County of Yolo

PLANNING AND PUBLIC WORKS DEPARTMENT

John Bencomo
DIRECTOR

292 West Beamer Street
Woodland, CA 95695-2598
(530) 666-8775 FAX (530) 666-8728
www.yolocounty.org

PLANNING COMMISSION STAFF REPORT **October 8, 2009**

FILE #2004-037: Appeal of the Planning and Public Works Department determinations regarding the Castle Companies' proposal to construct partial foundations for the 49 remaining homes to be built as part of the River's Edge (White) residential subdivision project in the Town of Knights Landing.	
APPLICANT:	Castle Companies (Dan Boatwright) 12885 Alcosta Boulevard, Suite A San Ramon, CA 94583
LOCATION: Located at the western end of 6th and 9th Streets and bordered by Colusa Basin Drainage Canal to the west in Knights Landing (APNs: 056-381-01 thru -29, 056-372-01 thru -08, 056-371-01 thru -19, and 056-372-01 thru -10) (**Attachment A**).	**SUPERVISORIAL DISTRICT:** 5TH (Sup. Chamberlain) **GENERAL PLAN:** Residential **ZONING:** R-1/PD-58 (Residential One-Family / Planned Development) **SOILS:** Sycamore (Sp) silt loam, drained (Class I) **FLOOD ZONE:** A (areas of 100-year flood) and B (areas between the limits of the 100-year flood and 500-year flood).
ENVIRONMENTAL DETERMINATION: Categorical Exemption	
REPORT PREPARED BY: Donald Rust, Principal Planner	**REVIEWED BY:** David Morrison, Assistant Director

RECOMMENDED ACTIONS

That the Planning Commission takes the following actions:

1. **HOLD** the public hearing and accept public testimony regarding the appeal:

2. **DETERMINE** that the Categorical Exemption prepared for the appeal is the appropriate level of environmental review in accordance with the California Environmental Quality Act (CEQA) and CEQA Guidelines (**Attachment B**);

3. **ADOPT** the recommended Findings (**Attachment C**); and

4. **DENY** the appeal.

REASONS FOR RECOMMENDED ACTIONS

Staff recommends denial on the following grounds: (1) that in the absence of accepted engineering calculations, the use of partial foundations would not be the standard practices of the County in administering the California Building Code; and (2) that the use of partial foundations would not establish a grandfathered right with regards to construction under the County Flood Damage Prevention Ordinance.

BACKGROUND

This item was continued from the September 10, 2009, Planning Commission meeting. The Staff Report prepared for that meeting is included as **Attachment D**. The following discussion briefly recaps the key points of the Background section in that report and recent developments.

Events Leading To This Appeal

May 6, 2009: The applicant provided an e-mail requesting that the Planning and Public Works Department evaluate and provide comments regarding a proposal to construct partial foundations (garage only) for the 49 homes remaining to be built as part of the residential subdivision project. The purpose of the partial foundations was to attempt to ensure that the homes would be grandfathered in under the existing Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs), instead of the new FIRMs which are expected to be adopted in June, 2010. The new FIRMs are anticipated to require the elevation of new structures in the Knights Landing community anywhere from two to 25 feet, depending on location.

June 9, 2009: The Planning and Public Works Department provided the applicant with a letter of determination denying the proposal to construct partial foundations for the 49 remaining homes to be built. The letter also documented issues discussed during a meeting held on May 29, 2009, between the applicant and staff as follows:

- All remaining 49 foundations must be fully installed to obtain final approval of the foundation, ensuring the foundation meets the current floodplain criteria, the California Building Code, and local ordinances associated with the issuance, inspection, and completion of a building permit.

- A reminder to the applicant that the preliminary FIRM Maps for the new flood zone designations are near and any required building permit that needs to be issued should occur as soon as possible and the start of construction shall commence prior to the adoption of the new flood zone designations and update to the FIRM.

- Based on a discussion about the construction of the 49 remaining homes, the applicant requested a specific time frame, if building permits were issued. The applicant and the Building Division agreed to the following specific time frame as it relates to the required building permits for the remaining homes to be constructed as part of the subdivision project. This specific time frame, 24 months, will be used in the construction of the remaining units, with the potential for a 12-month extension that must be requested in writing, and approved by the Chief Building Official. By agreeing to this approach, the Building Division effectively gave the applicant a significant extension of time to complete work under each building permit, as such permits typically expire in 180 days unless extended.

- Each building permit must maintain continuous building construction, and approved inspections, to allow the permit to remain active and valid, without incurring additional fees. This is a typical condition of all building permits.

June 22, 2009: The applicant filed an Application for Appeal regarding the Planning and Public Works letter of determination denying the Departments' determination that constructing partial foundations

(garage only) is insufficient to grandfather such homes in the event of a change to the FIRM Maps and related flood zone designations.

August 28, 2009: The applicant's attorney (Kent Calfee) notified the Planning and Public Works Department, via e-mail (**Attachment E**), that he will represent the applicant with regards to the appeal of the department's determination regarding the proposal to construct partial foundations at the River's Edge (White) subdivision. Mr. Calfee's letter indicates that he has concerns regarding two specific items from the Planning and Public Works' letter dated June 9, 2009, (**Attachment F**).

Mr. Calfee indicates that the conclusion of the staff's determination is not supported by FEMA regulation or the county's Flood Ordinance. The definition of the start of construction does not indicate anything regarding garage slabs or partial foundations.

Per the Flood Damage Prevention Ordinance, as described above, the staff agrees that the definition of "start of construction" is based on the date of permit issuance. However, the permit issuance date is only a portion of the discussion. For the start of construction, permit issuance alone does not continue to grandfather a structure from new FIRM requirements, unless construction also occurs. Staff does not believe that just pouring the foundation of an attached garage is sufficient under FEMA regulations or the County's Flood Ordinance to grandfather the entire residential structure.

Moreover, this question is somewhat moot, as the proposed changes to the foundations have not been submitted by the applicant or approved by the Building Division, nor has staff seen any structural and soils engineer reports regarding the proposed changes to date.

The applicant contacted FEMA personnel regarding the start of construction garage slabs (or partial foundations) for their opinion. FEMA confirmed that the definition of start of construction could apply to partial foundations. This would allow all 49 units to be built at-grade, without ever elevating the structures to comply with the new FIRMs, as long as the partial foundations were constructed.

Mr. Calfee attached an e-mail from Gregor Blackburn, FEMA's Chief, Floodplain Management and Insurance Branch to the applicant (Mr. Dan Boatwright), which appears to support Mr. Calfee's argument. Please see related section under Analysis below.

Mr. Calfee is requesting clarification of the county's authority regarding its determination of the proposed partial foundations.

It is a widely accepted practice to require that the entire foundation for the livable or habitable space be constructed and approved by the Chief Building Official in order to establish a grandfathered right for FIRMs.

Mr. Calfee indicates that he cannot find the authority to allow the proposed terms provided in the second determination, the 24-month and 12-month extension.

This portion of the appeal is puzzling to staff, as the 36-month timeline was jointly agreed to by both staff and the applicant during a meeting on May 29, 2009. After a lengthy discussion regarding issuance and expiration dates, the applicant requested that the Planning and Public Works Department provide written confirmation that the Yolo County Building Division would commit to allowing for extensions of time for each residential building permit, up to 30 months past its expiration date. The Chief Building Official agreed to the requested time frame and provided written confirmation as requested by the applicant, in light of the current housing market and economic situation. If the applicant prefers the time frames reflected in California Building Code (CBC), and wishes to eliminate the previously agreed upon time frame, staff has no objections. Construction must be completed

within 180 days of building permit issuance and each addition 90-day extensions may be approved at the discretion of the Chief Building Official.

September 10, 2009: At the end of the public hearing, staff recapped the additional information requested by the Planning Commission, as follows:

1. Staff to bring back more information on safety issues with a partial foundation;

2. The applicant to provide the Planning and Public Works Department with revised plans regarding the partial foundation proposal;

3. Staff provide greater explanation on the difference between attached and detached garages, as they relate to grandfathered rights under the Flood Damage Prevention Ordinance; and

4. Staff provided further clarity regarding the position of FEMA, particularly with regards to Mr. Blackburn's memo.

Recent Events

As with the "Background" section above, staff refers the Planning Commission to the attached staff report from the September meeting for an analysis of some of the main points raised by the appeal. The following discussion focuses on the remaining disputed issues.

As noted above, staff recommends denial of the request. Each issue raised by the Planning Commission at their September 10, 2009, public hearing is discussed in turn.

Safety Issues Regarding Partial Foundations

As discussed previously, a monolithic foundation is a concrete slab foundation that is poured all at once. The footing, the stem wall and the slab are one continuous structure. This is a standard building practice and generally required in earthquake zones or areas of expansive soils. The developer has already constructed 14 of the 63 homes within the subdivision project, and all 14 homes were constructed with the entire foundation being installed as one unit.

The soils report provided by the applicant indicated that there are expansive soils within the project site. As part of this project, the soils and structural engineers hired by the developer have recommended that a monolithic post-tension concrete slab be provided that includes post-tension cables to increase the strength of the foundation. Post-tension cables are put in similarly to rebar. The cables (tendons) are actually greased and are enclosed within a sleeve. There are anchors on one side of the cable that are embedded in the concrete. After the concrete has reached the appropriate strength, the contractor will stress the cables by pulling them tight with a machine. This causes a lift to occur that gives the slab itself higher strength.

Again, to restate the Department's position, the Department believes this is very significant. The proposed partial foundations construction may introduce the potential for serious problems to arise if the recommendations of the applicant's engineers are not followed. To date, the applicant has not submitted any information indicating the safety of alternative partial foundations. Without signed, wet-stamped plans prepared by an engineer demonstrating that partial foundations can be constructed given the on-site soil conditions, County approval could endanger public safety and increase potential liability.

Submittal of Revised Plans and Engineering Calculations

To date, the Planning and Public Works Department has not received any revised plans or additional submittals from the applicant regarding the proposed partial foundations.

Detached vs. Attached Garages

As discussed previously, under applicable county regulations, the "start of construction," does not include the installation of accessory buildings, such as (detached) garages, that are not a part of the main structure. The applicant is proposing to pour a partial foundation for only the garage at this time. As such, it is functionally equivalent to a detached garage, until such time as the remainder of the residential structure is constructed, and should not be allowed as the basis for grandfathering the entire home with regards to flood elevation requirements.

Attached garages are part of the main structure and play an integral role in the overall residential structure. The attached garage will support portions of the roof, may include bearing walls for other features within the structure, and if there is a second floor over the garage, then the foundation will be required to provide the additional support for the loading associated with the addition living space. However, attached garages are not considered to be habitable or livable space. Because they are intended to store portable or items of lesser cost, garages are not required to be elevated above the Base Flood Elevation. FEMA's primary concern is ensuring that the portions of a structure that protect life and/or house valuable contents are adequately protected from potential flood damage. As such, staff does not believe that constructing uninhabitable space should be used as the justification to grandfather future livable space from flood elevation requirements.

Certainly, this language is somewhat vague and may be susceptible to other interpretations. For instance it could be read to say that if the attached garage is constructed at a separate time from the main house, the grandfathering would apply only to the attached garage and not extend to the main house. It could also be read in the manner argued by the applicant, to grandfather a permit for an entire home even if only the garage foundation is poured. And taking that argument to its extreme, this language could even be read to say that the permit vests at the moment the first portion of the foundation, however small, is poured — effectively vesting the permit for a home site if the slab for a garage and patio are in place.

But staff believe that the regulatory language should be interpreted reasonably, and that the most reasonable interpretation is to read "the pouring of slab or footings" to mean just that—the pouring of the *entire* slab or all footings for a structure. Presumably, FEMA intended to grandfather projects where an applicant had obtained all necessary permits and taken substantial steps (and made a significant financial investment) toward completion. Hence it opted to define "start of construction" as the "pouring of slab or footings," rather than as "starting to pour the slab or footings" or the "pouring of a portion of the slab or footings." County staff sees no sound basis to interpret this standard in a more lenient manner than its plain language suggests. And certainly, the importance of maintaining good standing with FEMA to ensure the County's continued participation in the NFIP dictates a careful approach to interpreting this regulation so that FEMA does not later assert that the entire subdivision was wrongly interpreted by the County to be grandfathered.

Further, it should be noted that Section 8-3.305 regarding interpretations of the Flood Damage Prevention Ordinance (which includes the "start of construction" definition) includes the following (underline added):

> In the interpretation and application of this chapter, all provisions shall be:
> (a) Considered as minimum requirements;
> (b) Liberally construed in favor of the governing body; and
> (c) Deemed neither to limit nor repeal any other powers granted under state statutes.

Additional Comments from FEMA

On September 14, 2009, staff sent an e-mail to Mr. Blackburn (**Attachment G**), requesting that he read the attached Planning Commission staff report from September 10, 2009 (ZF 2004-037 – River's

Edge Subdivision project) and provide specific clarification regarding the following issue: would the use of partial (non-livable space) foundations establish a grandfathered right with regards to construction under the County Flood Damage Prevention Ordinance? To date, Mr. Blackburn has not responded to the e-mail.

However, on September 15, 2009, a second e-mail was sent to Sally Ziolkowski, Mitigation Division Director, FEMA Region IX, who oversees Mr. Blackburn. The e-mail provided a brief summary of events that had occurred regarding the River's Edge Subdivision project and Mr. Blackburn's input regarding the issues at hand. The e-mail explained the county's position that the proposed partial foundation construction (apparently supported by Mr. Blackburn) is inconsistent with the intent of the FEMA regulations. On September 18, 2009, Ms. Ziolkowski responded (**Attachment H**). She indicated that the issuance of the building permit(s) for the River's Edge residential subdivision project is within the authority of County Planning and Public Works Department. Additionally, the County can be more restrictive in implementing the NFIP provisions of the county's Flood Damage Prevention Ordinance that are related to the issuance of building permits, due to the threat that flooding poses in the Town of Knights Landing.

ANALYSIS

County staff has worked collaboratively with the applicant for the past six years and is committed to ensuring the success of the River's Edge subdivision. This includes having recently supported the applicant's request for various modifications to the project, such as a decreased square footage of most of the remaining homes to be built, deferment of approximately $360,000 dollars in FSA and other standard fees, and general coordination regarding design and construction issues and solutions.

According to the applicant, building all 49 complete foundations at this time would be economically infeasible. This is a reasonable concern. Instead, the applicant is hedging his bet by seeking to reduce costs by building what is essentially the equivalent of a detached garage (would clearly would not qualify under the definition of "start of construction"), while claiming that it will eventually be integrated into a larger attached residence, therefore the entire residence should be grandfathered. This, despite the fact that the applicant also appears to challenge the County's agreement to allow 24 or even 36 months to build the remainder of the home as not lenient enough. Moreover, the applicant has yet to demonstrate how the partial foundations can be built safely in an area of expansive soils, located immediately next to a waterway.

While staff is sympathetic to the applicant's dilemma, concerning both the severe downturn in the housing market and the proposed changes in flood mapping, further accommodations can only be supported so long as they comply with local, state, and federal requirements, protect the health and safety of future residents as well as the community, and do not result in a substandard product. The approach sought by the applicant does not appear to meet any of these objectives.

ATTACHMENTS:

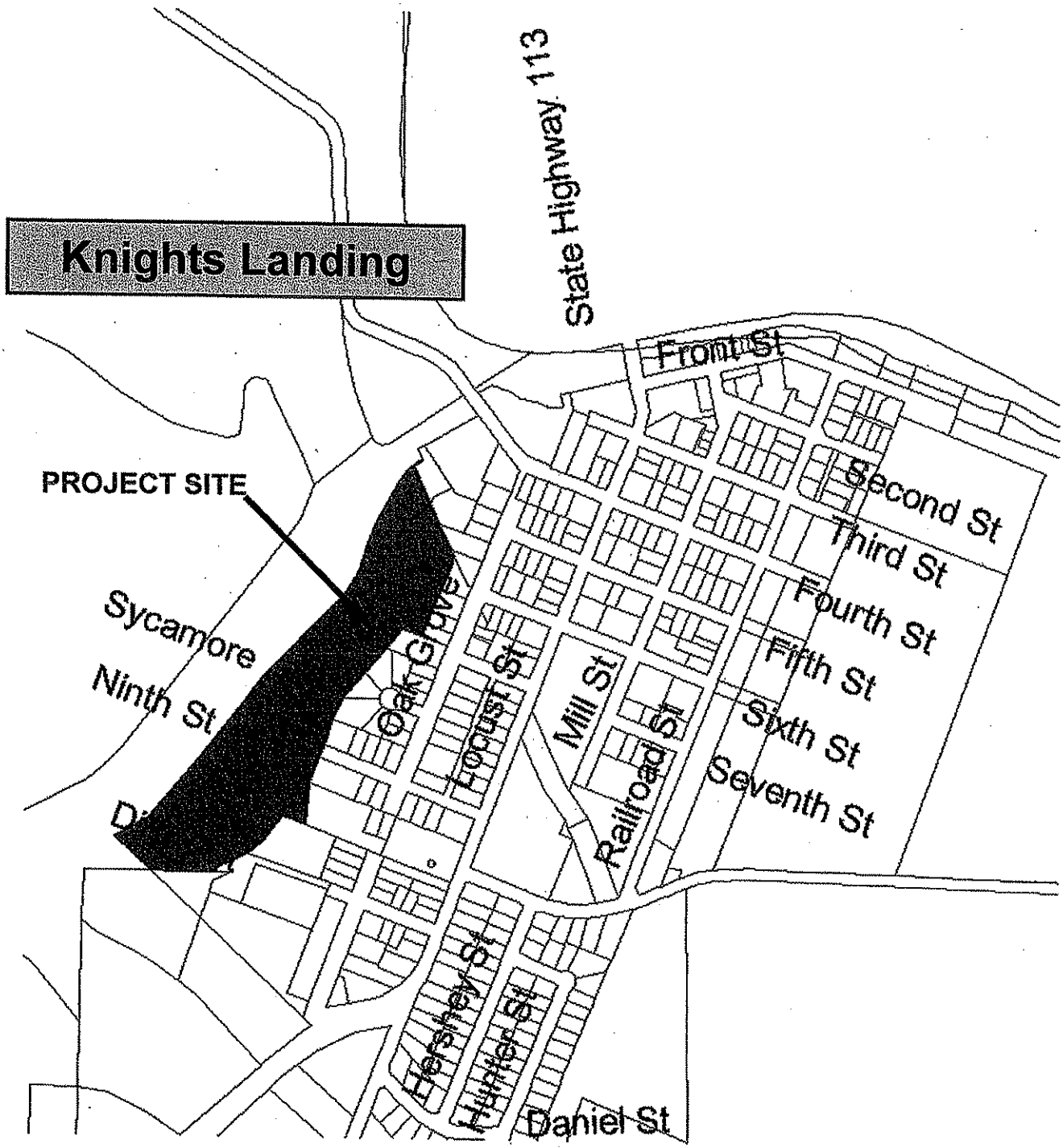
Attachment A – Location Map
Attachment B – CEQA Exemption
Attachment C – Findings
Attachment D – September 10, 2009 Planning Commission Staff Report
Attachment E – Letter from Castle's attorney dated August 28, 2009
Attachment F – Letter to the applicant from PPW dated June 9, 2009
Attachment G – E-mail from county staff to Gregor Blackburn
Attachment H – E-mail from Sally Ziolkowski to county staff

ATTACHMENT A

LOCATION MAP

THIS PAGE INTENTIONALLY LEFT BLANK

LOCATION MAP



ATTACHMENT A

THIS PAGE INTENTIONALLY LEFT BLANK

ATTACHMENT B

Categorical Exemption

THIS PAGE INTENTIONALLY LEFT BLANK

COUNTY RECORDER
Filing Requested by:

Yolo County Planning and Public Works
Name
292 West Beamer Street
Address
Woodland, CA 95695
City, State, Zip

Attention: Donald Rust

Notice of Exemption

To: Yolo County Clerk
625 Court Street
Woodland, CA 95695

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

Project Title: ZF 2004-037 – Appeal of the Planning and Public Works Department evaluation and letter of determination regarding Castle Companies' proposed modifications to residential dwelling units.

