



# County of Yolo

PLANNING AND PUBLIC WORKS DEPARTMENT

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DIRECTOR

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## PLANNING COMMISSION STAFF REPORT

January 28, 2010

**FILE #2009-044:** Request to abandon a 20-foot wide right-of-way for County Road 75A, located in Brooks (**Attachment A**).

**APPLICANT/OWNER:** Yocha Dehe Wintun Nation  
Marshall McKay  
P.O. Box 18  
Brooks, CA 95606

**LOCATION:** County Road 75A, off State Route 16 in Brooks (APN: 060-030-16) (**Attachment B**).

**SUPERVISOR DISTRICT:** 5 (Chamberlain)

**FIRE SEVERITY ZONE:** Moderate

**GENERAL PLAN:** Agriculture

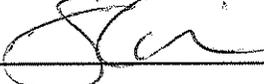
**ZONING:** Agricultural Preserve (A-P)

**SOILS:** Water (w); Yolo silt loam (Ya)(Class I); Tehama loam (TaA), 0 to 2 percent slopes (Class II); and Riverwash (Rh) (Class VIII).

**FLOOD ZONE:** A (area within the 100-year flood plain) and C (area outside the limits of the 500-year and 100-year flood plains).

**ENVIRONMENTAL DETERMINATION:** "General Rule" Exemption

**REPORT PREPARED BY:**

  
Stephanie Cormier, Associate Planner

**REVIEWED BY:**

  
David Morrison, Assistant Director

## RECOMMENDED ACTIONS

That the Planning Commission recommend the Board of Supervisors take the following actions:

1. **HOLD** a public hearing and receive comments;
2. **DETERMINE** that the project is exempt under the California Environmental Quality Act (CEQA) and CEQA Guidelines pursuant to Section 15061(b)(3) of the CEQA Guidelines (**Attachment C**);
3. **ADOPT** the Findings (**Attachment D**) and Conditions of Approval (**Attachment E**); and
4. **APPROVE** the request for a road right-of-way abandonment of County Road 75A.

## **REASONS FOR RECOMMENDED ACTIONS**

The road right-of-way abandonment would remove approximately 2,408 feet of maintained public right-of-way, for which paving is currently being paid for by the Yocha Dehe Wintun Nation (Tribe). County Road 75A begins at the centerline of State Route 16 and extends east until it reaches the high bank line of Cache Creek, where it ends. County Road 75A exclusively serves federal tribal trust land and property owned in fee title by the Tribe. The applicant intends to enhance security of the Tribal housing and offices through privatization of the road. There is no anticipated necessity to have the right-of-way reserved for public right-of-way purposes, as it does not provide for a public access to Cache Creek, and serves only property owned and managed by the Tribe.

## **BACKGROUND**

The proposed project is a request to abandon County Road 75A, which was originally shown on the 1911 Tancred Subdivision map as a 40-foot wide "Avenue" beginning at the centerline of a 60-foot wide "County Road" (State Route 16), and terminating at the "high bank of Cache Creek." The map was accepted and filed by the Board of Supervisors on August 12, 1911, and as part of that action the Board accepted the road right-of-way. According to a survey prepared for the project by Laugenour and Meikle, the actual paved road ends beyond the limits of the right-of-way.

Privatization of the road would allow the Tribe to exert more control over security, as access to the road would be limited to emergency personnel, tribal members, employees, and approved guests. No gate would be installed, but existing 24-hour security would continue to be stationed near the entrance of the Tribal Community Center.

## **STAFF ANALYSIS**

County Road 75A is currently a county-maintained right-of-way, in which the Tribe has paid for paving treatment for at least the last five years. The applicant requests that the county abandon the approximately 2,408 feet of right-of-way, in order to enhance security measures for the Tribal housing and offices. The California Streets and Highways Code allows the vacation of roads or easements through a public hearing process. Pursuant to Section 8321 (a) of the Code, ten or more freeholders may petition the Board of Supervisors to vacate a street or highway under this chapter. At least two of the petitioners shall be residents of the road district in which some part of the street or highway proposed to be vacated is situated. The county has received a petition consistent with these criteria.

