASEMENT

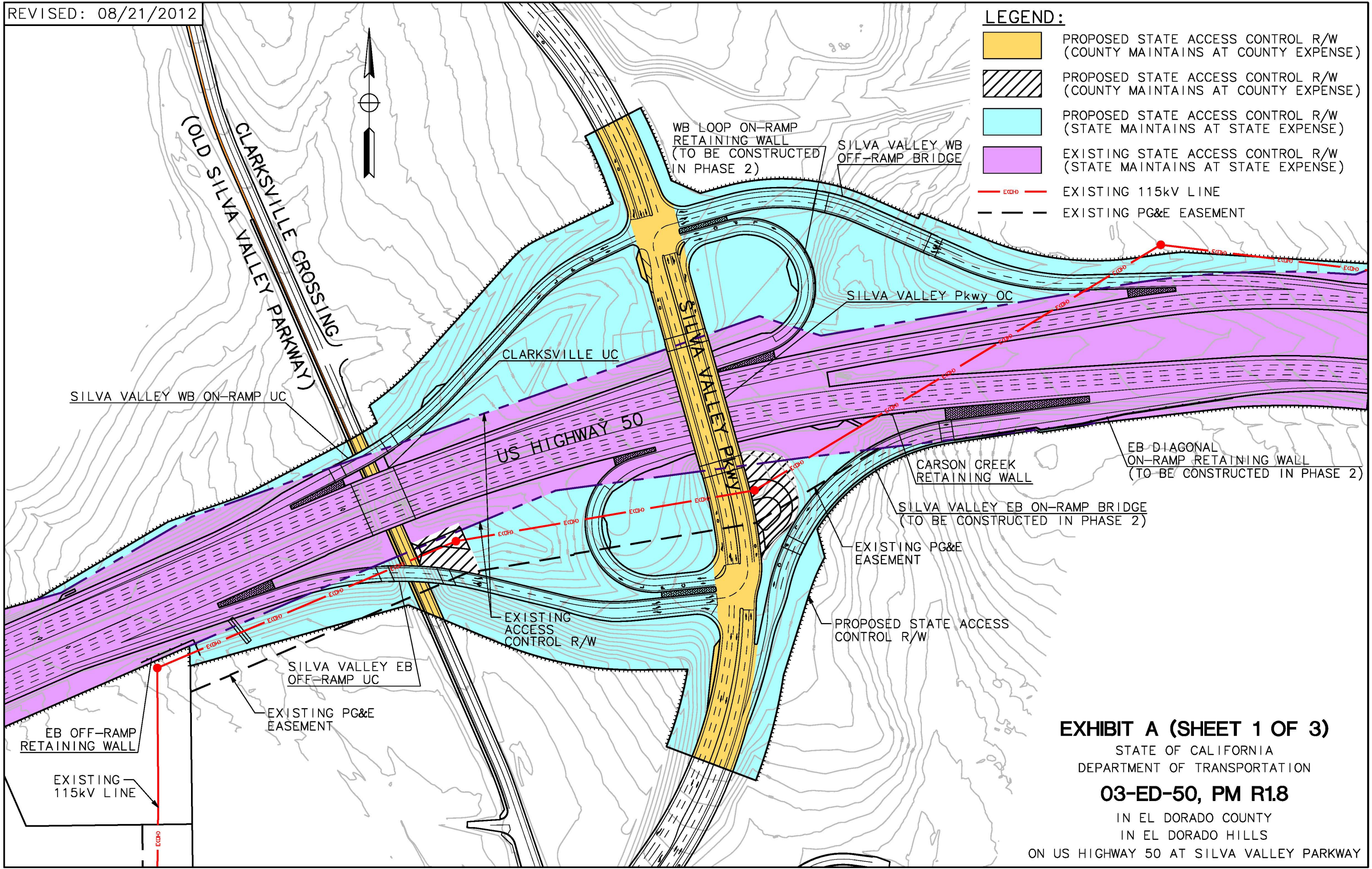


EXHIBIT A (SHEET 1 OF 3)