Applicant: Castle Companies (Dan Boatwright)
12885 Alcosta Boulevard, Suite A
San Ramon, CA 94583

Project Location:

The project site is located at the western end of 6th and 9th Streets and bordered by Colusa Basin Drainage Canal to the west in Knights Landing (APN: Number 056-381-01 to 29, 056-372-01 to 08, 056-371-01 to 19, and 056-372-01 to 10)

Project Description:

The applicant has proposed the construction of partial foundations (garage only) for the 49 remaining homes to be built, as part of the River's Edge (White) residential subdivision project. The Planning and Public Work's Department (PPW) reviewed, evaluated and provided a letter of determination,

Exempt Status:

Categorical Exemption: Review for Exemption "15061(b)(4)" and Projects which are Disapproved "15270 (a)"

Reasons why project is exempt:

CEQA does not apply to projects which a public agency rejects or disapproves.

Lead Agency Contact Person: Donald Rust, Principal Planner **Telephone Number:** (530) 666-8835

Signature (Public Agency): Date:

Date received for filing at OPR:

FILE #2004-037 FILE NAME: Castle Companies
AUTHORIZED SIGNATURE

RECEIPT #
FEE STATUS

THIS PAGE INTENTIONALLY LEFT BLANK

ATTACHMENT C

FINDINGS

THIS PAGE INTENTIONALLY LEFT BLANK

FINDINGS REGARDING THE RIVER'S EDGE (WHITE) RESIDENTIAL SUBDIVISION PROJECT (ZF 2004-037)

(A summary of evidence to support each FINDING is shown in Italics.)
Upon due consideration of the facts presented in this staff report and at the public hearing for Zone File # ZF2004-037, the Yolo County Planning Commission finds the following:

A. Introduction

The River's Edge (White) residential subdivision project was originally proposed as a rezone from A-1 to Residential One-Family, Planned Development (R-1/PD) zone and a Tentative Subdivision Map (TSM# 4708) to subdivide 22.19 acres into 63 single-family residential units and two non-residential lots. One of the non-residential lots, 1.36 acres in size, is to be utilized to create a 5-acre-foot detention pond in the southwest corner of the project site. The detention basin is to drain into the Colusa Basin Drain with a low-lift pump. The other non-residential lot, 7.87 acres in size, consists of the levee for the adjoining Colusa Basin Drain.

B. California Environmental Quality Act (CEQA) and Guidelines

That the recommended Categorical Exemption is the appropriate levels of environmental review in accordance with the California Environmental Quality Act (CEQA) and Guidelines, as CEQA does not apply to projects that a public agency rejects or disapproves (CEQA Guidelines § 15061(b)(4)).

C. Building Regulations, Standards and Vested Rights

In denying the applicant's appeal to overturn the Planning and Public Works Department determination regarding the proposal to construct partial foundations, the Planning Commission considers the factors set forth in the approved construction drawings, FEMA regulations, California Building Code, Flood Damage Prevention Ordinance and the Yolo County Code. In denying the applicant's appeal, the Planning Commission finds, on the following grounds: (1) that in the absence of accepted engineering calculations, the use of partial foundations would not be consistent with the requirements of the California building code and FEMA regulation; and (2) that the use of partial foundations would not establish a grandfathered right with regards to construction under the County Flood Damage Prevention Ordinance, as described in detail below.

1. Yolo County Planning and Public Works – Building Division is the local building and safety department, and responsible for the regulation and enforcement of the California Building Codes (CBC), Flood Damage Prevention Ordinance, Yolo County Code, and ordinances associated with the review, issuance, and final approval of all building permits within Yolo County.

   The applicant's proposal to construct partial foundations for non-livable space was reviewed by the Building and Planning Division, in consultation with other local jurisdictions and FEMA. Staff believes that the applicant should be required to use best building practices for construction of the entire concrete slab (on-ground) foundation as one unit (monolithically), utilizing a tight grid of a steel cables that actively helps support the slab creating a strong and stable foundation for the life of the dwelling unit as designed by the structural engineer. In the absence of structural calculations supporting the applicant's proposal, the construction of partial foundations would allow a substandard construction practice to introduce cold joints into the foundation, weakening

the overall structural integrity of the foundation, and could allow movement and possible degradation of the structure.

With regard to the FEMA and County definition of "start of construction," a partial foundation limited only to an attached garage is not sufficient to grandfather the building permit for the home. The definition states that a number of things are not sufficient to constitute the "start of construction." The list includes "the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure." Staff has concluded that this language means that work to install an unoccupied garage, even if attached to the main structure, falls short of what constitutes the "start of construction" under this definition. In other words, an applicant has to start work on the livable area – not the garage, even if it is attached – in order to qualify for grandfathering.

County staff sees no sound basis to interpret this standard in a more lenient manner than its plain language suggests. And certainly, the importance of maintaining good standing with FEMA to ensure the County's continued participation in the NFIP dictates a careful approach to interpreting this definition so that FEMA does not later assert that the entire subdivision was wrongly interpreted by the County to be grandfathered.

Altogether, the Commission agrees with staff's position that while the construction of a complete slab foundation clearly qualifies as the "start of construction," partial construction does not.

2. The time limitation for issuance and expiration of building permits for a residential dwelling unit is enforced by the California Building Code Sections 105.3.2 – Time limitation of application, 105.4 – Validity of permit, and 105.5 – Expiration. Construction must be completed within 180 days of building permit issuance and additional 90-day extensions can be approved at the discretion of the Chief Building Official.

   Here, County staff has agreed that the applicant may have up to 36 months to complete construction of the entire residential dwelling unit. Staff has advised that the applicant accepted this during a meeting on May 29, 2009, but now appeals this offer even though it represents far more than what the California Building Code requires. The Planning Commission sees no reason to disturb staff's judgment on this issue. After a lengthy discussion regarding issuance and expiration dates, the applicant requested that the Planning and Public Works Department provide written confirmation that the Yolo County Building Division would commit to the specific time frame, described above. The Chief Building Official agreed and provided written confirmation as requested by the applicant. If the applicant prefers the time frames reflected in California Building Code (CBC), and wishes to eliminate the previously agreed upon time frame, the Planning Commission has no objection, but it finds no basis for allowing the applicant more time than staff have previously offered to complete construction.

ATTACHMENT D

September 10, 2009 Planning Commission Staff Report

THIS PAGE INTENTIONALLY LEFT BLANK

County of Yolo

PLANNING AND PUBLIC WORKS DEPARTMENT

John Bencomo
DIRECTOR

292 West Beamer Street
Woodland, CA 95695-2598
(530) 666-8775 FAX (530) 666-8728
www.yolocounty.org

PLANNING COMMISSION STAFF REPORT **September 10, 2009**

FILE #2004-037: Appeal of the Planning and Public Works Department determinations regarding the Castle Companies' proposal to construct partial foundations for the 49 remaining homes to be built as part of the River's Edge (White) residential subdivision project in the Town of Knights Landing.	
APPLICANT:	Castle Companies (Dan Boatwright) 12885 Alcosta Boulevard, Suite A San Ramon, CA 94583
LOCATION: Located at the western end of 6th and 9th Streets and bordered by Colusa Basin Drainage Canal to the west in Knights Landing (APNs: 056-381-01 thru -29, 056-372-01 thru -08, 056-371-01 thru -19, and 056-372-01 thru -10) (**Attachment A**).	**SUPERVISORIAL DISTRICT:** 5TH (Sup. Chamberlain) **GENERAL PLAN:** Residential **ZONING:** R-1/PD-58 (Residential One-Family / Planned Development) **SOILS:** Sycamore (Sp) silt loam, drained (Class I) **FLOOD ZONE:** A (areas of 100-year flood) and B (areas between the limits of the 100-year flood and 500-year flood).
ENVIRONMENTAL DETERMINATION: Categorical Exemption	
REPORT PREPARED BY: Donald Rust, Principal Planner	**REVIEWED BY:** David Morrison, Assistant Director

RECOMMENDED ACTIONS

That the Planning Commission recommends the following actions to the Board of Supervisors:

1. **CONTINUE** the item to the next regularly scheduled Planning Commission hearing of October 8, 2009, as requested by the applicant; or,

2. **RECEIVE** a staff presentation, hold a public hearing, accept public testimony regarding the appeal, and:

   A. **DETERMINE** that the Categorical Exemption prepared for the appeal is the appropriate level of environmental review in accordance with the California Environmental Quality Act (CEQA) and CEQA Guidelines (**Attachment C**);

   B. **ADOPT** the recommended Findings (**Attachment D**); and

C. **DENY** the appeal.

REASONS FOR RECOMMENDED ACTIONS

The applicant has requested a continuance to the October meeting, as their attorney is unavailable on September 10. Staff does not oppose the continuance. However, should the Commission wish to entertain the appeal in September, staff recommends denial on the following grounds: (1) that in the absence of accepted engineering calculations, the use of partial foundations would not be consistent with the requirements of the California building code and FEMA regulation; and (2) that the use of partial foundations would not establish a grandfathered right with regards to construction under the County Flood Damage Prevention Ordinance.

BACKGROUND

History

The River's Edge (White) residential subdivision project was originally approved as a rezone from Agricultural General (A-1) zone to Residential One-Family, Planned Development (R-1/PD) zone and a Tentative Subdivision Map (TSM# 4708) to subdivide 22.19 acres into 63 single-family residential units and two non-residential lots. One of the non-residential lots, 1.36 acres in size, is a five acre-foot detention pond in the southwest corner of the project site. The detention basin drains into the Colusa Basin Drain with a low-lift pump. The other non-residential lot, 7.87 acres in size, consists of the levee for the adjoining Colusa Basin Drain. Vehicle access to the proposed project is provided via 6th Street and 9th Street. Levee maintenance access is provided via a ramp at the detention pond, and an access point near the northern edge of the project area. All streets are public, and all utilities on the site have been placed underground. Residential and agricultural land uses surround the River's Edge (White) residential subdivision. The site is bordered by the Colusa Basin Drain and agricultural land beyond to the west, residential subdivisions to the east, a walnut orchard to the south, and suburban residences and open land to the north.

The following is a timeline of events associated with the overall development project, as well as the current proposal and appeal.

PRIOR APPROVALS AND RELATED ACTIONS

April 1, 2004: The applicant submitted an application for the River's Edge residential subdivision project to allow for a Residential One-Family, Planned Development (R-1/PD) zone and a Tentative Subdivision Map (TSM# 4708) to subdivide 22.19 acres into 63 single-family residential units and two non-residential lots.

June 16, 2005: The Planning Commission reviewed the project, and received comments from the public. No concerns were expressed regarding the project, and the Planning Commission recommended its approval with a 5-0-1 vote.

July 19, 2005: The Board of Supervisors took the following actions regarding the White Residential Tentative Subdivision map (TSM #4708) pursuant to Minute Order No. 05-189: (1) Adopted the Mitigated Negative Declaration as the appropriate level of environmental review; (2) Adopted the Mitigation Monitoring and Reporting Plan implementing all Mitigation Measures; (3) Adopted and authorized the Chair to sign Ordinance No. 1337, approving the zone change from Agricultural General (A-1) Zone to Single Family Residential / Planned Development (R-1/PD) Zone; (4) Directed staff to include building codes for disability access; (5) Approved correction to the Conditions of Approval, Item No. 23; (6) Adopted the recommended Findings for approval of TSM#4708; and (7) Approved TSM #4708 in accordance with the Conditions of Approval.

February 27, 2007: The Board of Supervisors took the following actions regarding the White Residential Final Subdivision map (FSM #4708) pursuant to Minute Order No. 07-53 as part of the Consent Agenda as follows: (1) Adopted and authorized the Chair to sign Resolution No. 07-24 approving Subdivision Map No. 4708, accepting specified right-of-way and easements, and approving a subdivision improvement agreement and an inclusionary housing agreement; (2) Accepted on behalf of the public, the right-of-ways and easements offered for dedication, as provided for and indicated on Subdivision Map No. 4708; (3) Approved and authorized the Chair of the Board of Supervisors to sign Agreement No. 07-48 Subdivision Improvement Agreement; (4) Approved and authorized the Chair of the Board of Supervisors to sign Agreement No. 07-49, Inclusionary Housing Agreement for White Residential Subdivision; and (5) Adopted and authorized the Chair of the Board of Supervisors to sign Resolution No. 07-25 establishing parking restrictions on a portion of State Route 113 in Knights Landing.

September 9, 2008: The Board of Supervisors took the following actions regarding the White Residential Subdivision (FSM #4708) pursuant to Minute Order No. 08-218 as part of the Consent Agenda as follows: (1) Adopted a resolution of acceptance of public improvements for Subdivision No. 4708 to accept streets, curbs, gutters, sidewalks, and storm drainage facilities in the subdivision; and (2) Approved a resale and rental restriction agreement for affordable units to ensure compliance with certain requirements of Title 8, Chapter 9, of the Yolo County Code.

September 29, 2008: The developer proposed a Planned Development (PD-58) amendment to reduce the floor plan sizes of 43 of the 49 remaining homes to be constructed. Previously, the project had been approved to allow the construction of floor plans that range in sizes from 1,900 to 2,900 square feet. The proposed Planned Development amendment would allow floor plans of 1,300 to 2,400 square feet.

On March 12, 2009: The Planning Commission reviewed the project, and received comments from the public. No concerns were expressed regarding the project, and the Planning Commission recommended its approval with a 6-0-0 vote.

April 7, 2009: The Board of Supervisors took the following actions regarding the White Residential Subdivision (FSM #4708) pursuant to Minute Order No. 09-94: (1) Approved an amendment to Planned Development (PD-58) to reduce the floor plan sizes of 43 of the 49 remaining homes to be constructed to allow floor plans of 1,300 to 2,400 square feet; (2) Deferred the development impact fees to the final certificate of occupancy for each unit, totaling approximately $332,490 ($303,780 for Facilities Authorization and Fee (FSA) and $28,710 for General Plan Cost Recovery fees); (3) Allowed for different roofing materials; (4) Clarified the types of materials/improvements to be included in the interiors; (5) Reduced the number of front facades; (6) Established setbacks and construction standards for improvements near existing levees; and (7) Provided initial flood insurance coverage for homebuyers for a period of at least one year for all market rate units, and four years for affordable units (no general fund impact).

EVENTS LEADING TO THIS APPEAL

May 6, 2009: The applicant provided an e-mail requesting that the Planning and Public Works Department evaluate and provide comments regarding a proposal to construct partial foundations (garage only) for the 49 homes remaining to be built as part of the residential subdivision project. The purpose of the partial foundations was to attempt to ensure that the homes would be grandfathered in under the existing Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs), instead of the new FIRMs which are expected to be adopted in June, 2010. The new FIRMs are anticipated to require the elevation of new structures in the Knights Landing community anywhere from two to 25 feet, depending on location.

June 9, 2009: The Planning and Public Works Department provided the applicant with a letter of determination denying the proposal to construct partial foundations for the 49 remaining homes to

be built. The letter also documented issues discussed during a meeting held on May 29, 2009, between the applicant and staff as follows:

- All remaining 49 foundations must be fully installed to obtain final approval of the foundation, ensuring the foundation meets the current floodplain criteria, the California Building Code, and local ordinances associated with the issuance, inspection, and completion of a building permit.

- A reminder to the applicant that the preliminary FIRM Maps for the new flood zone designations are near and any required building permit that needs to be issued should occur as soon as possible and the start of construction shall commence prior to the adoption of the new flood zone designations and update to the FIRM.