Pursuant to Section 8324 (b) of the California Streets and Highways Code, "If the legislative body finds, from all the evidence submitted, that the street, highway, or public service easement described in the notice of hearing or petition is unnecessary for present or prospective public use, the legislative body may adopt a resolution vacating the street, highway, or public service easement. The resolution of vacation may provide that the vacation occurs only after conditions required by the legislative body have been satisfied and may instruct the clerk that the resolution of vacation not be recorded until the conditions have been satisfied."

The approximately 2,408 feet of road right-of-way proposed for abandonment serves only one user, the Yocha Dehe Wintun Nation, whose tribal trust property (APN: 060-030-15) lies on the north side of CR 75A and whose fee title property (APN: 060-030-16) lies to the south. Technically, the county has jurisdiction only over the southern portion of the right-of-way; the northern portion is under the jurisdiction of the federal government. This application request is for the 20-foot wide southern portion, from the centerline of the CR 75A right-of-way.

According to a survey prepared for the project in November, 2009, no other users are served by CR 75A, including properties east of the western high bank of Cache Creek. The right-of-way is contained solely within trust and fee title property owned and managed by the Tribe. The end of the county right-of-way is several hundred feet from the current low water mark of Cache Creek, and approximately 200 feet from property lines east of the western high bank of Cache Creek (adjoining Tribe property). There is no evident path from the riparian foliage on the western high bank to the creek, nor is there evidence of any creek crossing extending from CR 75A.

In order to ensure the safety of the traveling public, the applicant will be required to place signage at the intersection of CR 75A and SR 16 advising the public of private property. Any road signage on State Route 16 referencing CR 75A will be required to be removed, at the applicant's expense. In addition, Caltrans has requested that the applicant dedicate fee title or a highway easement for the portion of State Route 16 adjacent to County Road 75A (see Agency Comments, below).

County Road 75A is not a necessary road right-of-way for present or future public use. The right-of-way is not a part of any anticipated future trail system, nor does it provide access to any public recreational areas. Therefore, staff recommends approval of the request to abandon the 20-foot wide southern portion of County Road 75A right-of-way.

### **Compensation for right-of-way vacation**

A discussion at the December 10, 2009, Planning Commission meeting took place regarding the possibility of requiring compensation for a road abandonment. As noted above, under California law, the County may vacate (abandon) a right-of-way only upon finding that it is "unnecessary for present or prospective public use" [Streets & Highways Code § 8324(b)]. Upon vacating a right-of-way easement, "the title to the property previously subject to the easement is thereafter free from the easement." The Streets and Highways Code says that fees for application costs and related administrative matters may be charged, but it does not authorize any other charge or fee in connection with the vacation of an easement. In contrast, if the public entity has fee title to the land at issue (rather than merely an easement), California law authorizes its legislative body to sell the property. The Office of the County Counsel has concluded that this is the only situation in which it would be appropriate to condition the vacation of a right-of-way upon the payment of compensation. It should be noted, however, that since Road 75A is an easement and is not owned in fee title by the County, the above situation is not applicable to the applicant's request. As such, the County cannot legally require compensation for the proposed road abandonment.

### **AGENCY COMMENTS**

This report has been reviewed by County Counsel.

A "Request for Comments" was prepared and circulated for the proposed project from November 20, 2009, to December 16, 2009, and a courtesy notice was sent to adjoining property owners. Agency and public comments are summarized in the table below. Due to furloughs, there were no Development Review Committee meetings during the months of December or January.

The project was reviewed at the Transportation Advisory Committee meeting on December 17, 2009, with a unanimous vote to recommend approval, after a discussion ensued regarding compensation for deeding the road over to the Tribe. The County Engineer, Panos Kokkas, clarified that CR 75A is a public right-of-way with an easement over private property, and that the county did not own the road in fee title. See discussion on compensation, above.

The Capay Valley Citizens Advisory Committee voted to recommend “not to deny the request for the abandonment,” with three yes votes, zero no votes, and one abstention.