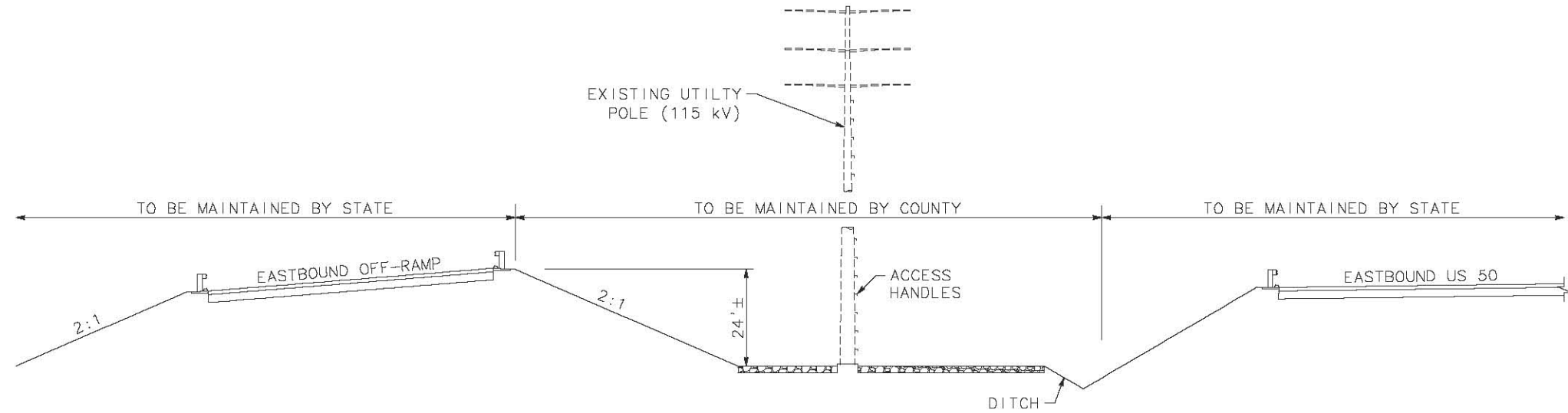
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