- Based on a discussion about the construction of the 49 remaining homes, the applicant requested a specific time frame, if building permits were issued. The applicant and the Building Division agreed to the following specific time frame as it relates to the required building permits for the remaining homes to be constructed as part of the subdivision project. This specific time frame, 24 months, will be used in the construction of the remaining units, with the potential for a 12-month extension that must be requested in writing, and approved by the Chief Building Official. By agreeing to this approach, the Building Division effectively gave the applicant a significant extension of time to complete work under each building permit, as such permits typically expire in 180 days unless extended.

- Each building permit must maintain continuous building construction, and approved inspections, to allow the permit to remain active and valid, without incurring additional fees. This is a typical condition of all building permits.

June 22, 2009: The applicant filed an Application for Appeal regarding the Planning and Public Works letter of determination denying the Departments' determination that constructing partial foundations (garage only) is insufficient to grandfather such homes in the event of a change to the FIRM Maps and related flood zone designations.

Post-tension Concrete Slab (on-ground) Foundation

Concrete slabs can be prone to cracking due to deflection or bending when the earth under the slab sinks or becomes unstable due to soil types and soil movement based on moisture level, and can damage the structural integrity of foundations and ultimately the entire structure. The applicant was required to utilize a post-tension concrete slab foundation for the project site due to the soil types and other design criteria.

The proposed foundation for the remaining homes is a "post tension" foundation design that ties the living space and garage together with tendons (steel cables), creating a tight grid system throughout to develop a single unit, ensuring a strong and stable foundation. The cables also provide flexibility, where settling is expected due to sandy soils and/or high water tables. Slabs using the post-tension method can also be built thinner, which can cut down on construction costs and curing time. The post-tensioning method is the best practice for building stronger, and more reliable foundations.

With regards to this proposal, the applicant must submit revised plans and calculations if Castle plans on pouring the garage slab only, and building permit addendums must be reviewed by the Building Division for approval. The foundation slab structural design must be reviewed by the soils engineer and be approved for the design. The type of post-tensioned slab/foundation on the current plans will not allow a two pour system because the way the post-tension tendons are placed and the way the tendons must be stressed. This system works as one unit due to the expansive soil conditions encountered throughout the project site. If the applicant proposes a different application, he must submit the changes for the Building Division to review.

As part of the review of the proposed partial foundations, the Chief Building Official (CBO) requested that the applicant provide a letter from the project's design professionals indicating their review and wet stamp approval of the partial foundation (garage only) placement. In several conversations between the applicant's representative, the CBO and the planner regarding the proposal, the representative indicated that the applicant's design professional was unwilling to provide a letter and wet stamp approval.

The Department believes this is very significant. It indicates the potential for serious problems to arise with the foundation of homes built in the manner proposed by the applicant (i.e., with construction of the foundation for the garage only, followed at some later point by the addition of the foundation for the livable area). If the applicant's own design professional cannot endorse this approach, there is no reason for the County to effectively endorse it by issuing building permits.

Flood Regulations and Changes to the Depth of Flooding

In compliance with the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP), like most jurisdictions in California, Yolo County adopted a Floodplain Management Ordinance several years ago. This ordinance requires that the lowest floor, including basement, for all new structures within a flood hazard area be elevated one foot above the Base Flood Elevation for that area, which is the height of the water during a 100-year storm event. By participating in the NFIP and remaining in good standing, the County ensures that its residents can purchase flood insurance. Obviously, this is important as a matter of public policy.

FEMA periodically audits the County's compliance with various aspects of the NFIP and related federal regulations. In the past 18-months, FEMA has performed two specific audits of the Yolo County Building Division with regards to the NFIP and Community Rating System (CRS). The first audit was in early 2008; this is a three-year cycle audit, and is a requirement to participate in the NFIP. Basically, FEMA checks for the following during an audit: (1) Flood elevation certificates are complete; (2) Appropriate permit issuance of structures built within special flood hazard areas; (3) Field inspections for verifications for flow through vents and elevations; and (4) Review and evaluation of Yolo County's Floodplain Management Program. The second audit was in early July 2009, and was based on a new program which Yolo County is participating in, the CRS. In this program, if the County adopts flood protection measures, public outreach, and other efforts beyond the minimum required, flood insurance rates throughout the County may be lowered.

Currently, Knights Landing is designated under Flood Insurance Rate Maps (FIRMs) issued by FEMA as Zone C, or within an area considered to be outside the 100-year floodplain. However, in December 19, 2008, FEMA issued new preliminary FIRMs as part of the Flood Map Modernization Program. FEMA based these preliminary maps on new flooding analysis that takes into account local and regional flooding concerns, levee stability, and new Base Flood Elevations for several communities within Yolo County. In general, the new flooding risk is associated with within low lying properties along the Sacramento River and/or on Cache Creek. The preliminary FIRMs have been reviewed and are expected to be officially adopted by June, 2010. As a consequence, all new building permits submitted after the new FIRMs have been adopted will be required to comply with the new flood requirements. This anticipated change is at the heart of this appeal.

In March and April 2009, county and FEMA staff provided information and answered questions regarding what the proposed changes mean to owners and residents within areas affected by the new Flood Map Modernization Program. On April 12, 2009, the applicant's representative, local residents, property owners, and other interested parties attended the Knights Landing Citizen's Advisory Committee. The Flood Map Modernization Program was discussed extensively at that meeting with the local community. Letters and mailers have been provided to all affected landowners within the areas proposed for designation in the 100-year floodplain, and the Planning and Public Works Department maintains a detailed website of updated flood information.

In August 2009, county staff received Flood Depth Maps for Knights Landing, Clarksburg, and Yolo that provide very approximate calculations of the potential depth of flooding during a 100-year storm event. This information isn't sufficient to be used to require specific Base Flood Elevations at this time, but they do provide a general idea of how high structures may be required to be elevated once the new FIRMs are adopted in June, 2010. For the River's Edge Subdivision, if the Colusa Basin Drainage levees were to fail, flood depths could range anywhere from six feet to more than 15 feet (**Attachment F**).

Permit Issuance, Vesting, and Expiration

The Planning and Public Works Department is responsible for the enforcement of the California Building Codes, Yolo County Code, and ordinances associated with the review, issuance, inspection, and final approval of all building permits within Yolo County. The applicant's proposal to construct partial foundations was reviewed by the Chief Building Official, in consultation with other local jurisdictions, and the Federal Emergency Management Agency (FEMA).

The home on each individual lot must receive a separate building permit and comply with all current adopted California building codes, adopted Floodplain Insurance Rate Maps (FIRM), and local ordinances in effect at the time of issuance. If a building permit expires, the applicant or property owner is required to obtain a new building permit and provide updated construction plans to ensure compliance with all requirements in effect at the time of issuance. Any modifications to the approved construction plans requires the review and approval of the Building Division, and may require the design professional (architect or engineer) to provide supporting documents that the proposed change meets the current building standards.

In this case, building permits for the complete slab foundations have already been approved by the Chief Building Official. The applicant has indicated his intent to amend the applications to instead provide partial slab foundations. To approve the amended building permit, the applicant must provide supporting evidence from the structural engineer indicating how the partial slabs would be constructed.

Per the 2007 California Building Code Volume 2, Appendix Chapter 1 Administration Section 106.4 - Amended construction documents: Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

As indicated above, these calculations have not yet been received by staff and staff therefore cannot act—and have not yet taken final action—on any applications for building permits for the partial foundations. But without these supporting documents, the 49 remaining residential dwelling units can not be approved for partial foundations.

If building permits are not issued and the foundations constructed for the 49 homes prior to June, 2010, all remaining unbuilt homes will be required to be elevated in accordance with the new FIRM maps adopted at that time. As indicated above, the living space of the homes may need to be elevated from 7 to more than 16 feet (Base Flood Elevation plus one foot). At a minimum, the ground level floor of each home would have to be limited to a garage and storage area, or the home would have to be elevated on piers.

Under applicable county regulations, existing building permits are grandfathered—and thus exempt from subsequent FIRM Map changes—upon the "start of construction," defined as follows:

> Start of construction" includes substantial improvement and other proposed new development, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a

structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

As explained further below, staff interprets this to mean that if building permits are issued for the complete slab foundation and the actual work is started within six months for all 49 homes prior to June, 2010, they would be grandfathered with regards to the new FIRMs and could be constructed under the existing FIRMs. As a result, they would not have to be elevated. Any homes that did not have completed foundations within six months of the issuance of building permits would not be vested.

In addition, under the requirements of the California Building Code, in order for a building permit to maintain its approval, work must be continuous or the permit will expire. The initial period within work must be completed is 180 days of permit issuance (as verified by final building inspection or final occupancy, approved by the County). The Chief Building Official may grant extensions of at least 90 days, at his/her discretion. As a practice, extensions are not unlimited. Building Codes, Zoning Requirements, General Plan policies, and Flood Ordinances all change on a regular basis and if a vested permit is extended for a lenthy period of time, it can result in a structure that is considerably inconsistent with updated requirements. At the applicant's request, staff has agreed to extend any building permits issued for the 49 remaining homes for a period of 24 months from the time of permit issuance, with the possibility of an additional 12 month extension. This should be adequate time for construction of the entire home (not just the foundation) to be completed. If at any time a building permit expires, it loses its vested status, and the applicant must reapply subject to the regulations applicable at the time of re-application. In this case, if the permit for the foundation is issued and the home is not completed within three years, a new building permit applicant would have to be submitted showing how the home would be elevated in accordance with the new FIRMs.

Letter from the Applicant's Legal Counsel

On August 28, 2009, the applicant's attorney (Kent Calfee) notified the Planning and Public Works Department, via e-mail (**Attachment E**), that he will represent the applicant with regards to the appeal of the department's determination regarding the proposal to construct partial foundations at the River's Edge (White) subdivision. Mr. Calfee's letter indicates that he has concerns regarding two specific items from the Planning and Public Works' letter dated June 9, 2009, (**Attachment D**).

Mr. Calfee indicates that the conclusion of the staff's determination is not supported by FEMA regulation or the county's Flood Ordinance. The definition of the start of construction does not indicate anything regarding garage slabs or partial foundations.

Per the Flood Damage Prevention Ordinance, as described above, the staff agrees that the definition of "start of construction," includes the date of permit issuance. However, the permit issuance date is a small portion of the discussion. As discussed in further detail below, some amount of actual construction is necessary as well, and staff does not believe that pouring a fraction of the entire foundation is sufficient under FEMA regulations or the County's Flood Ordinance. Also, the proposed changes to the foundations have not been reviewed or approved by the Building Division, nor has staff seen any structural and soils engineer reports regarding the proposed changes to date.

The applicant contacted FEMA personnel regarding the start of construction garage slabs (or partial foundations) for their opinion. FEMA confirmed the definition of start of construction.

Mr. Calfee has attached an e-mail from Gregor Blackburn, FEMA's Chief, Floodplain Management and Insurance Branch to the applicant (Mr. Dan Boatwright). Mr. Blackburn provided clarification in his opinion regarding the start of construction, but he has not provided any opinion regarding the main issue: what is the threshold for establishing a grandfathered right. Mr. Blackburn has repeatedly indicated that the determination of grandfathered is at the discretion of the local Floodplain Administrator.

Mr. Calfee is requesting clarification of the county's authority regarding its determination of the proposed partial foundations.

The county has been in consultation not only with FEMA (Mr. Gregor Blackburn), but with other regional jurisdictions regarding staff's determination. With regards to grandfathered rights, it is a widely accepted practice to require that the entire foundation for the livable or habitable space be constructed and approved by the Chief Building Official in order to establish a grandfathered right.

Mr. Calfee indicates that he cannot find the authority to allow the proposed terms provided in the second determination, the 24-month and 12-month extension.

This portion of the appeal is puzzling to staff, as the 36-month timeline was jointly agreed to by both staff and the applicant during a meeting on May 29, 2009. After a lengthy discussion regarding issuance and expiration dates, the applicant requested that the Planning and Public Works Department provide written confirmation that the Yolo County Building Division would commit to the specific time frame, described above. The Chief Building Official agreed to the requested to the time frame and provided written confirmation as requested by the applicant. If the applicant prefers the time frames reflected in California Building Code (CBC), and wishes to eliminate the previously agreed upon time frame, staff has no objections. Construction must be completed within 180 days of building permit issuance and additional 90-day extensions can be approved at the discretion of the Chief Building Official.

ANALYSIS

County staff has worked collaboratively with the applicant for the past six years and is committed to ensuring the success of the River's Edge subdivision. This includes having recently supported the applicant's request for various modifications to the project, such as a decreased square footage of most of the remaining homes to be built, deferment of approximately $360,000 dollars in FSA and other standard fees, and general coordination regarding design and construction issues and solutions. While staff is sympathetic to the applicant's dilemma, concerning both the severe downturn in the housing market and the proposed changes in flood mapping, further accommodations can only be supported so long as they comply with local, state, and federal requirements, protect the health and safety of future residents as well as the community, and do not result in a substandard product.

The developer has already constructed 14 of the 63 homes within the subdivision project, and all 14 homes were constructed with the entire foundation being installed at the same time, as one unit. Staff believes that the applicant should be required to use best building practices for construction of the entire concrete slab (on-ground) foundation as one unit (monolithically), utilizing a tight grid of a steel cables that actively helps support the slab creating a strong and stable foundation for the life of the dwelling unit as designed by the structural engineer. In the absence of structural calculations supporting the applicant's proposal, the construction of partial foundations would allow a substandard construction practice to introduce cold joints into the foundation, weakening the overall structural integrity of the foundation, and could allow movement and possible degradation of the structure.

With regard to the FEMA and County definition definition of "start of construction," quoted above, a partial foundation limited only to an attached garage does not appear to be sufficient to grandfather the building permit for the home. The definition states that a number of things are not sufficient to constitute the "start of construction." The list includes "the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure." Staff have concluded that this language means that work to install an unoccupied garage, even if attached to the main structure, falls short of what constitutes the "start of construction" under this definition. In other words, an applicant has to start work on the livable area – not the garage, even if it is attached – in order to qualify for grandfathering.

Certainly, this language is somewhat vague and may be susceptible to other interpretations. For instance it could be read to say that if the attached garage is constructed at a separate time from the main house, the grandfathering would apply only to the attached garage and not extend to the main house. It could also be read in the manner argued by the applicant, to grandfather a permit for an entire home even if only the garage foundation is poured. And taking that argument to its extreme, this language could even be read to say that the permit vests at the moment the first portion of the foundation, however small, is poured — effectively vesting the permit for a home site if the slab for a garage and patio are in place.

But staff believe that the regulatory language should be interpreted reasonably, and that the most reasonable interpretation is to read "the pouring of slab or footings" to mean just that—the pouring of the *entire* slab or all footings for a structure. Presumably, FEMA intended to grandfather projects where an applicant had obtained all necessary permits and taken substantial steps (and made a significant financial investment) toward completion. Hence it opted to define "start of construction" as the "pouring of slab or footings," rather than as "starting to pour the slab or footings" or the "pouring of a portion of the slab or footings." County staff sees no sound basis to interpret this standard in a more lenient manner than its plain language suggests. And certainly, the importance of maintaining good standing with FEMA to ensure the County's continued participation in the NFIP dictates a careful approach to interpreting this regulation so that FEMA does not later assert that the entire subdivision was wrongly interpreted by the County to be grandfathered.

Further, it should be noted that Section 8-3.305 regarding interpretations of the Flood Damage Prevention Ordinance (which includes the "start of construction" definition) includes the following (underline added):

> In the interpretation and application of this chapter, all provisions shall be:
> (a) Considered as minimum requirements;
> (b) Liberally construed in favor of the governing body; and
> (c) Deemed neither to limit nor repeal any other powers granted under state statutes.

More importantly, even without these interpretations, staff believes that the applicant's efforts are in conflict with the intent of the grandfathering regulation. Construction of a single-family residence (including a complete slab foundation) clearly qualifies as the "start of construction." However, according to the applicant, building all 49 complete foundations at this time would be economically infeasible. This is a reasonable concern. Instead, the applicant is hedging his bet by seeking to reduce costs by building what is essentially the equivalent of a detached garage (would clearly would not qualify under the definition of "start of construction"), while claiming that it will eventually be integrated into a larger attached residence, and thus the entire residence should be grandfathered. This, despite the fact that the applicant also appears to challenge the County's agreement to allow 24 or even 36 months to build the remainder of the home as not lenient enough. Nor is there a guarantee that the building permit won't be amended at a later date to request a detached garage. Altogether, the applicant is seeking the advantages of grandfathering under the existing FIRMs in a manner that not only seem inconsistent with the plain language of the FEMA regulations, but the underlying policy as well.