AGENCY/DATE	COMMENTS	RESPONSE
Yolo County Building Division (11-30-09)	None	N/A
Yolo County Sheriff's Department (12-02-09)	Expressed concern about a gate not being installed at the entrance of CR 75A. The road would still look like a county road; however, once private property, the Department would not be able to enforce laws as if it was a public roadway. The Department recommends explicit signage at the intersection of SR 16 and CR 75A to advise the traveling public of private property. Signage shall include that trespass and other laws will be strictly enforced by the Sheriff.	Included as Conditions of Approval.
Gaw Van Male Smith Myers and Reynolds (12-09-09)	Objection to abandonment of County Road 75A made by Robert E. Lando, representing Jim Cassil, property owner of APNs: 060-030-13 and 060-030-14. The letter states, "CR 72 provides access to APN: 060-03-13 and the portion of APN: 060-030-14 located on the east side of Cache Creek via a bridge that spans the creek. Because of the shape of APN 060-03-13, the topography, and the relationship of the bridge to the creek bed, CR 72 does not provide access to that portion of APN 060-030-14 located on the west side of Cache Creek. Abandonment of CR 75A would effectively land lock the portion of APN 060-03-14 situated on the west side of the creek. "	According to the Map of Tancred, accepted and filed by the Board of Supervisors on August 12, 1911, and confirmed by a recent survey and exhibit prepared for the road abandonment, CR 75A right-of-way is contained solely within APNs: 060-030-16 and 060-030-17. The eastern end of CR 75A at the "high bank of Cache Creek" does not touch APN: 060-030-14, and is approximately 200 feet or more west of Mr. Cassil's property line.  Additionally, a staff site visit revealed no evidence of a road continuing from end of CR 75A through the riparian brush and across the creek.
Caltrans (12-16-09)	Any road signage on State route 16 that refers to CR 75A should be removed. Due to historical factors, Caltrans does not have fee title or highway easement	Included in the Conditions of Approval.

	<p>to all portions of SR 16 in the proposed project area. As parcels are divided, developed, or abandoned Caltrans request fee title or highway easement to SR 16 as part of the approval process. Caltrans requests fee title or highway easement to SR 16 adjacent to CR 75A. Please contact Paul Tonn of the Office of Right of Way Engineering at (530) 741-5302 regarding specific procedures for making the dedication.</p>	
<p>Yolo County Public Works Division (01-19-10)</p>	<p>Applicant to provide legal description(s) and plat(s) of the proposed abandonment signed and sealed by a surveyor licensed in the State of California. Applicant's work order shall be reimbursed for all charges necessary to remove any existing county road signage along County Road 75A and State Route 16. The applicant shall file a Record of Survey, prepared by a licensed surveyor in the State of California, whenever any of the following instances occur: a) A legal description has been prepared that is based upon a new field survey disclosing data that does not appear on any previously filed Subdivision Map, Parcel Map, Record of Survey, or other official map. b) Permanent monuments have been set marking any boundary.</p>	<p>Included in the Conditions of Approval.</p>

**APPEALS**

Any person who is dissatisfied with the decisions of this Planning Commission may appeal to the Board of Supervisors by filing with the Clerk of the Board of Supervisors within fifteen days from the date of the action. A written notice of appeal specifying the grounds for appeal and an appeal fee immediately payable to the Clerk of the Board must be submitted at the time of filing. The Board of Supervisors may sustain, modify, or overrule this decision.

**ATTACHMENTS**

- Attachment A -** Site Plan
- Attachment B -** Project Location
- Attachment C -** Notice of Exemption
- Attachment D -** Findings
- Attachment E -** Conditions of Approval

### LAND DESCRIPTION

THAT portion of real property situate in the unincorporated area of the County of Yolo, State of California, and being a portion of Rancho Canada de Capay in Township 11 North, Range 3 West, Mount Diablo Base and Meridian, being more particularly described as follows:

BEGINNING at the intersection of the West line of County Road No. 75A with the South line of Lot 3 as shown on that certain map entitled "TANCRED SUBDIVISION", filed in Book 2 of Maps at Page 42, said County Records; said point being distant North 73°17'00" East 31.61 feet from the Southwest corner of said Lot 3; thence, from said POINT OF BEGINNING, and along said West line, North 35°06'00" West 21.08 feet to the Northwest corner of said County Road as shown on said map; thence, along the North line of said County Road, North 73°17'00" East 2,407.83 feet to the Northeast corner thereof; thence, along the East line of said County Road, South 16°43'00" East 40.00 feet to the Southeast corner thereof; thence, along the South line of said County Road, South 73°17'00" West 2,394.54 feet to the Southwest corner thereof; thence, along the East line of said County Road, North 35°06'00" West 21.08 feet to said POINT OF BEGINNING.