03-ED-50, PM R1.8

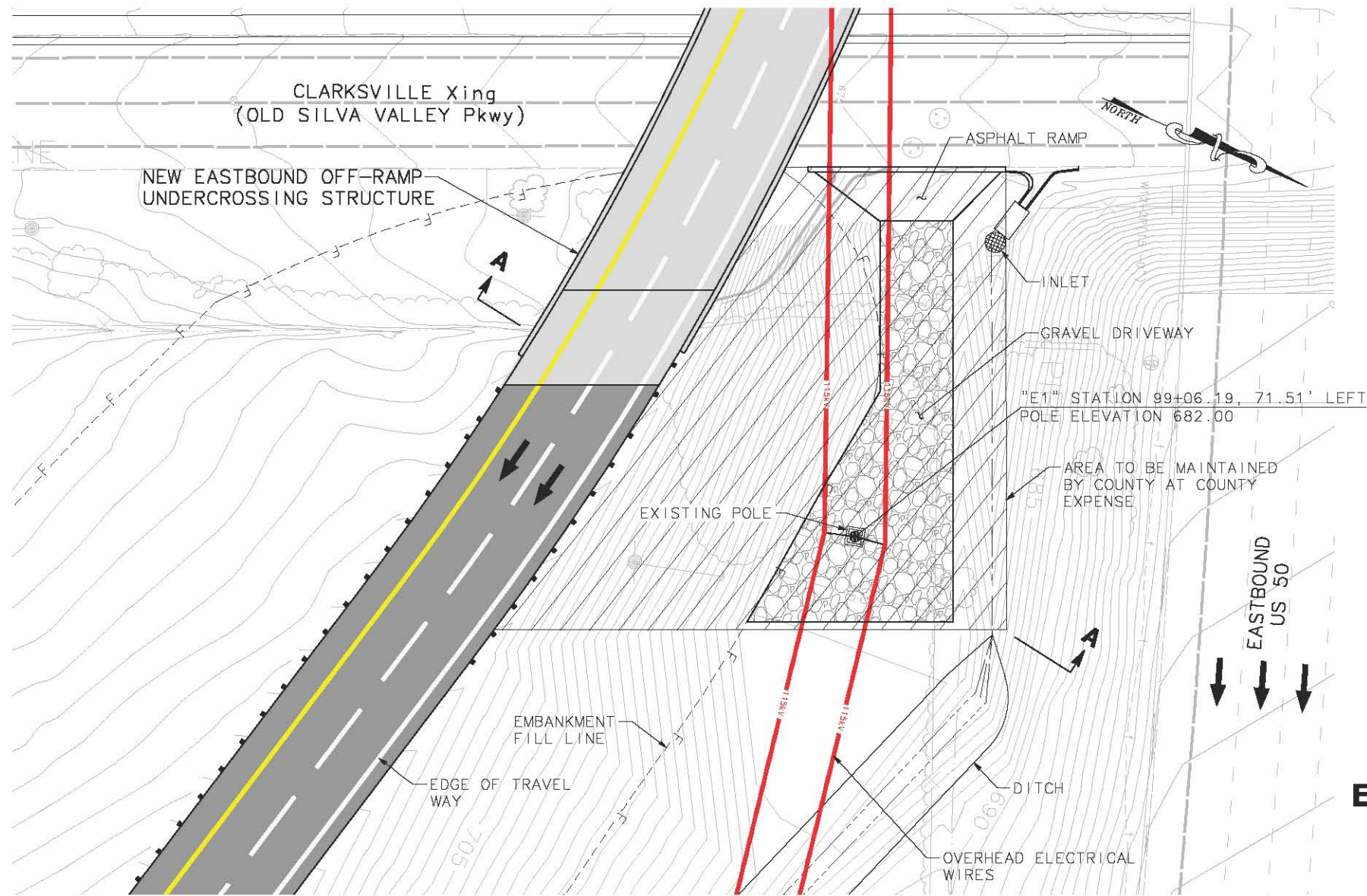
IN EL DORADO COUNTY
IN EL DORADO HILLS
ON US HIGHWAY 50 AT SILVA VALLEY PARKWAY

LEGEND:

 PROPOSED STATE ACCESS CONTROL RIGHT OF WAY
(COUNTY MAINTAINS AT COUNTY EXPENSE)