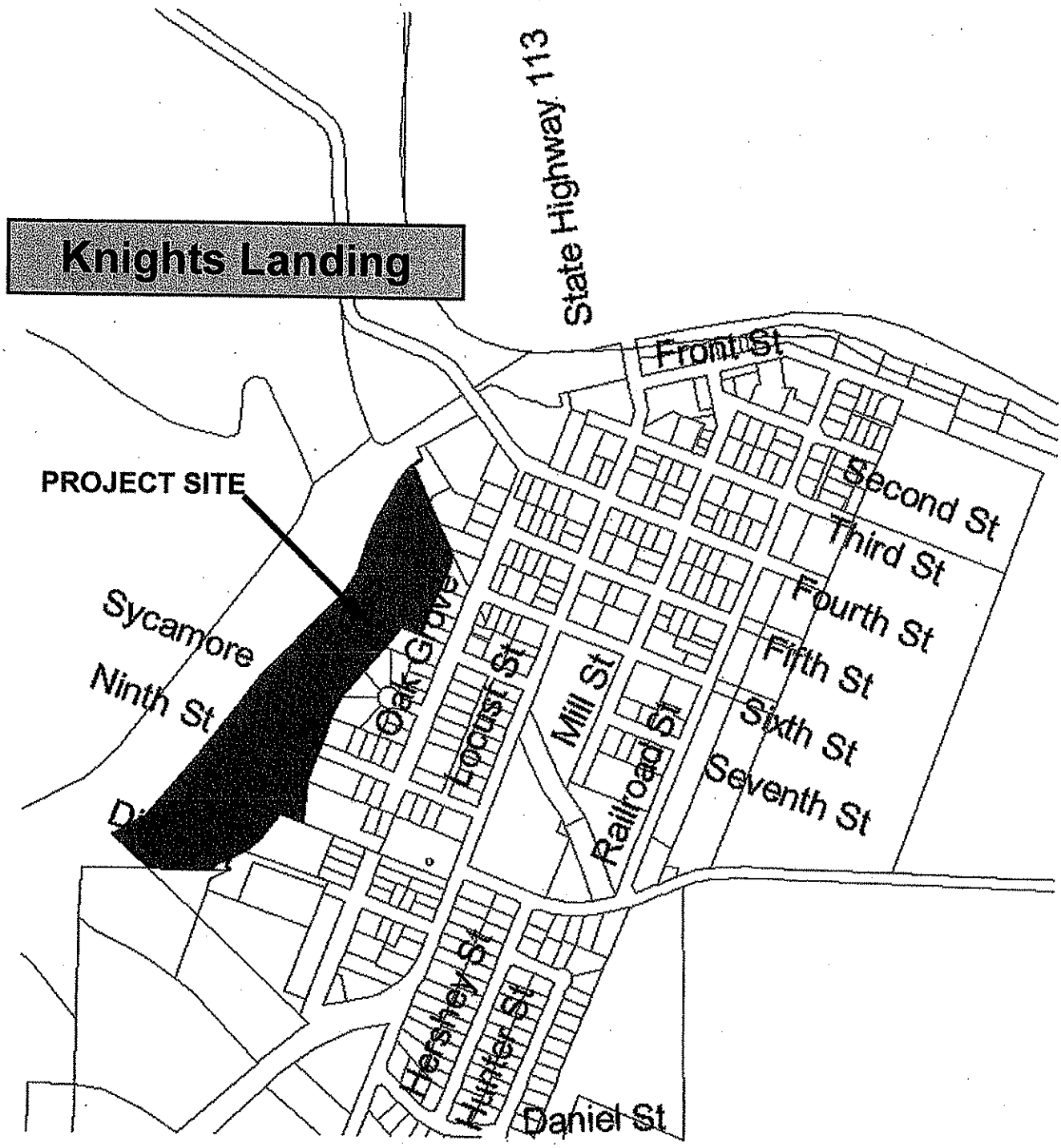
ATTACHMENTS:

Attachment A – Location Map
Attachment B – CEQA Exemption
Attachment C – Findings
Attachment D – Letter to the applicant from PPW dated June 9, 2009
Attachment E – Letter from Castle's attorney dated August 28, 2009
Attachment F – Depth Map – Knights Landing

ATTACHMENT A

LOCATION MAP

LOCATION MAP



ATTACHMENT A

ATTACHMENT B

Categorical Exemption

COUNTY RECORDER
Filing Requested by:

Yolo County Planning and Public Works
Name
292 West Beamer Street
Address
Woodland, CA 95695
City, State, Zip

Attention: Donald Rust

Notice of Exemption

To: Yolo County Clerk
625 Court Street
Woodland, CA 95695

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

Project Title: ZF 2004-037 – Appeal of the Planning and Public Works Department evaluation and letter of determination regarding Castle Companies' proposed modifications to residential dwelling units.

Applicant: Castle Companies (Dan Boatwright)
12885 Alcosta Boulevard, Suite A
San Ramon, CA 94583

Project Location:

The project site is located at the western end of 6th and 9th Streets and bordered by Colusa Basin Drainage Canal to the west in Knights Landing (APN: Number 056-381-01 to 29, 056-372-01 to 08, 056-371-01 to 19, and 056-372-01 to 10)

Project Description:

The applicant has proposed the construction of partial foundations (garage only) for the 49 remaining homes to be built, as part of the River's Edge (White) residential subdivision project. The Planning and Public Work's Department (PPW) reviewed, evaluated and provided a letter of determination,

Exempt Status:

Categorical Exemption: Review for Exemption "15061(b)(4)" and Projects which are Disapproved "15270 (a)"

Reasons why project is exempt:

CEQA does not apply to projects which a public agency rejects or disapproves.

Lead Agency Contact Person: Donald Rust, Principal Planner **Telephone Number:** (530) 666-8835

Signature (Public Agency): Date:

Date received for filing at OPR:

FILE #2004-037 FILE NAME: Castle Companies **RECEIPT #**
AUTHORIZED SIGNATURE **FEE STATUS**

ATTACHMENT C

FINDINGS

FINDINGS REGARDING THE RIVER'S EDGE (WHITE) RESIDENTIAL SUBDIVISION PROJECT (ZF 2004-037)

(A summary of evidence to support each FINDING is shown in Italics.)
Upon due consideration of the facts presented in this staff report and at the public hearing for Zone File # ZF2004-037, the Yolo County Planning Commission finds the following:

A. Introduction

The River's Edge (White) residential subdivision project was originally proposed as a rezone from A-1 to Residential One-Family, Planned Development (R-1/PD) zone and a Tentative Subdivision Map (TSM# 4708) to subdivide 22.19 acres into 63 single-family residential units and two non-residential lots. One of the non-residential lots, 1.36 acres in size, is to be utilized to create a 5-acre-foot detention pond in the southwest corner of the project site. The detention basin is to drain into the Colusa Basin Drain with a low-lift pump. The other non-residential lot, 7.87 acres in size, consists of the levee for the adjoining Colusa Basin Drain.

B. California Environmental Quality Act (CEQA) and Guidelines

That the recommended Categorical Exemption is the appropriate levels of environmental review in accordance with the California Environmental Quality Act (CEQA) and Guidelines, as CEQA does not apply to projects that a public agency rejects or disapproves (CEQA Guidelines § 15061(b)(4)).

C. Building Regulations, Standards and Vested Rights

In denying the applicant's appeal to overturn the Planning and Public Works Department determination regarding the proposal to construct partial foundations, the Planning Commission considers the factors set forth in the approved construction drawings, FEMA regulations, California Building Code, Flood Damage Prevention Ordinance and the Yolo County Code. In denying the applicant's appeal, the Planning Commission finds, on the following grounds: (1) that in the absence of accepted engineering calculations, the use of partial foundations would not be consistent with the requirements of the California building code and FEMA regulation; and (2) that the use of partial foundations would not establish a grandfathered right with regards to construction under the County Flood Damage Prevention Ordinance, as described in detail below.

1. Yolo County Planning and Public Works – Building Division is the local building and safety department, and responsible for the regulation and enforcement of the California Building Codes (CBC), Flood Damage Prevention Ordinance, Yolo County Code, and ordinances associated with the review, issuance, and final approval of all building permits within Yolo County.

   The applicant's proposal to construct partial foundations for non-livable space was reviewed by the Building and Planning Division, in consultation with other local jurisdictions and FEMA. Staff believes that the applicant should be required to use best building practices for construction of the entire concrete slab (on-ground) foundation as one unit (monolithically), utilizing a tight grid of a steel cables that actively helps support the slab creating a strong and stable foundation for the life of the dwelling unit as designed by the structural engineer. In the absence of structural calculations supporting the applicant's proposal, the construction of partial foundations would allow a substandard construction practice to introduce cold joints into the foundation, weakening

the overall structural integrity of the foundation, and could allow movement and possible degradation of the structure.

With regard to the FEMA and County definition of "start of construction," a partial foundation limited only to an attached garage is not sufficient to grandfather the building permit for the home. The definition states that a number of things are not sufficient to constitute the "start of construction." The list includes "the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure." Staff has concluded that this language means that work to install an unoccupied garage, even if attached to the main structure, falls short of what constitutes the "start of construction" under this definition. In other words, an applicant has to start work on the livable area – not the garage, even if it is attached – in order to qualify for grandfathering.

County staff sees no sound basis to interpret this standard in a more lenient manner than its plain language suggests. And certainly, the importance of maintaining good standing with FEMA to ensure the County's continued participation in the NFIP dictates a careful approach to interpreting this definition so that FEMA does not later assert that the entire subdivision was wrongly interpreted by the County to be grandfathered.

Altogether, the Commission agrees with staff's position that while the construction of a complete slab foundation clearly qualifies as the "start of construction," partial construction does not.

2. The time limitation for issuance and expiration of building permits for a residential dwelling unit is enforced by the California Building Code Sections 105.3.2 – Time limitation of application, 105.4 – Validity of permit, and 105.5 – Expiration. Construction must be completed within 180 days of building permit issuance and additional 90-day extensions can be approved at the discretion of the Chief Building Official.

   Here, County staff has agreed that the applicant may have up to 36 months to complete construction of the entire residential dwelling unit. Staff has advised that the applicant accepted this during a meeting on May 29, 2009, but now appeals this offer even though it represents far more than what the California Building Code requires. The Planning Commission sees no reason to disturb staff's judgment on this issue. After a lengthy discussion regarding issuance and expiration dates, the applicant requested that the Planning and Public Works Department provide written confirmation that the Yolo County Building Division would commit to the specific time frame, described above. The Chief Building Official agreed and provided written confirmation as requested by the applicant. If the applicant prefers the time frames reflected in California Building Code (CBC), and wishes to eliminate the previously agreed upon time frame, the Planning Commission has no objection, but it finds no basis for allowing the applicant more time than staff have previously offered to complete construction.

ATTACHMENT D

Letter to the applicant from PPW dated June 9, 2009

County of Yolo

PLANNING AND PUBLIC WORKS DEPARTMENT

John Bencomo
DIRECTOR

292 West Beamer Street
Woodland, CA 95695-2598
(530) 666-8775 FAX (530) 666-8728
www.yolocounty.org

June 9, 2009

Castle Companies
12885 Alcosta Boulevard, Suite A
San Ramon, CA 94583

Attention: Dan Boatwright, Project Manager

Subject: **ZONE FILE #2004-037** – The River's Edge (White) residential subdivision project a Planned Development (R-1/PD) zone and Tentative Subdivision Map (TSM# 4708) to subdivide 22.19 acres into 63 single-family residential units and two non-residential lots

Mr. Boatwright:

On May 6, 2009, you provided an e-mail requesting that the Planning and Public Works Department evaluate and provide comments regarding your proposal to construct partial foundations for the 49 homes remaining to be built as part of the residential subdivision project. The Department has reviewed your request and provides the following comments:

1. All remaining 49 foundations (i.e. entire footprint of the building) must be completely installed to obtain entitlement to ensure that the foundation meets the current floodplain criteria. Partial foundations will not be considered vesting with regards to FEMA. As you are aware, the flood zones and Floodplain Insurance Rate Maps (FIRM) has been reviewed and will be updated by Federal Emergency Management Agency (FEMA) in the early spring of 2010. All new building permits submitted after the FIRM maps have been adopted will have to comply with the flood requirements in effect at that time.

2. If a building permit is issued for a residential dwelling unit, the construction of that residential dwelling unit must be completed within 24 months, with the potential for a 12 month extension that must be requested in writing, and approved by the Chief Building Official.

3. Each building permit must maintain continuous building construction, and approved inspections to allow the permit to remain active, and no incurring additional fees.

4. For any residential dwelling units that have not been completed under the building permit issued within the three year time frame discuss above, a new building permit and construction plans will be required, and the residential dwelling unit will need to meet all current adopted California building codes, adopted Floodplain Insurance Rate Maps (FIRM), and other ordinances in effect at the time of issuance.

If you have any questions or concerns regarding the above, please contact me at my office by mail, e-mail at: donald.rust@yolocounty.org or phone at (530) 666-8835.

Sincerely,

DONALD RUST
Principal Planner

cc: John Bencomo, Yolo County, Planning & Public Works
David Morrison, Yolo County, Planning & Public Works
Lonell Butler, Yolo County, Planning & Public Works
Sergio Caldera, Yolo County, Planning & Public Works

ATTACHMENT E

Letter from Castle's attorney dated August 28, 2009

CALFEE | KONWINSKI
A PROFESSIONAL CORPORATION

611 NORTH STREET
WOODLAND, CALIFORNIA 95695-3237
TELEPHONE (530) 666-2185
FACSIMILE (530) 666-3123
kcalfee@calfeelaw.com

KENT N. CALFEE
DAVID W. CALFEE III
CHRISTOPHER J. KONWINSKI
SARAH B. ORR

August 28, 2009

Phil Pogledich, Esq.
Yolo County Counsel
625 Court Street
Woodland, CA 95695

Mr. John Bencomo
Yolo County Planning
and Public Works
292 W. Beamer Street
Woodland, CA 95695

Gentlemen:

I have been asked to assist Dan Boatwright with his appeal dated June 22, 2009, a copy of which is enclosed.

Castle Homes contends that two portions of the County's letter of June 9, 2009, are contrary to the applicable law. Inasmuch as the issues relate primarily, if not exclusively, to statutory interpretations, I think it is critical to have counsel weigh in.

The first issue relates to Don's conclusion under his Paragraph 1 that:

> All remaining 49 foundations (i.e. entire footprint of the building) must be completely installed to obtain entitlement to ensure that the foundation meets the current floodplain criteria. Partial foundations will not be considered vesting with regards to FEMA.

That conclusion is simply not supported by the language of the FEMA regulations nor the language of the Yolo County Flood ordinance. The definitions for the NFIP Regulations are set forth in § 59.1 (copy enclosed, see page E-6). I cannot see anything in the definition of "Start of Construction" that supports the conclusion that a garage slab does not meet the definition. In addition, Dan sought advice from Gregor Blackburn of FEMA. Mr. Blackburn is a senior staff

member and has the title Chief, Floodplain Management and Insurance Branch, DHS-FEMA Region IX. I have attached the email exchange with Mr. Blackburn and have taken the liberty to underline the portions that were highlighted in red by Mr. Blackburn in the original. Mr. Blackburn confirmed that the definitions of New Construction and Start of Construction in § 59.1 are the only regulations on this issue. If the County has any authority to support its conclusion that a garage slab does not meet the definition of "Start of Construction," we would appreciate the opportunity to evaluate the authority. Absent additional authority, it seems clear to me that an attached garage slab meets the definitional requirements of § 59.1 of the FEMA Regulations and § 8-3.245 of the Yolo County Code.

The second issue relates to Paragraph 2 of Don's letter. I cannot find any authority for Don's conclusions relating to a 24-month term or an extended 36-month term for a building permit. Please provide me with the statutory basis for these time restrictions. My understanding is that the Uniform Building Code ("UBC") provisions relating to "Expiration" control this issue. Enclosed is a copy of the applicable provision from the UBC, § 106.4.4. Nowhere in § 106.4.4 can I find a twenty-four (24) month term for a building permit.

I would appreciate the opportunity to meet with the two of you, and any other staff member you think appropriate, to discuss these issues. I feel strongly that we should explore these legal issues informally in an attempt to avoid having a legal debate at the appeal hearing. Assuming you are willing to meet with us, please let me know some available dates.

Thanks.

Very truly yours,

CALFEE | KONWINSKI
A Professional Corporation

Kent N. Calfee

sfp
enc.

cc: Mr. Dan Boatwright
Mr. Donald Rust
Mr. Lonell Butler

\\Server\old\WP\KNC\Castle\lpogledich rust 090827.doc

FOR OFFICE USE ONLY

Received by _____ APN # _____

Receipt # _____ Zoning _____

Sup. Dist. # _____ File # _____

Gen./Spec. Plan _____ Date Filed _____

Code Reference _____

APPLICATION FOR APPEAL

Please understand that after you have made your application for an appeal, staff will place your appeal on the agenda at the earliest possible legal date and will prepare a brief report to accompany your appeal. The more information you can provide, the more complete your appeal will be at the time it is heard.

According to the Yolo County Code, I request my appeal to be heard by:

(Check one) X Planning Commission (Title 8, Chapter 2) Sec. 8-3.405 County Code

___ Board of Supervisors " "

___ Building Code Appeals Board (Title 7, Chapters 1, 2, 3 and 4)

State what you requested to do: Grandfather building permits for FEMA flood zone purposes by having building permits issued prior to new FIRM effective date, installing garage slabs within 180 days, and not "abandoning work" before all homes are completed.

Give the location (street address, general location, etc.) White Subdivision (TSM #4708), Knights Landing

Give the assessor's parcel number(s): ___-___-See attached list of APN's

State in detail why you think your request was denied: See attached letter from Yolo County, which takes a position contrary to applicable law, including but not limited to CBC, CFR, and Yolo County Code

Name of Respondent Dan Boatwright, Cattle Companies Phone (925) 328-1000

Address 12885 Alcosta Blvd., San Ramon, CA 94583

I certify that the above statements are correct and that all accompanying documents and maps are accurate.

Signature _____

Dated 6-22-09

8/82

Assessor Parcel Numbers for Application for Appeal

056-371-01 through 09
056-372-01 through 08
056-381-01 through 11
056-381-13 through 16
056-381-18 through 29
056-382-01 and 02
056-382-06 through 08

49 total parcels.