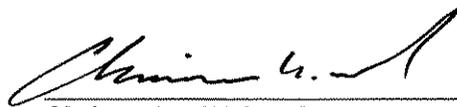
Containing 2.205 acres of land, more or less.

The basis of bearings for this description is the South line of said Lot 3, calculated as North 73°17'00" East from said map.

End of description.

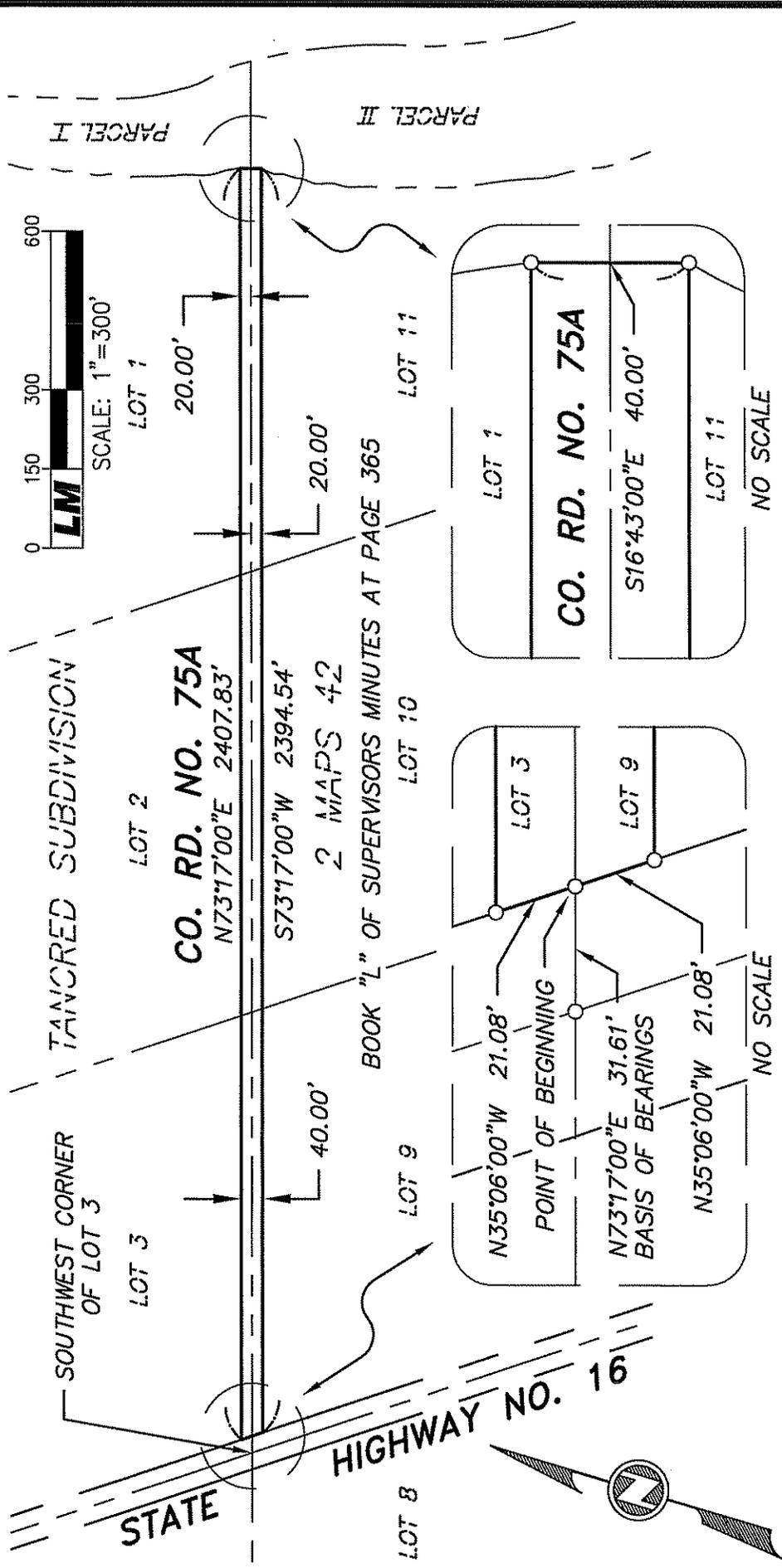
This description was prepared by me or under my direction in accordance with Section 8761 of the Professional Land Surveyors' Act.