SECTION A-A
NO SCALE

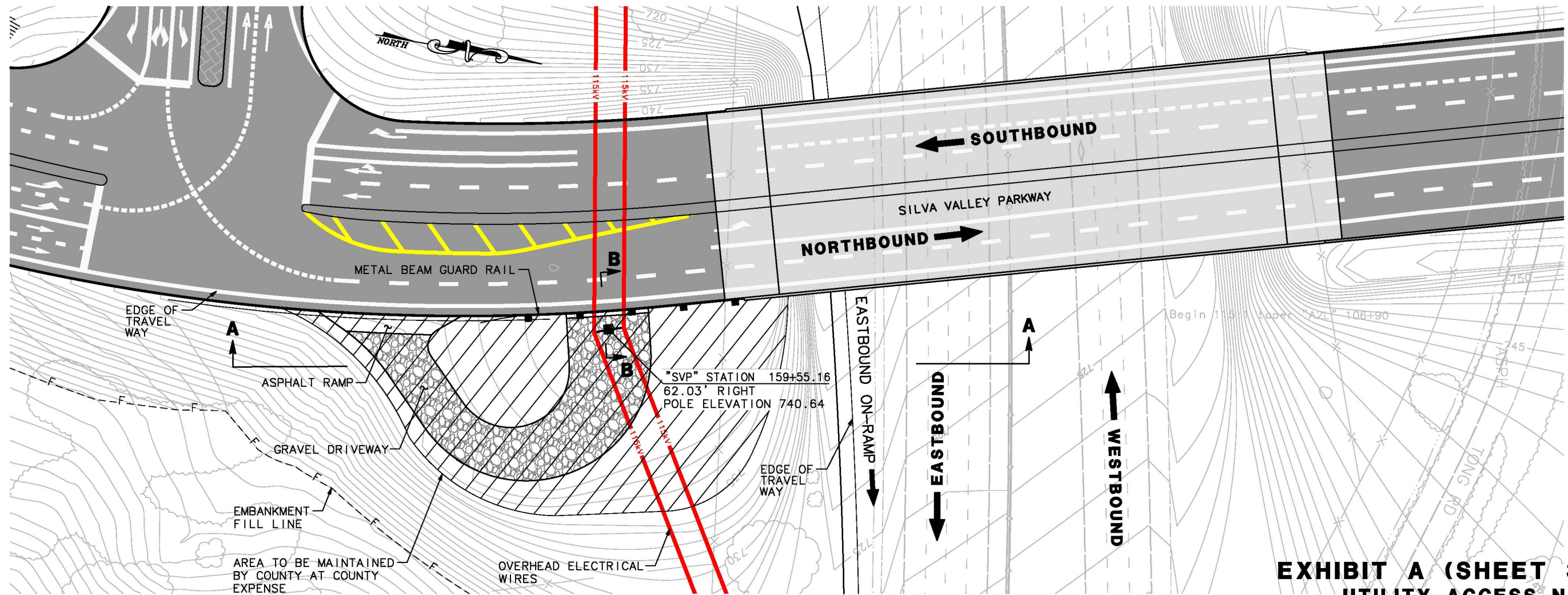
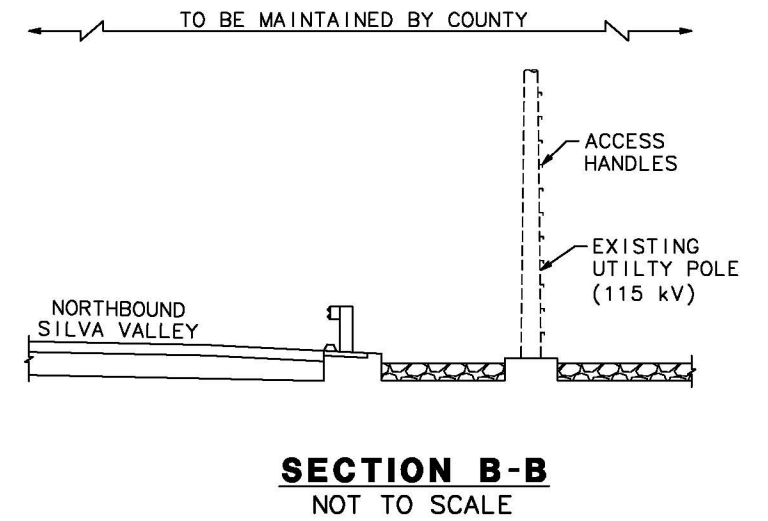
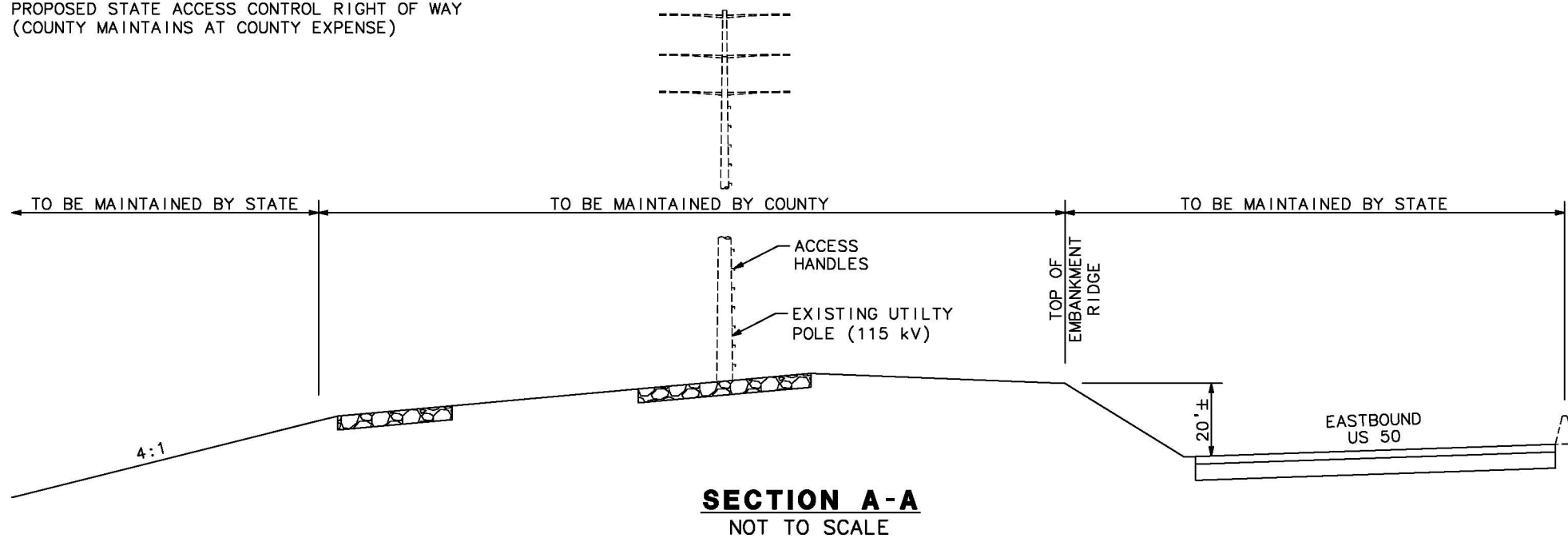


UTILITY ACCESS No. 1
SCALE: 1"=20'

EXHIBIT A (SHEET 2 OF 3)
UTILITY ACCESS No. 1
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
03-ED-50, PM R1.8
IN EL DORADO COUNTY
IN EL DORADO HILLS
ON US HIGHWAY 50 AT SILVA VALLEY PARKWAY

LEGEND:

 PROPOSED STATE ACCESS CONTROL RIGHT OF WAY
(COUNTY MAINTAINS AT COUNTY EXPENSE)



UTILITY ACCESS No. 2
SCALE: 1"=30'

EXHIBIT A (SHEET 3 OF 3)
UTILITY ACCESS No. 2
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
03-ED-50, PM R1.8
IN EL DORADO COUNTY
IN EL DORADO HILLS
ON US HIGHWAY 50 AT SILVA VALLEY PARKWAY