County of Yolo

PLANNING AND PUBLIC WORKS DEPARTMENT

John Bencomo
DIRECTOR

292 West Beamer Street
Woodland, CA 95695-2598
(530) 666-8775 FAX (530) 666-8728
www.yolocounty.org

June 9, 2009

Castle Companies
12885 Alcosta Boulevard, Suite A
San Ramon, CA 94583

Attention: Dan Boatwright, Project Manager

Subject: **ZONE FILE #2004-037** – The River's Edge (White) residential subdivision project a Planned Development (R-1/PD) zone and Tentative Subdivision Map (TSM# 4708) to subdivide 22.19 acres into 63 single-family residential units and two non-residential lots

Mr. Boatwright:

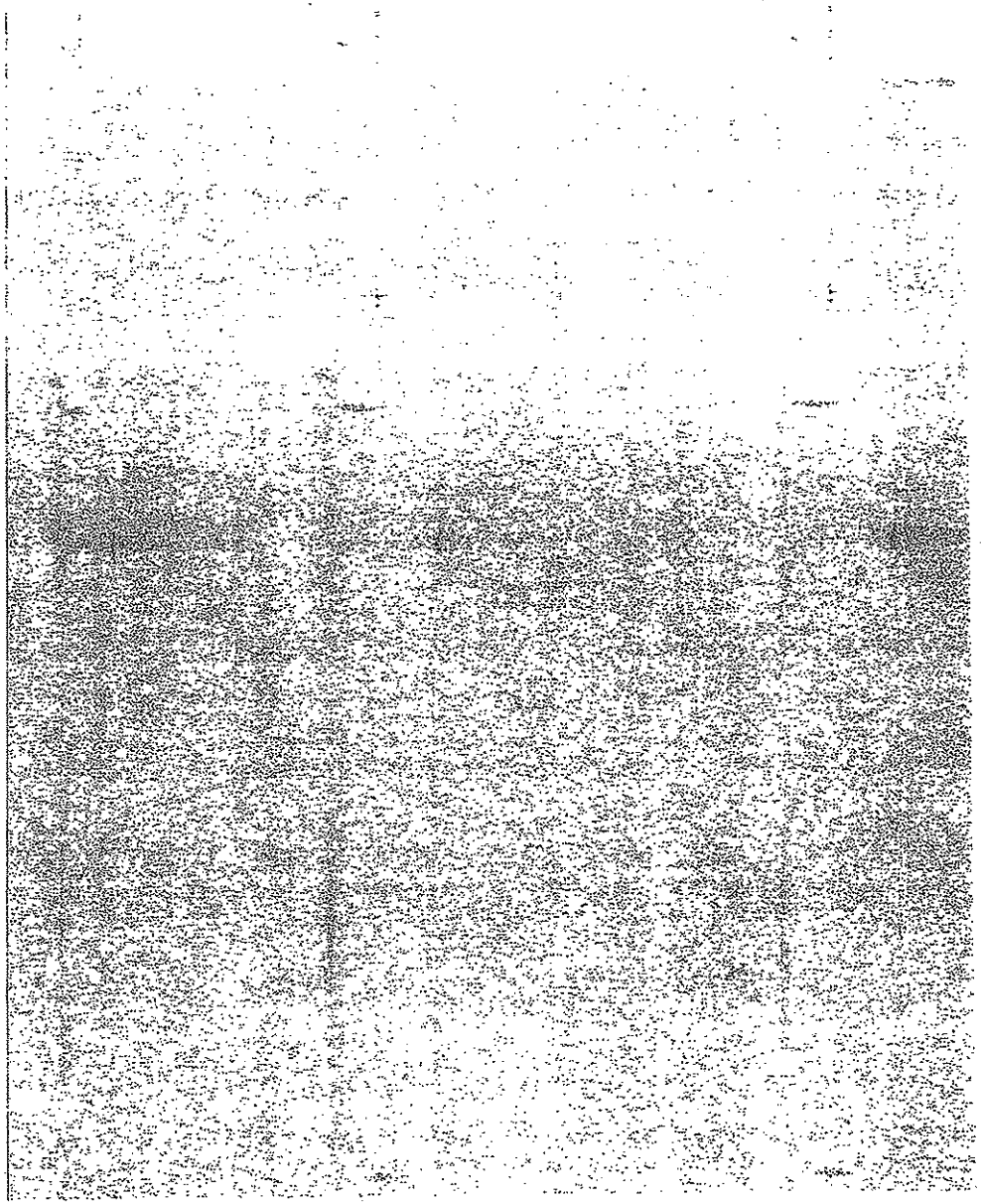
On May 6, 2009, you provided an e-mail requesting that the Planning and Public Works Department evaluate and provide comments regarding your proposal to construct partial foundations for the 49 homes remaining to be built as part of the residential subdivision project. The Department has reviewed your request and provides the following comments:

1. All remaining 49 foundations (i.e. entire footprint of the building) must be completely installed to obtain entitlement to ensure that the foundation meets the current floodplain criteria. Partial foundations will not be considered vesting with regards to FEMA. As you are aware, the flood zones and Floodplain Insurance Rate Maps (FIRM) has been reviewed and will be updated by Federal Emergency Management Agency (FEMA) in the early spring of 2010. All new building permits submitted after the FIRM maps have been adopted will have to comply with the flood requirements in effect at that time.

2. If a building permit is issued for a residential dwelling unit, the construction of that residential dwelling unit must be completed within 24 months, with the potential for a 12 month extension that must be requested in writing, and approved by the Chief Building Official.

3. Each building permit must maintain continuous building construction, and approved inspections to allow the permit to remain active, and no incurring additional fees.

4. For any residential dwelling units that have not been completed under the building permit issued within the three year time frame discuss above, a new building permit and construction plans will be required, and the residential dwelling unit will need to meet all current adopted California building codes, adopted Floodplain Insurance Rate Maps (FIRM), and other ordinances in effect at the time of issuance.

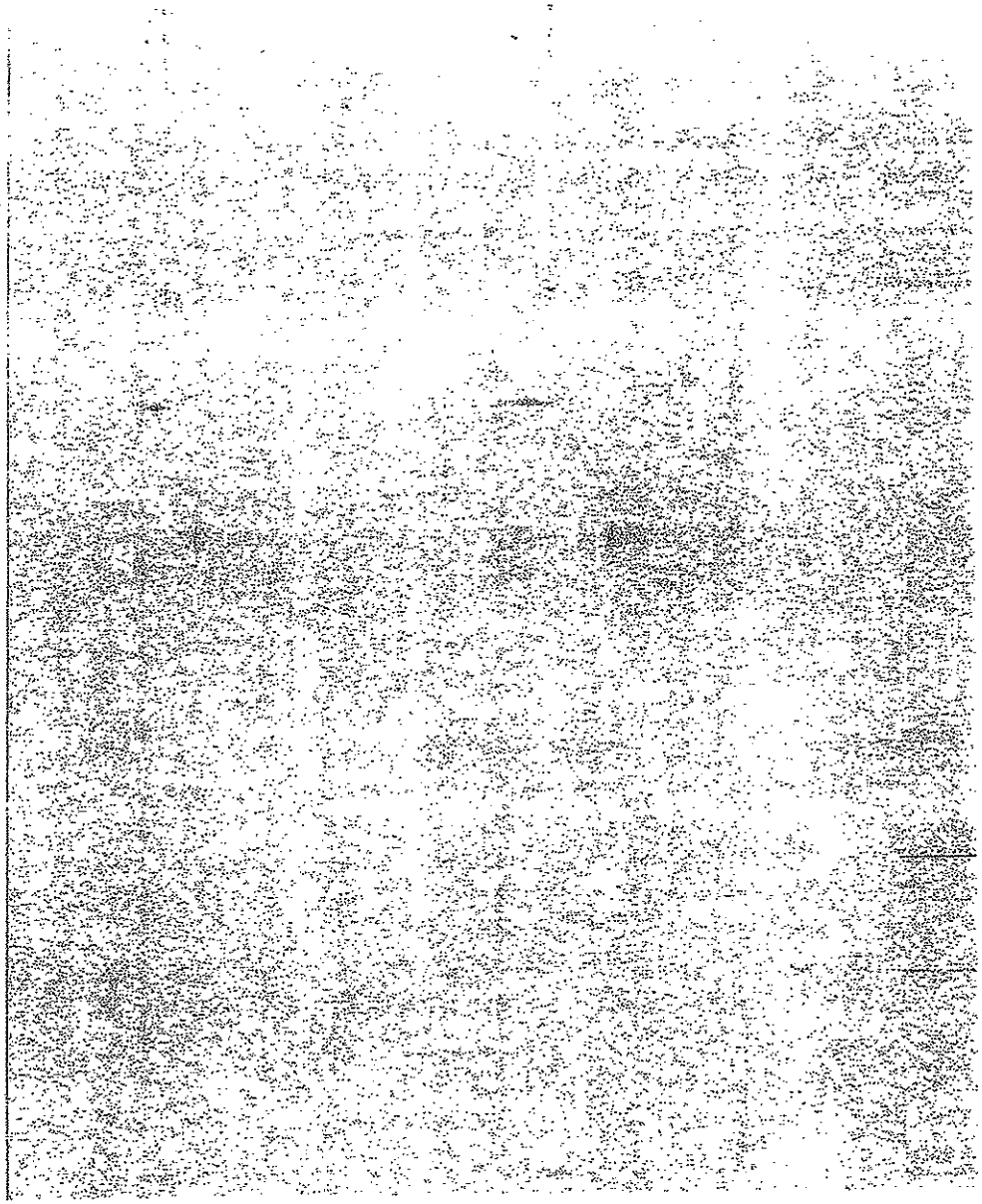


If you have any questions or concerns regarding the above, please contact me at my office by mail, e-mail at: donald.rust@yolocounty.org or phone at (530) 666-8835.

Sincerely,

DONALD RUST
Principal Planner

cc: John Bencomo, Yolo County, Planning & Public Works
David Morrison, Yolo County, Planning & Public Works
Lonell Butler, Yolo County, Planning & Public Works
Sergio Caldera, Yolo County, Planning & Public Works



APPENDIX E: NFIP REGULATIONS

This Appendix contains the text of the Code of Federal Regulations (CFR) for the National Flood Insurance Porgram: 44 CFR Parts 59, 60, 65 and 70.

PART 59 -- GENERAL PROVISIONS

Subpart A – General

Sec.

59.1 Definitions
59.2 Description of program
59.3 Emergency program
59.4 References

Subpart B – Eligibility Requirements

59.21 Purpose of subpart
59.22 Prerequisites for the sale of flood insurance
59.23 Priorities for the sale of flood insurance under the regular program
59.24 Suspension of community eligibility

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

Source: 41 FR 46968, Oct. 26, 1976; 44 FR 31177, May 31, 1979; 50 FR 36022, Sept. 4, 1985; 51 FR 30306, Aug. 25, 1986; 57 FR 19540, May 7, 1992; 58 FR 62424, Nov. 26, 1993; 59 FR 53597, Oct. 25, 1994; 62 FR 55715, Oct. 27, 1997, unless otherwise noted.

Subpart A – General

§ 59.1 Definitions.

As used in this subchapter.

"Act" means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001-4128.

"Actuarial rates". see "risk premium rates."

"Administrator" means the Federal Insurance Administrator.

"Agency" means the Federal Emergency Management Agency, Washington DC.

"Alluvial fan flooding" means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and, unpredictable flow paths.

"Apex" means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

"Applicant" means a community which indicates a desire to participate in the Program.

"Appurtenant Structure" means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

"Area of shallow flooding" means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood-related erosion hazard" is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

"Area of special flood hazard" is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

"Area of special mudslide (i.e., mudflow) hazard" is the land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBM. After the detailed evaluation of the special mudslide (i.e., mudflow)

hazard area in preparation for publication of the FIRM, Zone M may be further refined.

"Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

"Building", see "structure."

"Chargeable rates" mean the rates established by the Administrator pursuant to section 1308 of the Act for first layer limits of flood insurance on existing structures.

"Chief Executive Officer" of the community ("CEO") means the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

"Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

"Community" means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

"Contents coverage" is the insurance on personal property within an enclosed structure, including the cost of debris removal, and the reasonable cost of removal of contents to minimize damage. Personal property may be household goods usual or incidental to residential occupancy, or merchandise, furniture, fixtures, machinery, equipment and supplies usual to other than residential occupancies.

"Criteria" means the comprehensive criteria for land management and use for flood-prone areas developed under 42 U.S.C. 4102 for the purposes set forth in Part 60 of this subchapter.

"Critical feature" means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

"Curvilinear Line" means the border on either a FHBM or FIRM that delineates the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.

"Deductible" means the fixed amount or percentage of any loss covered by insurance which is borne by the insured prior to the insurer's liability.

"Developed area" means an area of a community that is:

(a) A primarily urbanized, built-up area that is a minimum of 20 contiguous acres, has basic urban infrastructure, including roads, utilities, communications, and public facilities, to sustain industrial, residential, and commercial activities, and

(1) Within which 75 percent or more of the parcels, tracts, or lots contain commercial, industrial, or residential structures or uses; or

(2) Is a single parcel, tract, or lot in which 75 percent of the area contains existing commercial or industrial structures or uses; or

(3) Is a subdivision developed at a density of at least two residential structures per acre within which 75 percent or more of the lots contain existing residential structures at the time the designation is adopted.

(b) Undeveloped parcels, tracts, or lots, the combination of which is less than 20 acres and contiguous on at least 3 sides to areas meeting the criteria of paragraph (a) at the time the designation is adopted.

(c) A subdivision that is a minimum of 20 contiguous acres that has obtained all necessary government approvals, provided that the actual "start of construction" of structures has occurred on at least 10 percent of the lots or remaining lots of a subdivision or 10 percent of the maximum building coverage or remaining building coverage allowed for a single lot subdivision at the time the designation is adopted and construction of structures is underway. Residential subdivisions must meet the density criteria in paragraph (a)(3).

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Director" means the Director of the Federal Emergency Management Agency.

"Eligible community" or "participating community" means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program.

"Elevated building" means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"Emergency Flood Insurance Program" or "emergency program" means the Program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

"Erosion" means the process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

"Exception" means a waiver from the provisions of Part 60 of this subchapter directed to a community which relieves it from the requirements of a rule, regulation, order or other determination made or issued pursuant to the Act.

"Existing construction," means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"Existing structures" see "existing construction."

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

"Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration.

"Financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States.

"Financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief Act of 1974 other than assistance under such Act in connection with a flood. It includes only financial assistance insurable under the Standard Flood Insurance Policy.

"First-layer coverage" is the maximum amount of structural and contents insurance coverage available under the Emergency Program.

"Flood" or "Flooding" means:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

"Flood elevation determination" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

"Flood Hazard Boundary Map" (FHBM) means an official map of a community, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related "Flood plain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and flood plain management regulations.

"Flood plain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

"Flood protection system" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

"Flood proofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

"Flood-related erosion area" or "flood-related erosion prone area" means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

"Flood-related erosion area management" means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and flood plain management regulations.

"Floodway", see "regulatory floodway."

"Floodway encroachment lines" mean the lines marking the limits of floodways on Federal, State and local flood plain maps.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

"General Counsel" means the General Counsel of the Federal Emergency Management Agency.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved state program as determined by the Secretary of the Interior or

(2) Directly by the Secretary of the Interior in states without approved programs.

"Independent scientific body" means a non-federal technical or scientific organization involved in the study of land use planning, flood plain management, hydrology, geology, geography, or any other related field of study concerned with flooding.

"Insurance adjustment organization" means any organization or person engaged in the business of adjusting loss claims arising under the Standard Flood Insurance Policy.

"Insurance company" or "insurer" means any person or organization authorized to engage in the insurance business under the laws of any State.

"Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

"Levee System" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

"Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's

lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of section 60.3.

"Mangrove stand" means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above the ground and which contain one or more of the following species: Black mangrove (Avicennia Nitida); red mangrove (Rhizophora Mangle); white mangrove (Languncularia Racemosa); and buttonwood (Conocarpus Erecta).

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Map" means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Agency.

"Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

"Mudslide" (i.e., mudflow) describes a condition where there is a river, flow or inundation of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

"Mudslide (i.e., mudflow) area management" means the operation of an overall program of corrective and preventive measures for reducing mudslide (i.e., mudflow) damage, including but not limited to emergency preparedness plans, mudslide control works, and flood plain management regulations.

"Mudslide (i.e., mudflow) prone area" means an area with land surfaces and slopes of unconsolidated material where the history, geology and climate indicate a potential for mudflow.

"New construction" means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

"100-year flood" see "base flood."

"Participating community," also known as an "eligible community," means a community in which the Administrator has authorized the sale of flood insurance.

"Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

"Policy" means the Standard Flood Insurance Policy.

"Premium" means the total premium payable by the insured for the coverage or coverages provided under the policy. The calculation of the premium may be based upon either chargeable rates or risk premium rates, or a combination of both.

"Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

"Principally above ground" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

"Program" means the National Flood Insurance Program authorized by 42 U.S.C. 4001-4128.

"Program deficiency" means a defect in a community's flood plain management regulations or administrative procedures that impairs effective implementation of those flood plain management regulations or of the standards in §§ 60.3, 60.4, 60.5, or 60.6.

"Project cost" means the total financial cost of a flood protection system (including design, land acquisition, construction, fees, overhead, and profits), unless the Federal Insurance Administrator determines a given "cost" not to be a part of such project cost.

"Recreational vehicle" means a vehicle which is:

(a) built on a single chassis;

(b) 400 square feet or less when measured at the largest horizontal projection;

(c) designed to be self-propelled or permanently towable by a light duty truck; and

(d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Reference feature" is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal high-water line or the seaward line of permanent vegetation if a high-water line cannot be identified.

"Regular Program" means the Program authorized by the Act under which risk premium rates are required for the first half of available coverage (also known as "first layer" coverage) for all new construction and substantial improvements started on or after the effective date of the FIRM, or after December 31, 1974, for FIRM's effective on or before that date. All buildings, the construction of which started before the effective date of the FIRM, or before January 1, 1975, for FIRMs effective before that date, are eligible for first layer coverage at either subsidized rates or risk premium rates, whichever are lower. Regardless of date of construction, risk premium rates are always required for the second layer coverage and such coverage is offered only after the Administrator has completed a risk study for the community.

"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

"Remedy a violation" means to bring the structure or other development into compliance with State or local flood plain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

"Risk premium rates" mean those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the Act and the accepted actuarial principles. "Risk premium rates" include provisions for operating costs and allowances.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Sand dunes" mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Scientifically incorrect". The methodology(ies) and/or assumptions which have been utilized are inappropriate for the physical processes being evaluated or are otherwise erroneous.