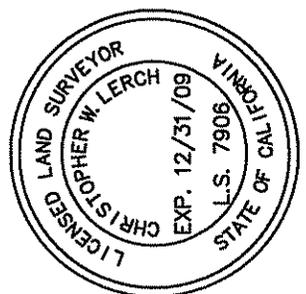
  
r W. Lerch

11-13-2009  
Date





THIS EXHIBIT WAS PREPARED BY ME OR UNDER MY DIRECTION IN ACCORDANCE WITH SECTION 8761 OF THE PROFESSIONAL LAND SURVEYORS' ACT



*Christopher W. Lerch*  
CHRISTOPHER W. LERCH

11-13-2009  
DATE

EXHIBIT TO ACCOMPANY A DESCRIPTION  
**ROAD ABANDONMENT**  
BEING A PORTION OF RANCHO CANADA DE CAPAY  
IN TOWNSHIP 11 NORTH, RANGE 3 WEST,  
MOUNT DIABLO BASE AND MERIDIAN  
UNINCORPORATED AREA OF YOLO COUNTY, CA

**LM LAUGENOUR AND MEIKLE**  
CIVIL ENGINEERING · LAND SURVEYING · PLANNING  
608 COURT STREET, WOODLAND, CALIFORNIA 95695 · PHONE: (530) 662-1755  
P.O. BOX 828, WOODLAND, CALIFORNIA 95776 · FAX: (530) 662-4602

SHEET 1 OF 1  
NOVEMBER 12, 2009

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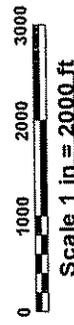
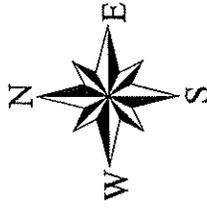
ZF #2009-044

Yolo County

Planning and

Public Works

CR 75A



Printed 1/20/2010



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**ATTACHMENT B**



# 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# 2009-044 (Road Right-of-Way Abandonment)

Marshall McKay  
Yocha Dehe Wintun Nation  
PO Box 18  
Brooks, CA 95606

**Project Location:** Subject right-of-way is located north of Brooks, beginning at the intersection of State Route 16 and County Road 75A. APNs: 060-030-16 and 060-030-17

**Project Description:** A road abandonment of approximately 2,408 feet of road right-of-way on County Road 75A. The right-of-way was originally shown on the Tancred Subdivision Map as a 40-foot wide "Avenue," filed in 1911. There is no anticipated necessity to have the roadway reserved for public purposes. It currently serves only one user; the right-of-way does not provide for a public access to Cache Creek.

**Exempt Status:** Exemption based on Section 15061 (b) (3) of the California Environmental Quality Act (CEQA) Guidelines, known as the "common sense" rule.

**Reasons why project is exempt:** Section 15061 (b) (3) consists of activities covered by the "common sense" rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

**Lead Agency Contact Person:** Stephanie Cormier, Associate Planner    **Telephone Number:** (530) 666-8850

Signature (Public Agency): \_\_\_\_\_ Date:

Date received for filing at OPR:

## ATTACHMENT C



**FINDINGS**  
**COUNTY ROAD 75A ROAD RIGHT-OF-WAY ABANDONMENT**  
**ZONE FILE #2009-044**

Upon due consideration of the facts presented in this staff report and at the public hearing for Zone File #2009-044, the Yolo County Planning Commission recommends that the Board of Supervisors find the following:

*(A summary of evidence to support each FINDING is shown in Italics)*

**California Environmental Quality Act (CEQA) and Guidelines**

That the recommended Notice of Exemption was prepared in accordance with the California Environmental Quality Act (CEQA) and Guidelines, and is the appropriate environmental level of review for this project.