"Second layer coverage" means an additional limit of coverage equal to the amounts made available under the Emergency Program, and made available under the Regular Program.

"Servicing company" means a corporation, partnership, association, or any other organized entity which contracts with the Federal Insurance Administration to service insurance policies under the National Flood Insurance Program for a particular area.

"Sheet flow area". see "area of shallow flooding."

"60-year setback" means a distance equal to 60 times the average annual long term recession rate at a site, measured from the reference feature.

Special flood hazard area. see "area of special flood hazard".

"Special hazard area" means an area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E.

"Standard Flood Insurance Policy" means the flood insurance policy issued by the Federal Insurance Administrator, or an insurer pursuant to an arrangement with the Administrator pursuant to Federal statutes and regulations.

"Start of Construction" (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub.L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"State" means any State, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

"State coordinating agency" means the agency of the state government, or other office designated by the Governor of the state or by state statute at the request of

largest horizontal projection;
(c) Designed to be self-propelled or permanently towable by a light duty truck; and
(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
"Reference feature" is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal high-water line or the seaward line of permanent vegetation if a high-water line cannot be identified.
"Regular Program" means the Program authorized by the Act under which risk premium rates are required for the first half of available coverage (also known as "first layer" coverage) for all new construction and substantial improvements started on or after the effective date of the FIRM, or after December 31, 1974, for FIRM's effective on or before that date. All buildings, the construction of which started before the effective date of the FIRM, or before January 1, 1975, for FIRMs effective before that date, are eligible for first layer coverage at either subsidized rates or risk premium rates, whichever are lower. Regardless of date of construction, risk premium rates are always required for the second layer coverage and such coverage is offered only after the Administrator has completed a risk study for the community.
"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.
"Remedy a violation" means to bring the structure or other development into compliance with State or local flood plain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.
"Risk premium rates" mean those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with section 1307 of the Act and the accepted actuarial principles. "Risk premium rates" include provisions for operating costs and allowances.
"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
"Sand dunes" mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.
"Scientifically incorrect". The methodology(ies) and/or assumptions which have been utilized are inappropriate for the physical processes being evaluated or are otherwise erroneous.
"Second layer coverage" means an additional limit of coverage equal to the amounts made available under the Emergency Program, and made available under the Regular Program.
"Servicing company" means a corporation, partnership, association, or any other organized entity which contracts with the Federal Insurance Administration to service insurance policies under the National Flood Insurance Program for a particular area.
"Sheet flow area"- see area of shallow flooding.
"60-year setback" means a distance equal to 60 times the average annual long term recession rate at a site, measured from the reference feature.
"Special flood hazard area"-- see "area of special flood hazard".
"Special hazard area" means an area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E.
"Standard Flood Insurance Policy" means the flood insurance policy issued by the Federal Insurance Administrator, or an insurer pursuant to an arrangement with the Administrator pursuant to Federal statutes and regulations.
"Start of Construction" (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling;

nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"State" means any State, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

State coordinating agency means the agency of the state government, or other office designated by the Governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program in that state.

"Storm cellar" means a space below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornado or similar wind storm activity.

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure, for insurance purposes, means:

(1) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

(2) A manufactured home (``a manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

(3) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For the latter purpose, ``structure" does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

"Subsidized rates" mean the rates established by the Administrator involving in the aggregate a subsidization by the Federal Government.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred ``substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or

(2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

"30-year setback" means a distance equal to 30 times the average annual long term recession rate at a site, measured from the reference feature.

"Technically incorrect". The methodology(ies) utilized has been erroneously applied due to mathematical or measurement error, changed physical conditions, or insufficient quantity or quality of input data.

"V Zone" - see "coastal high hazard area."

"Variance" means a grant of relief by a community from the terms of a flood plain management regulation.

"Violation" means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sec. 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

"Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where

Kent Calfee

From: Dan Boatwright [dboatwright@castlecompanies.com]
Sent: Monday, August 17, 2009 9:38 AM
To: Kent Calfee
Subject: FW: New Homes in Knights Landing

From: Blackburn, Gregor [mailto:gregor.blackburn@dhs.gov]
Sent: Monday, August 17, 2009 9:45 AM
To: Dan Boatwright
Cc: lonell.butler@yolocounty.org
Subject: RE: New Homes in Knights Landing

Mr. Boatwright: First let me apologize for the delay in response. I also cc:ed Lonell Butler at Yolo County in order to provide him with the findings of our conversation.

Your synopsis of our discussion and conclusions as written below are an accurate account of conversation. There are some details which I have added as appropriate in your text below in red. If you have further questions, please contact Mr. Butler and me...or if those questions concern insurance policy, premium, payment or timing issues, please contact our Insurance Industry Specialist, Ms. Jana Critchfield at 510-627-7266. (She is out of the office for the next few weeks, but she does answer calls left on her voice mail system.)

Thank you.

Gregor Blackburn, CFM

desk: 510-627-7186
fax: 510-627-7147

From: Dan Boatwright [mailto:dboatwright@castlecompanies.com]
Sent: Thursday, July 30, 2009 3:48 PM
To: Blackburn, Gregor
Subject: New Homes in Knights Landing

Gregor,

Thank you for discussing the implementation of the FEMA regulations with regard to the "Start of Construction" and "Actual Start" for the new homes that we have constructed and will construct in Knights Landing. As you know, it appears Knights Landing will be located in a 100-year flood zone starting sometime early next year.

You indicated that under FEMA regulations "new construction" and "start of construction" are defined [Section 59.1] and that there are no further regulations specifying how much construction (garage slab, whole house slab, etc.) is required to qualify as "actual start" of construction. You further indicated that as long as the local building official issued a valid building permit prior to the effective date of the new 100-year flood zone, (and the local floodplain administrator does not require the use of additional flood data other sources because there is a 'greater-than-mapped' risk, and/or higher lowest floor elevations because the community has a 'free-board' requirement) and as long as that building permit remained valid as determined by the local jurisdiction (Yolo County), then it would not fall under the definition of "New Construction," and the structures for which a building permit was issued would be vested for FEMA's NFIP purposes. (I would phrase it – not as a 'vesting' issue – but 'as the structures were designed and built in accordance with the FEMA FIRM and BFE's in effect at the time the permits were issued.' Note: This becomes important for the home buyers' insurance implications...grandfathering

rates are tied to what the older maps showed when permitted, rather than what the current map might show.) The above assumes that the actual start of construction is within 180 days of the building permit date.

Please let me know if the above understanding is accurate.

Sincerely,

Dan Boatwright

authorizations from the building official, and all work regulated by this code shall be done in accordance with the approved plans.

The building official may issue a permit for the construction of part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this code. The holder of a partial permit shall proceed without assurance that the permit for the entire building or structure will be granted.

106.4.2 Retention of plans. One set of approved plans, specifications and computations shall be retained by the building official for a period of not less than 90 days from date of completion of the work covered therein; and one set of approved plans and specifications shall be returned to the applicant, and said set shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress.

106.4.2.1 [For HCD 1] Retention of plans.

NOTE: Reference Building Standards Law, Health and Safety Code, Sections 19850 and 19851, for provisions related to permanent retention of plans.

106.4.3 Validity of permit. The issuance or granting of a permit or approval of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

The issuance of a permit based on plans, specifications and other data shall not prevent the building official from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of this code or of any other ordinances of this jurisdiction.

106.4.4 Expiration. Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

106.4.5 Suspension or revocation. The building official may, in writing, suspend or revoke a permit issued under the provisions of this code whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of this code.

SECTION 107 — FEES *AND PLAN REVIEW*

107.1 General. Fees shall be assessed in accordance with the provisions of this section or shall be as set forth in the fee schedule adopted by the jurisdiction.

107.1.1 [For HCD 1] General. Subject to other laws, reference State Housing Law, Health and Safety Code, Division 13, Part 1.5, Section 17951 and California Code of Regulations, Title 25, Division 1, Chapter 1 commencing with Section 1 for the local enforcement agency's authority to prescribe fees.

107.1.2 [For HCD 1] Plan review and time limitations. Subject to other provisions of law, provisions related to plan checking, prohibition of excessive delays and contracting with or employment of private parties to perform plan checking are set forth in State Housing Law, Health and Safety Code, Section 17960.1 and for employee housing, Health and Safety Code Sections 17021 and 17055.

107.2 Permit Fees. The fee for each permit shall be as set forth in Table 1-A.

The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment.

107.3 Plan Review Fees. When submittal documents are required by Section 106.3.2, a plan review fee shall be paid at the time of submitting the submittal documents for plan review. Said plan review fee shall be 65 percent of the building permit fee as shown in Table 1-A.

The plan review fees specified in this section are separate fees from the permit fees specified in Section 107.2 and are in addition to the permit fees.

When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in Section 106.3.4.2, an additional plan review fee shall be charged at the rate shown in Table 1-A.

107.4 Expiration of Plan Review. Applications for which no permit is issued within 180 days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action by the applicant for a period not exceeding 180 days on request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

107.5 Investigation Fees: Work without a Permit.

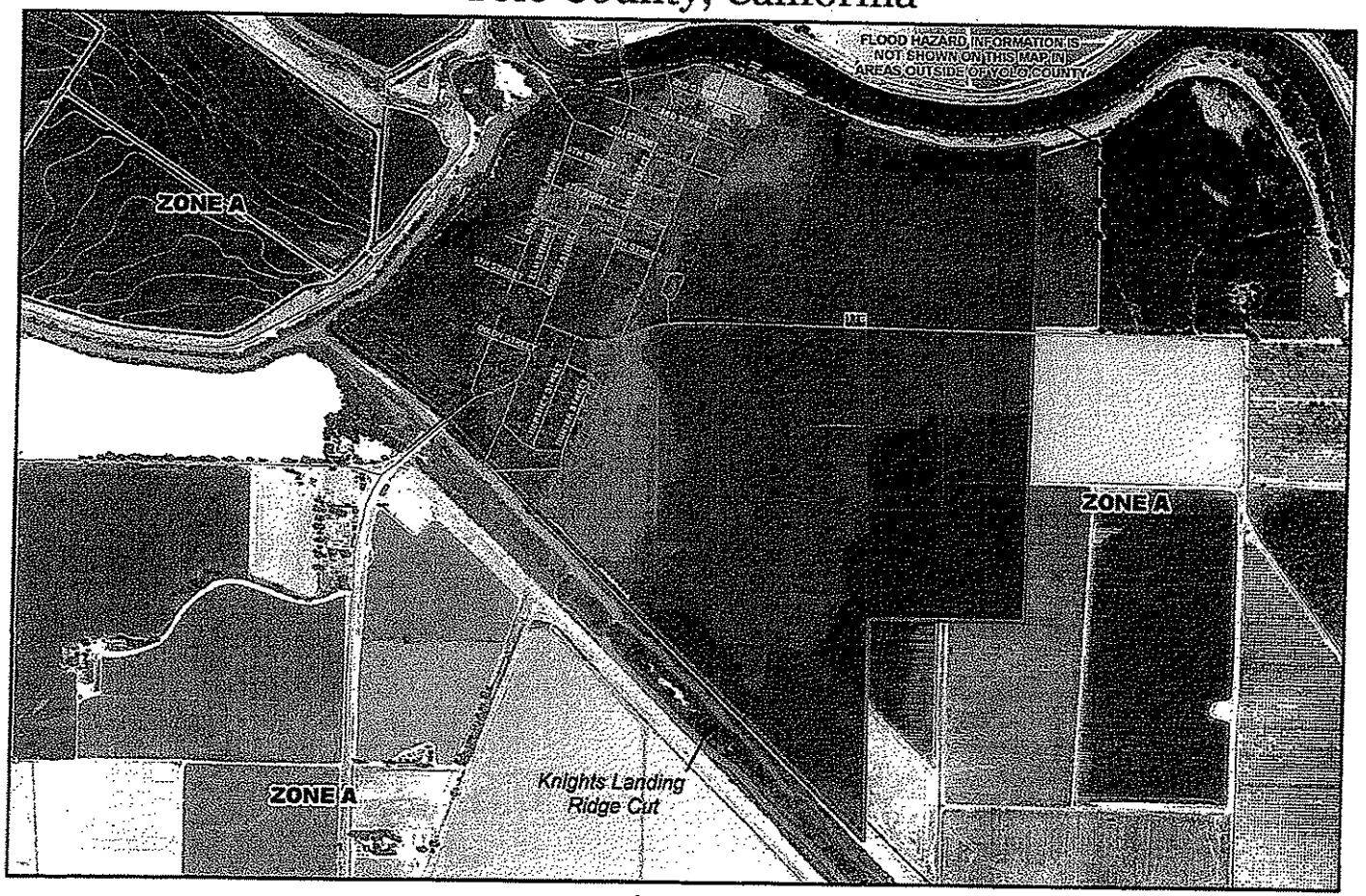
107.5.1 Investigation. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work.

107.5.2 Fee. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in Table 1-A. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

ATTACHMENT F

Depth Map – Knights Landing

Depth Map - Knights Landing
Yolo County, California



0 750 1,500 3,000 Feet

Legend
1% Annual Chance Flood Depths

1 - 3'	9.1 - 12'
3.1 - 6'	12.1 - 15'
6.1 - 9'	15.1 - 24'

Topographic Data Source:
National Elevation Dataset, 1999
U.S. Geological Survey, EROS Data Center

Produced by:
MAP IX-Mainland
A Joint Venture of URS, Dewberry, Schaaf & Wheeler, Airborne 1, and TerraPoint

ATTACHMENT E

Letter from Castle's attorney dated August 28, 2009

THIS PAGE INTENTIONALLY LEFT BLANK

CALFEE | KONWINSKI
A PROFESSIONAL CORPORATION

611 NORTH STREET
WOODLAND, CALIFORNIA 95695-3237
TELEPHONE (530) 666-2185
FACSIMILE (530) 666-3123
kcalfee@calfeelaw.com

KENT N. CALFEE
DAVID W. CALFEE III
CHRISTOPHER J. KONWINSKI
SARAH B. ORR

August 28, 2009

Phil Pogledich, Esq.
Yolo County Counsel
625 Court Street
Woodland, CA 95695

Mr. John Bencomo
Yolo County Planning
and Public Works
292 W. Beamer Street
Woodland, CA 95695

Gentlemen:

I have been asked to assist Dan Boatwright with his appeal dated June 22, 2009, a copy of which is enclosed.

Castle Homes contends that two portions of the County's letter of June 9, 2009, are contrary to the applicable law. Inasmuch as the issues relate primarily, if not exclusively, to statutory interpretations, I think it is critical to have counsel weigh in.

The first issue relates to Don's conclusion under his Paragraph 1 that:

> All remaining 49 foundations (i.e. entire footprint of the building) must be completely installed to obtain entitlement to ensure that the foundation meets the current floodplain criteria. Partial foundations will not be considered vesting with regards to FEMA.

That conclusion is simply not supported by the language of the FEMA regulations nor the language of the Yolo County Flood ordinance. The definitions for the NFIP Regulations are set forth in § 59.1 (copy enclosed, see page E-6). I cannot see anything in the definition of "Start of Construction" that supports the conclusion that a garage slab does not meet the definition. In addition, Dan sought advice from Gregor Blackburn of FEMA. Mr. Blackburn is a senior staff

member and has the title Chief, Floodplain Management and Insurance Branch, DHS-FEMA Region IX. I have attached the email exchange with Mr. Blackburn and have taken the liberty to underline the portions that were highlighted in red by Mr. Blackburn in the original. Mr. Blackburn confirmed that the definitions of New Construction and Start of Construction in § 59.1 are the only regulations on this issue. If the County has any authority to support its conclusion that a garage slab does not meet the definition of "Start of Construction," we would appreciate the opportunity to evaluate the authority. Absent additional authority, it seems clear to me that an attached garage slab meets the definitional requirements of § 59.1 of the FEMA Regulations and § 8-3.245 of the Yolo County Code.

The second issue relates to Paragraph 2 of Don's letter. I cannot find any authority for Don's conclusions relating to a 24-month term or an extended 36-month term for a building permit. Please provide me with the statutory basis for these time restrictions. My understanding is that the Uniform Building Code ("UBC") provisions relating to "Expiration" control this issue. Enclosed is a copy of the applicable provision from the UBC, § 106.4.4. Nowhere in § 106.4.4 can I find a twenty-four (24) month term for a building permit.

I would appreciate the opportunity to meet with the two of you, and any other staff member you think appropriate, to discuss these issues. I feel strongly that we should explore these legal issues informally in an attempt to avoid having a legal debate at the appeal hearing. Assuming you are willing to meet with us, please let me know some available dates.

Thanks.

Very truly yours,

CALFEE | KONWINSKI
A Professional Corporation

Kent N. Calfee

sfp
enc.

cc: Mr. Dan Boatwright
Mr. Donald Rust
Mr. Lonell Butler

\\Server\old\WP\KNC\Castle\pogledich rust 090827.doc

FOR OFFICE USE ONLY

Received by _____ APN # _____

Receipt # _____ Zoning _____

Sup. Dist. # _____ File # _____

Gen./Spec. Plan _____ Date Filed _____

Code Reference _____

APPLICATION FOR APPEAL

Please understand that after you have made your application for an appeal, staff will place your appeal on the agenda at the earliest possible legal date and will prepare a brief report to accompany your appeal. The more information you can provide, the more complete your appeal will be at the time it is heard.

According to the Yolo County Code, I request my appeal to be heard by:

(Check one) X Planning Commission (Title 8, Chapter 2) Sec. 8-3.405 County Code

___ Board of Supervisors " "

___ Building Code Appeals Board (Title 7, Chapters 1, 2, 3 and 4)

State what you requested to do: Grandfather building permits for FEMA flood zone purposes by having building permits issued prior to new FIRM effective date, installing garage slabs within 180 days, and not "abandoning work" before all homes are completed.

Give the location (street address, general location, etc.) White Subdivision (TSM #4708), Knights Landing

Give the assessor's parcel number(s): ___ - ___ - See attached list of APN's

State in detail why you think your request was denied: See attached letter from Yolo County, which takes a position contrary to applicable law, including but not limited to CBC, CFR, and Yolo County Code

Name of Respondent Dan Boatwright, Castle Companies Phone (925) 228-1000

Address 12885 Alcosta Blvd., San Ramon, CA 94583

I certify that the above statements are correct and that all accompanying documents and maps are accurate.

Signature _____

Dated 6-22-09

8/82

Assessor Parcel Numbers for Application for Appeal

056-371-01 through 09
056-372-01 through 08
056-381-01 through 11
056-381-13 through 16
056-381-18 through 29
056-382-01 and 02
056-382-06 through 08

49 total parcels.

County of Yolo

PLANNING AND PUBLIC WORKS DEPARTMENT

John Bencomo
DIRECTOR

292 West Beamer Street
Woodland, CA 95695-2598
(530) 666-8775 FAX (530) 666-8728
www.yolocounty.org

June 9, 2009

Castle Companies
12885 Alcosta Boulevard, Suite A
San Ramon, CA 94583

Attention: Dan Boatwright, Project Manager

Subject: **ZONE FILE #2004-037** – The River's Edge (White) residential subdivision project a Planned Development (R-1/PD) zone and Tentative Subdivision Map (TSM# 4708) to subdivide 22.19 acres into 63 single-family residential units and two non-residential lots

Mr. Boatwright:

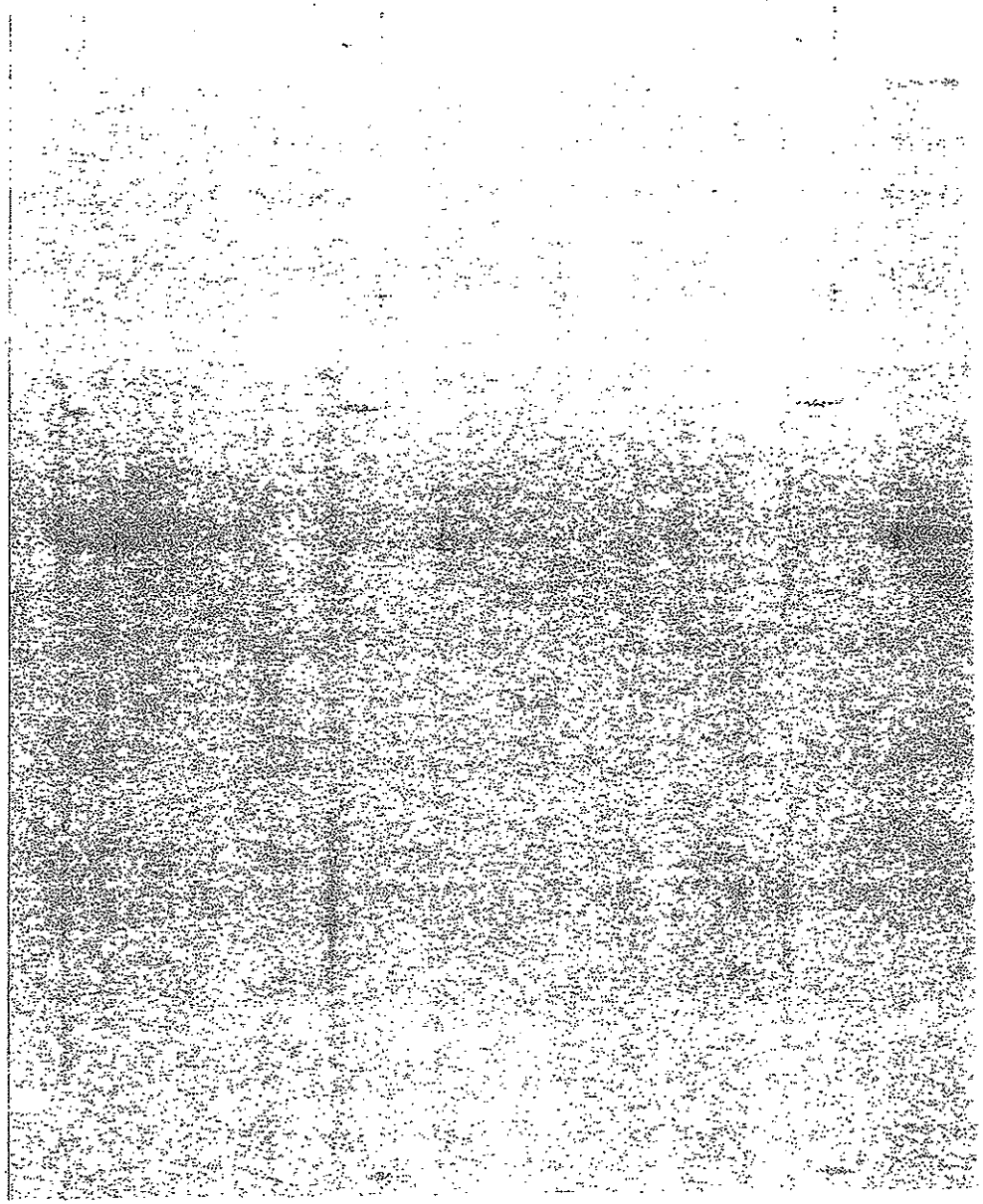
On May 6, 2009, you provided an e-mail requesting that the Planning and Public Works Department evaluate and provide comments regarding your proposal to construct partial foundations for the 49 homes remaining to be built as part of the residential subdivision project. The Department has reviewed your request and provides the following comments:

1. All remaining 49 foundations (i.e. entire footprint of the building) must be completely installed to obtain entitlement to ensure that the foundation meets the current floodplain criteria. Partial foundations will not be considered vesting with regards to FEMA. As you are aware, the flood zones and Floodplain Insurance Rate Maps (FIRM) has been reviewed and will be updated by Federal Emergency Management Agency (FEMA) in the early spring of 2010. All new building permits submitted after the FIRM maps have been adopted will have to comply with the flood requirements in effect at that time.

2. If a building permit is issued for a residential dwelling unit, the construction of that residential dwelling unit must be completed within 24 months, with the potential for a 12 month extension that must be requested in writing, and approved by the Chief Building Official.

3. Each building permit must maintain continuous building construction, and approved inspections to allow the permit to remain active, and no incurring additional fees.

4. For any residential dwelling units that have not been completed under the building permit issued within the three year time frame discuss above, a new building permit and construction plans will be required, and the residential dwelling unit will need to meet all current adopted California building codes, adopted Floodplain Insurance Rate Maps (FIRM), and other ordinances in effect at the time of issuance.

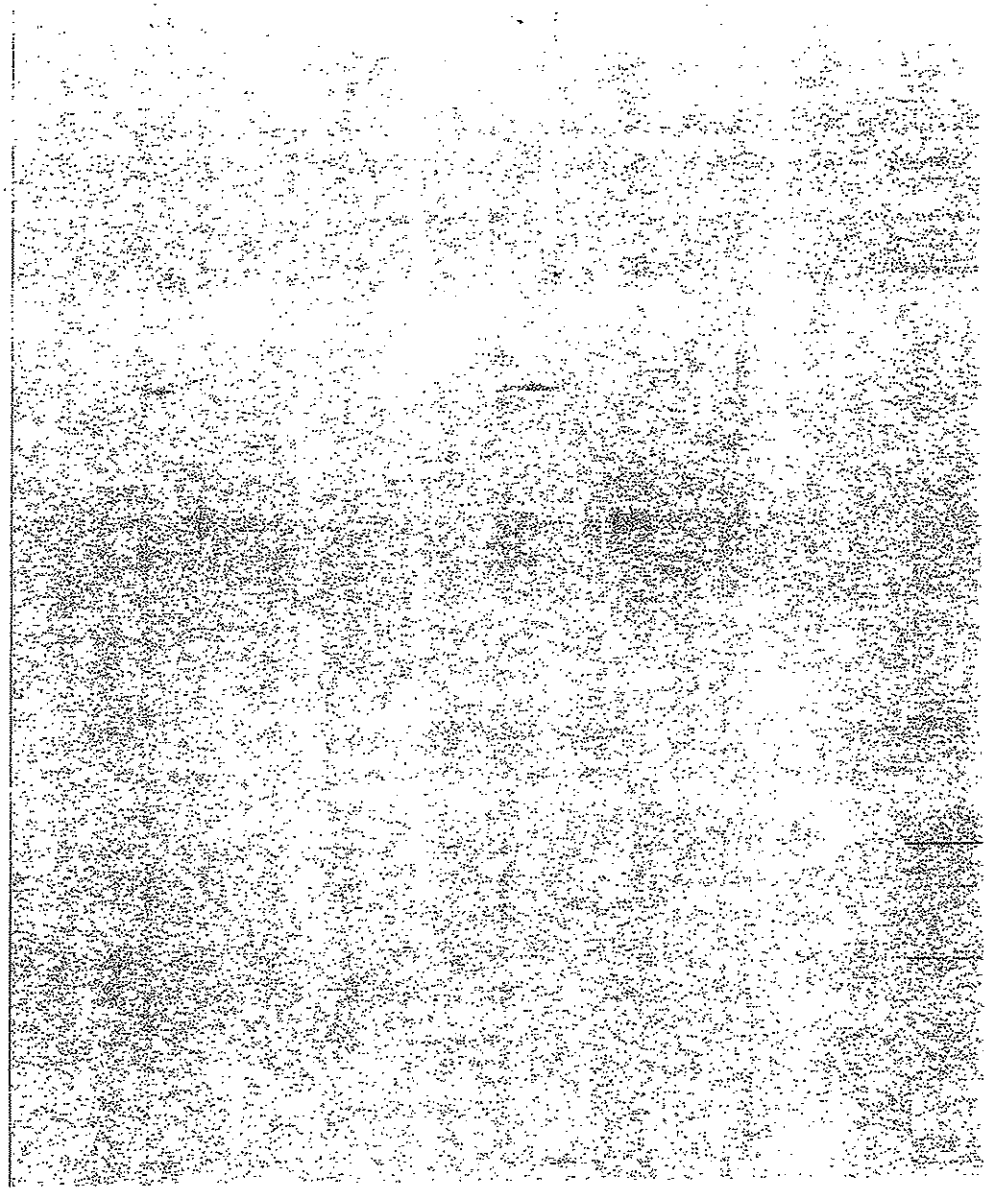


If you have any questions or concerns regarding the above, please contact me at my office by mail, e-mail at: donald.rust@yolocounty.org or phone at (530) 666-8835.

Sincerely,

DONALD RUST
Principal Planner

cc: John Bencomo, Yolo County, Planning & Public Works
David Morrison, Yolo County, Planning & Public Works
Lonell Butler, Yolo County, Planning & Public Works
Sergio Caldera, Yolo County, Planning & Public Works



APPENDIX E:
NFIP REGULATIONS

This Appendix contains the text of the Code of Federal Regulations (CFR) for the National Flood Insurance Porgram: 44 CFR Parts 59, 60, 65 and 70.

PART 59 -- GENERAL PROVISIONS

Subpart A -- General

Sec.

59.1 Definitions
59.2 Description of program
59.3 Emergency program
59.4 References

Subpart B -- Eligibility Requirements

59.21 Purpose of subpart
59.22 Prerequisites for the sale of flood insurance
59.23 Priorities for the sale of flood insurance under the regular program
59.24 Suspension of community eligibility

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

Source: 41 FR 46968, Oct. 26, 1976; 44 FR 31177, May 31, 1979; 50 FR 36022, Sept. 4, 1985; 51 FR 30306, Aug. 25, 1986; 57 FR 19540, May 7, 1992; 58 FR 62424, Nov. 26, 1993; 59 FR 53597, Oct. 25, 1994; 62 FR 55715, Oct. 27, 1997, unless otherwise noted.

Subpart A -- General

§ 59.1 Definitions.

As used in this subchapter.

"Act" means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001-4128.

"Actuarial rates", see "risk premium rates."

"Administrator" means the Federal Insurance Administrator.

"Agency" means the Federal Emergency Management Agency, Washington DC.

"Alluvial fan flooding" means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and, unpredictable flow paths.

"Apex" means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

"Applicant" means a community which indicates a desire to participate in the Program.

"Appurtenant Structure" means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

"Area of shallow flooding" means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood-related erosion hazard" is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

"Area of special flood hazard" is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

"Area of special mudslide (i.e., mudflow) hazard" is the land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBM. After the detailed evaluation of the special mudslide (i.e., mudflow)

hazard area in preparation for publication of the FIRM, Zone M may be further refined.

"Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

"Building", see "structure."

"Chargeable rates" mean the rates established by the Administrator pursuant to section 1308 of the Act for first layer limits of flood insurance on existing structures.

"Chief Executive Officer" of the community ("CEO") means the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

"Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

"Community" means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

"Contents coverage" is the insurance on personal property within an enclosed structure, including the cost of debris removal, and the reasonable cost of removal of contents to minimize damage. Personal property may be household goods usual or incidental to residential occupancy, or merchandise, furniture, fixtures, machinery, equipment and supplies usual to other than residential occupancies.

"Criteria" means the comprehensive criteria for land management and use for flood-prone areas developed under 42 U.S.C. 4102 for the purposes set forth in Part 60 of this subchapter.

"Critical feature" means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

"Curvilinear Line" means the border on either a FHBM or FIRM that delineates the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.

"Deductible" means the fixed amount or percentage of any loss covered by insurance which is borne by the insured prior to the insurer's liability.

"Developed area" means an area of a community that is:

(a) A primarily urbanized, built-up area that is a minimum of 20 contiguous acres, has basic urban infrastructure, including roads, utilities, communications, and public facilities, to sustain industrial, residential, and commercial activities, and

(1) Within which 75 percent or more of the parcels, tracts, or lots contain commercial, industrial, or residential structures or uses; or

(2) Is a single parcel, tract, or lot in which 75 percent of the area contains existing commercial or industrial structures or uses; or

(3) Is a subdivision developed at a density of at least two residential structures per acre within which 75 percent or more of the lots contain existing residential structures at the time the designation is adopted.

(b) Undeveloped parcels, tracts, or lots, the combination of which is less than 20 acres and contiguous on at least 3 sides to areas meeting the criteria of paragraph (a) at the time the designation is adopted.

(c) A subdivision that is a minimum of 20 contiguous acres that has obtained all necessary government approvals, provided that the actual "start of construction" of structures has occurred on at least 10 percent of the lots or remaining lots of a subdivision or 10 percent of the maximum building coverage or remaining building coverage allowed for a single lot subdivision at the time the designation is adopted and construction of structures is underway. Residential subdivisions must meet the density criteria in paragraph (a)(3).

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Director" means the Director of the Federal Emergency Management Agency.

"Eligible community" or "participating community" means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program.

"Elevated building" means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"Emergency Flood Insurance Program" or "emergency program" means the Program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

"Erosion" means the process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

"Exception" means a waiver from the provisions of Part 60 of this subchapter directed to a community which relieves it from the requirements of a rule, regulation, order or other determination made or issued pursuant to the Act.

"Existing construction," means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"Existing structures" see "existing construction."

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

"Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration.

"Financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States.

"Financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief Act of 1974 other than assistance under such Act in connection with a flood. It includes only financial assistance insurable under the Standard Flood Insurance Policy.

"First-layer coverage" is the maximum amount of structural and contents insurance coverage available under the Emergency Program.

"Flood" or "Flooding" means:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

"Flood elevation determination" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

"Flood Hazard Boundary Map" (FHBM) means an official map of a community, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related "Flood plain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and flood plain management regulations.

"Flood plain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

ATTACHMENT F

Letter to the applicant from PPW dated June 9, 2009

THIS PAGE INTENTIONALLY LEFT BLANK

County of Yolo

PLANNING AND PUBLIC WORKS DEPARTMENT

John Bencomo
DIRECTOR

292 West Beamer Street
Woodland, CA 95695-2598
(530) 666-8775 FAX (530) 666-8728
www.yolocounty.org

June 9, 2009

Castle Companies
12885 Alcosta Boulevard, Suite A
San Ramon, CA 94583

Attention: Dan Boatwright, Project Manager

Subject: **ZONE FILE #2004-037** – The River's Edge (White) residential subdivision project a Planned Development (R-1/PD) zone and Tentative Subdivision Map (TSM# 4708) to subdivide 22.19 acres into 63 single-family residential units and two non-residential lots

Mr. Boatwright:

On May 6, 2009, you provided an e-mail requesting that the Planning and Public Works Department evaluate and provide comments regarding your proposal to construct partial foundations for the 49 homes remaining to be built as part of the residential subdivision project. The Department has reviewed your request and provides the following comments:

1. All remaining 49 foundations (i.e. entire footprint of the building) must be completely installed to obtain entitlement to ensure that the foundation meets the current floodplain criteria. Partial foundations will not be considered vesting with regards to FEMA. As you are aware, the flood zones and Floodplain Insurance Rate Maps (FIRM) has been reviewed and will be updated by Federal Emergency Management Agency (FEMA) in the early spring of 2010. All new building permits submitted after the FIRM maps have been adopted will have to comply with the flood requirements in effect at that time.

2. If a building permit is issued for a residential dwelling unit, the construction of that residential dwelling unit must be completed within 24 months, with the potential for a 12 month extension that must be requested in writing, and approved by the Chief Building Official.

3. Each building permit must maintain continuous building construction, and approved inspections to allow the permit to remain active, and no incurring additional fees.

4. For any residential dwelling units that have not been completed under the building permit issued within the three year time frame discuss above, a new building permit and construction plans will be required, and the residential dwelling unit will need to meet all current adopted California building codes, adopted Floodplain Insurance Rate Maps (FIRM), and other ordinances in effect at the time of issuance.

If you have any questions or concerns regarding the above, please contact me at my office by mail, e-mail at: donald.rust@yolocounty.org or phone at (530) 666-8835.