*The notice of exemption for the project, prepared pursuant to Section 15061(b)(3) of the CEQA Guidelines, states that, "A project is exempt from CEQA if the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment the activity is not subject to CEQA. The environmental review process has concluded that the project is exempt from CEQA, as the project will not result in a direct or reasonably foreseeable indirect physical change in the environment.*

**General Plan**

That the proposal is consistent with the Yolo County General Plan as follows:

*Circulation Policy CI-3.17 Ensure adequate access for emergency vehicles.*

*Privatization of County Road 75A will not impede emergency services, but will allow for greater control over security and emergency efforts.*

**Streets and Highways Code**

That the proposal is consistent with Section 8321 of the Streets and Highways Code.

*The road vacation petition is consistent with Section 8321(a), which prescribes that ten or more freeholders may petition the board of supervisors to vacate a street or highway under this chapter. At least two of the petitioners shall be residents of the road district in which some part of the street or highway proposed to be vacated is situated.*

That the proposal is consistent with Section 8324 of the Streets and Highways Code.

*The approximately 2,408 feet of the CR 75A road right-of-way serves only one user and does not provide access to any public lands. The county has no plans to use this right-of-way for future public use.*

*Section 8324 of the Streets and Highways Code states, "If the legislative body finds, from all the evidence submitted, that the street, highway, or public service easement described in the notice of hearing or petition is unnecessary for present or prospective public use, the legislative body may adopt a resolution vacating the street, highway, or public service easement. The resolution of vacation may provide that the vacation occurs only after conditions required by the legislative body have been satisfied and may instruct the clerk that the resolution of vacation not be recorded until the conditions have been satisfied."*

**ATTACHMENT D**

**CONDITIONS OF APPROVAL  
COUNTY ROAD 75A ROAD RIGHT-OF-WAY ABANDONMENT  
ZONE FILE #2009-044**

1. The applicant shall comply with all requirements of agencies of jurisdiction, including Yolo County Planning and Public Works, Yolo County Sheriff's Department, and Caltrans.
2. The applicant shall be responsible for all costs associated with implementing the Conditions of Approval contained herein, including costs for the removal of existing county road signage along County Road 75A and State Route 16 by the Planning and Public Works Department.
3. The applicant shall be responsible for installing explicit signage at the intersection of State Route 16 and County Road 75A alerting the traveling public of private property, and that trespass and other laws will be strictly enforced by the Yolo County Sheriff. Contact Tom A. Lopez, Undersheriff-Coroner, at the Yolo County Sheriff's Department, (530) 668-5227.
4. The applicant shall coordinate with Caltrans regarding their request for fee title or highway easement dedication to State Route 16 adjacent to County Road 75A. Contact Paul Tonn of the Office of Right of Way Engineering at (530) 741-5302 regarding specific procedures for making the dedication.
5. The applicant shall provide legal description(s) and plat(s) of the proposed road abandonment, signed and sealed by a surveyor licensed in the State of California, to the Planning and Public Works Department for review and approval. The map(s) shall be approved by the Director of Planning and Public Works and recorded in the Office of the County Recorder upon approval by the Yolo County Board of Supervisors.
6. The applicant shall file a Record of Survey, prepared by a licensed surveyor in the State of California, whenever any of the following instances occur:
  - a. A legal description has been prepared that is based upon a new field survey disclosing data that does not appear on any previously filed Subdivision Map, Parcel Map, Record of Survey, or other official map.
  - b. Permanent monuments have been set marking any boundary.
7. In accordance with Section 8-2.2415 of the Yolo County Code, the applicant shall agree to indemnify, defend, and hold harmless the county or its agents, officers and employees from any claim, action, or proceeding (including damage, attorney fees, and court cost awards) against the county or its agents, officers, or employees to attach, set aside, void, or annul an approval of the county, advisory agency, appeal board, or legislative body concerning the permit or entitlement when such action is brought within the applicable statute of limitations.

The county shall promptly notify the applicant of any claim, action or proceeding and that the county cooperates fully in the defense. If the county fails to promptly notify the applicant of any claim, action, or proceeding, or if the county fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold the county harmless as to that action.

**ATTACHMENT E**

The county may require that the applicant post a bond in an amount determined to be sufficient to satisfy the above indemnification and defense obligation.

8. Failure to comply with the **CONDITIONS OF APPROVAL** as approved by the Planning Commission may result in the following actions:
  - **legal action;**
  - **non-issuance of future building permits.**