Sincerely,

DONALD RUST,
Principal Planner

cc: John Bencomo, Yolo County, Planning & Public Works
David Morrison, Yolo County, Planning & Public Works
Lonell Butler, Yolo County, Planning & Public Works
Sergio Caldera, Yolo County, Planning & Public Works

ATTACHMENT G

E-mail from county staff to Gregor Blackburn

THIS PAGE INTENTIONALLY LEFT BLANK

Donald Rust

From: Lonell Butler
Sent: Thursday, October 01, 2009 10:09 AM
To: Donald Rust
Subject: FW: FEMA
Attachments: Agenda Item 6.1 - Castle Companies.pdf

Lonell Butler
Chief Building Official
Planning and Public Works Department
Development Services Division
292 W. Beamer Street
Woodland, California 95695
(530) 666-8803

From: Donald Rust
Sent: Monday, September 14, 2009 9:49 AM
To: 'gregor.blackburn@dhs.gov'
Cc: Lonell Butler
Subject: FW: FEMA

Mr. Blackburn,

I am the Project Planner for the River's Edge residential subdivision project in Knights Landing that Dan Boatwright (Castle Companies), Lonell Butler, Yolo County - CBO and you have been discussing regarding the "grandfathering" of partial (non-livable space) foundations for the remaining 49 homes to be constructed under the current approvals for the subdivision. Castle has constructed 14 of the 63 homes of the subdivision. However, they have requested a change in the manner and method of construction for the placement of foundations for 49 remaining homes.

Mr. Boatwright has brought you and FEMA into the conversation regarding this "grandfathered" issue to beat the new FIRM maps deadline of June 2010, as it relates to the construction of the 49 remaining homes. Last Thursday, September 10. 2009, there was a public hearing regarding an appeal by Mr. Boatwright due do the county determination that the partial (non-livable space) foundations **would not** grandfather the remaining 49 homes. After the public meeting, Lonell indicate that he spoke with you again regarding this proposal of partial foundations; he indicated that you agreed that partial (non-livable space) foundations **would not** be acceptable. The public hearing has been continued to October 8, 2009.

There are two basic questions:

(1) In the absence of accepted engineering calculations, the use of partial (non-livable space) foundations would not be consistent with the requirements of the California building code and FEMA regulation; and

(2) The use of partial (non-livable space) foundations would not establish a grandfathered right with regards to construction under the County Flood Damage Prevention Ordinance.

I have attached the staff report for your review and comments. I believe that the county's analysis and recommendation regarding its determination is based on the appropriate data, information, approved construction plans, and all codes, ordinances, and regulation regarding the issuance, inspections, and final occupancy of the 49 remaining homes.

If you have any questions, please feel free to contact Lonell or me regarding this issue.

Thanks,

Don Rust, Principal Planner
(530) 666-8835 - Desk
(530) 666-8156 - FAX
donald.rust@yolocounty.org

From: Lonell Butler
Sent: Thursday, September 10, 2009 9:48 AM
To: John Bencomo
Cc: David Morrison; Donald Rust
Subject: FW: FEMA

Lonell Butler
Chief Building Official
Planning and Public Works Department
Development Services Division
292 W. Beamer Street
Woodland, California 95695
(530) 666-8803

From: Blackburn, Gregor [mailto:gregor.blackburn@dhs.gov]
Sent: Thursday, September 03, 2009 2:08 PM
To: Lonell Butler
Subject: RE: FEMA

Lonell,

Under the assumption that area in question is NOT currently in a Special Flood Hazard Area: if these permits are issued in May, and if the construction plans show that the garage slabs are for attached garages and not detached garages, and then new DFIRMs become effective in June, FEMA would view this situation as one where valid permits were issued using a FIRM that did not require floodplain construction requirements in the developed area. Provided that actual start of construction begins within 180 days of permit issuance, the County would not be in violation of your ordinance or NFIP regulations, nor be penalized for this in a CRS audit.

Gregor Blackburn, CFM

desk: 510-627-7186
fax: 510-627-7147

From: Lonell Butler [mailto:Lonell.Butler@yolocounty.org]
Sent: Thursday, September 03, 2009 12:29 PM
To: Blackburn, Gregor
Subject: RE: FEMA

Gregor,

If Yolo County permits and allows the construction of 49 partial garage foundation slabs in May 2010, and the Draft Preliminary Maps become effective June 1, 2010. Yolo County participates in the NFIP and CRS program, will FEMA penalize Yolo County in the next CRS and regular audit for allowing these partial foundation.

Lonell Butler
Chief Building Official
Planning and Public Works Department
Development Services Division
292 W. Beamer Street
Woodland, California 95695
(530) 666-8803

From: Blackburn, Gregor [mailto:gregor.blackburn@dhs.gov]
Sent: Thursday, September 03, 2009 12:04 PM
To: Lonell Butler
Subject: RE: FEMA

Lonell, then I need clarification. The definition of Start of Construction is in your Yolo County Ordinance (8-3.245) and the Code of Federal Regulations (44 CFR §59.1) and is fairly explicit. What do you mean when you ask if something is 'vested'?

Gregor Blackburn, CFM

desk: 510-627-7186
fax: 510-627-7147

From: Lonell Butler [mailto:Lonell.Butler@yolocounty.org]
Sent: Thursday, September 03, 2009 11:03 AM
To: Blackburn, Gregor
Subject: RE: FEMA
Importance: High

Gregor,

I am asking you this question again because your email below did not address/clarify the key issue here, which is, the start of construction and whether or not pouring a partial foundation garage slab is considered "vested" according to FEMA Federal Code of Regulations.

Lonell Butler
Chief Building Official
Planning and Public Works Department
Development Services Division
292 W. Beamer Street
Woodland, California 95695
(530) 666-8803

From: Blackburn, Gregor [mailto:gregor.blackburn@dhs.gov]
Sent: Wednesday, September 02, 2009 4:46 PM
To: Lonell Butler
Subject: RE: FEMA

Lonell.

I understand that Mr. Dan Boatwright, in his justification to the Yolo County Planning Commission to gain approval for his project, intends to use the e-mail communication between he and I, which appears below (in which you were cc:ed).

Mr. Boatwright and I had a number of phone calls prior to his e-mail of July 30, 2009. His issue was, essentially, he was planning a multi-building development but with the current economic situation he would find it difficult to construct all the residences at one time. And with the impending change in the Yolo County Flood Insurance Rate Maps (FIRMs), would he be able (financially and actually) to begin construction under a permit issued before the new FIRMs became effective? Floodplain construction requirements may be significantly different under a permit issued with the existing FIRM conditions than they might be under a permit with the new FIRM: Base Flood Elevations might be increased on new maps and/or entire building site might be in high-risk flood hazard areas, where those same sites might be low-risk flood hazard areas on the old maps.

His questions were directed towards definitions of 'start of construction' and 'new construction'. He had researched both definitions in the Code of Federal Regulations. His understanding was that 'Start of Construction' is the date the permit is issued, provided that the actual building begins within 180 days of the permit date. Further, the work must be more than merely grading or other excavation work but must be, at a minimum, the first placement of permanent construction, such as the pouring of a foundation slab. His understanding correct, and reflected in his language of his e-mail to me, dated July 30.

He also wanted to know if a break in construction would require getting a new permit: (where the second phase would probably occur after the new FIRM for Yolo County became effective, and most likely have additional construction requirements and costs.) Taking his scenario, if only slabs for the garage were poured but not the remainder of the structure, could he then come back to finish the buildings at a later time without having to pull new permits which might be subject to a new FIRM? I had to research that answer with our Headquarters office staff. The answer was that communities have their own procedural standards to determine when, and if, a permit expires due to (for lack of a better term of mine) abandonment or lack of forward progress. The controlling organization to answer that question is the County, not FEMA.

I believe Mr. Boatwright understood that, considering the language in his e-mail reply: "local building official issued a valid building permit...and as long as that building permit remained valid as determined by the local jurisdiction ". Therefore, delays or lag times between construction phases, or determinations of the length of time where no physical permanent construction occurs without a jeopardizing a permit's validity, etc. are all issues that are decided by local county building officials based on their established practices. The possibility that a project could be done in phases doesn't mean that a project must be done in phases; or that FEMA's National Flood Insurance Program's regulations require it. If an issued permit remains valid the floodplain management construction requirements of the original permit remains valid. However if the permit expires or becomes invalid for whatever reason, a new permit must be obtained. The floodplain management requirements for that new permit must meet the conditions of the County's FIRM in effect at the time.

I believe that my conclusion with Mr. Boatwright was understood: any questions about a permit's length of time or type of work between construction 'phases' while still remaining a valid permit was one that the County has the sole authority and responsibility to answer.

I hope this clarifies my past communications. If you have any questions or if I can be of further assistance please contact me via e-mail or telephone using the number below

Sincerely,

Gregor Blackburn, CFM

desk: 510-627-7186
fax: 510-627-7147

From: Blackburn, Gregor [mailto:gregor.blackburn@dhs.gov]
Sent: Monday, August 17, 2009 9:45 AM
To: Dan Boatwright
Cc: Lonell Butler
Subject: RE: New Homes in Knights Landing

Mr. Boatwright: First let me apologize for the delay in response. I also cc:ed Lonell Butler at Yolo County in order to provide him with the findings of our conversation.

Your synopsis of our discussion and conclusions as written below are an accurate account of conversation. There are some details which I have added as appropriate in your text below in red. If you have further questions, please contact Mr. Butler and me...or if those questions concern insurance policy, premium, payment or timing issues, please contact our Insurance Industry Specialist, Ms. Jana Critchfield at 510-627-7266. (She is out of the office for the next few weeks, but she does answer calls left on her voice mail system.)

Thank you.

Gregor Blackburn, CFM

desk: 510-627-7186
fax: 510-627-7147

From: Dan Boatwright [mailto:dboatwright@castlecompanies.com]
Sent: Thursday, July 30, 2009 3:48 PM
To: Blackburn, Gregor
Subject: New Homes in Knights Landing

Gregor,

Thank you for discussing the implementation of the FEMA regulations with regard to the "Start of Construction" and "Actual Start" for the new homes that we have constructed and will construct in Knights Landing. As you know, it appears Knights Landing will be located in a 100-year flood zone starting sometime early next year.

You indicated that under FEMA regulations "new construction" and "start of construction" are defined [Section 59.1] and that there are no further regulations specifying how much construction (garage slab, whole house slab, etc.) is required to qualify as "actual start" of construction. You further indicated that as long as the local building official issued a valid building permit prior to the effective date of the new 100-year flood zone, (and the local floodplain administrator does not require the use of additional flood data other sources because there is a 'greater-than-mapped' risk, and/or higher lowest floor elevations because the community has a 'free-board' requirement) and as long as that building permit remained valid as determined by the local jurisdiction (Yolo County), then it would not fall under the definition of "New Construction," and the structures for which a building permit was issued would be vested for FEMA's NFIP purposes. (I would phrase it – not as a 'vesting' issue – but 'as the structures were designed and built in accordance with the FEMA FIRM and BFE's in effect at the time the permits were issued.' Note: This becomes important for the home buyers' insurance implications... grandfathering rates are tied to what the older maps showed when permitted, rather than what the current map might show.) The above assumes that the actual start of construction is within 180 days of the building permit date.

Please let me know if the above understanding is accurate.

Sincerely,

Dan Boatwright

ATTACHMENT H

E-mail from Sally Ziolkowski to county staff

THIS PAGE INTENTIONALLY LEFT BLANK

Donald Rust

From: John Bencomo
Sent: Monday, September 21, 2009 10:18 AM
To: David Morrison; Donald Rust; Lonell Butler
Subject: FW: FEMA NFIP Yolo County inquiry

FYI

From: Ziolkowski, Sally [mailto:sally.ziolkowski@dhs.gov]
Sent: Friday, September 18, 2009 8:48 PM
To: John Bencomo
Cc: Blackburn, Gregor; Simmons, Eric W
Subject: FEMA NFIP Yolo County inquiry

Mr. Bencomo,

Thank you for providing me with information regarding National Flood Insurance Program (NFIP) compliance initiatives in Yolo County. It was not our intent to get in-between a community's review of an applicant's new construction/building permit, and actions implementing your local NFIP Ordinance provisions. That is a responsibility and action which rightly belongs within the local NFIP community, and therefore, your County can reject the application for new building permits, and/or require compliance with the best available flood risk data.

We fully support the community's task of approving and issuing building permits for development using the available data on the preliminary Digital Flood Insurance Rate Map (DFIRM). Additionally, we affirm the goal of building structures (new construction) which take into account the flood threats and risks faced by those new buildings in areas that are expected to be mapped into a Special Flood Hazard Area (SFHA) on the effective Flood Insurance Rate Maps (scheduled for 2010).

Your condition for issuing the building permit(s) for the River's Edge residential subdivision project -- stating that the entire residential structures' foundations be completed at one time, not just the garage or a portion of the foundation, under the current Yolo County Flood Insurance Rate Map -- is within the authority of Yolo County's Planning and Public Works Department. Additionally, the County can be more restrictive in implementing the NFIP provisions of your Ordinance that are related to the issuance of building permits -- due to the threat that flooding poses in this community.

It was not Mr. Blackburn's intention to intrude into Yolo County's decision making when providing a reply to an NFIP inquiry, and we regret any misunderstanding that has happened related to development in the County. If you have questions or need additional information, please contact Gregor Blackburn, Floodplain Management and Insurance Branch Chief. For inquiries regarding the status of Yolo County's DFIRMs, you may contact Eric Simmons, Regional Engineer.

Thank you again for bringing this concern to my attention, as I would like to recognize your due diligence in reducing flood risks within your community and monitoring new construction in areas expected to be mapped as a SFHA. I am also available if additional coordination is required.

Sally Ziolkowski
Mitigation Division Director

FEMA Region IX

From: John Bencomo [mailto:John.Bencomo@yolocounty.org]
Sent: Tuesday, September 15, 2009 11:31 AM
To: Ziolkowski, Sally
Cc: gregor.blackburn@dhs.gov
Subject: FW: FEMA
Importance: High

Ms. Ziolkowski,

The purpose of this email is to bring to your attention an issue that is continuing to evolve based on conversations between your employee (Mr. Blackburn) and a housing developer (Mr. Boatwright) that is making efforts to evade the FEMA flood regulations for his proposed residential development project. The Castle Development Corporation is a successful bay area firm, and Mr. Boatwright is an effective representative, and while we at Yolo County have made our position clear, I suspect he has made a series of well framed inquiries to your staff to help raise an argument of conflicting interpretations between both of our respective agencies (see attached email below). As noted in the exchange of emails, Mr. Boatwright's effort is to obtain "grandfathered rights" prior to the issuance of the revised FEMA flood maps by constructing the cement slabs only for the garages, that are supposed to be a part of the complete residential structure. The implication being that the subsequent construction of the remaining residential element (after new flood maps issued) will also be covered by this grandfathering status.

It is the county's position that the segmentation by a partial construction (as now apparently supported by the FEMA staff) is inconsistent with the intent of the FEMA regulations. The FEMA regulations and the historic practice had routinely required an appraisal process for any reconstruction/additional construction exceeding 50% of the value of the existing structure (post flood maps), and thusly required adherence to the then current flood elevation requirements. The county's position and agreement (prior to Mr. Boatwright speaking with FEMA staff) was that the entire residential structural foundation was to be constructed prior to the issuance of the revised flood maps, not just the garage or any other part thereof. I have serious concerns regarding the information provided by your staff to the developer that is now being used against the local entity's interpretation in this appeal process, and for the precedent that it will set in the Sacramento region that is grappling with expansive new flood zones currently containing partially built housing developments. There also seems to be concurrence with our interpretation, based on inquiries with other local flood administrators and fema representatives in the area.

I would appreciate your consideration and clarification in this matter,
Sincerely,

John Bencomo, Director
Yolo County, Planning and Public Works Department

From: Donald Rust

Sent: Monday, September 14, 2009 9:49 AM
To: 'gregor.blackburn@dhs.gov'
Cc: Lonell Butler
Subject: FW: FEMA

Mr. Blackburn,

I am the Project Planner for the River's Edge residential subdivision project in Knights Landing that Dan Boatwright (Castle Companies), Lonell Butler, Yolo County - CBO and you have been discussing regarding the "grandfathering" of partial (non-livable space) foundations for the remaining 49 homes to be constructed under the current approvals for the subdivision. Castle has constructed 14 of the 63 homes of the subdivision. However, they have requested a change in the manner and method of construction for the placement of foundations for 49 remaining homes.

Mr. Boatwright has brought you and FEMA into the conversation regarding this "grandfathered" issue to beat the new FIRM maps deadline of June 2010, as it relates to the construction of the 49 remaining homes. Last Thursday, September 10. 2009, there was a public hearing regarding an appeal by Mr. Boatwright due do the county determination that the partial (non-livable space) foundations **would not** grandfather the remaining 49 homes. After the public meeting, Lonell indicate that he spoke with you again regarding this proposal of partial foundations; he indicated that you agreed that partial (non-livable space) foundations **would not** be acceptable. The public hearing has been continued to October 8, 2009.

There are two basic questions:

(1) In the absence of accepted engineering calculations, the use of partial (non-livable space) foundations would not be consistent with the requirements of the California building code and FEMA regulation; and

(2) The use of partial (non-livable space) foundations would not establish a grandfathered right with regards to construction under the County Flood Damage Prevention Ordinance.

I have attached the staff report for your review and comments. I believe that the county's analysis and recommendation regarding its determination is based on the appropriate data, information, approved construction plans, and all codes, ordinances, and regulation regarding the issuance, inspections, and final occupancy of the 49 remaining homes.

If you have any questions, please feel free to contact Lonell or me regarding this issue.

Thanks,

Don Rust, Principal Planner
(530) 666-8835 - Desk
(530) 666-8156 – FAX
donald.rust@yolocounty.org

ETC .....