



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

March 11, 2010

| | |
|---|--|
| FILE #2009-044: Request to abandon a 40-foot wide right-of-way for County Road 75A, located north of Brooks, in the Capay Valley (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

This item was continued from the last Planning Commission public hearing on January 28, 2010, to further investigate issues of compensation for road right-of-way abandonment requests, and to clarify a discrepancy in survey maps recorded for the subject and adjacent properties. The previous Planning Commission Staff Report, dated January 28, 2010, is attached for reference (**Attachment F**). While there are limited circumstances in which compensation may be appropriate, the Office of the County Counsel continues to have the opinion that there is no legal basis for compensation under the facts present here. The discrepancy in the legal description has been resolved to the County Surveyor's satisfaction. In addition, the project is consistent with the County General Plan, specifically Action CI-A19, which states: "Evaluate County roadway segments that are underutilized and/or seasonal, for potential reduced or eliminated maintenance, closure and/or vacation." Consequently, the original staff recommendations for approval remain the same.

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 of Supervisors accepted the road right-of-way. County Road 75A serves only lands owned or held in federal trust for the Yocha Dehe Wintun Nation (Tribe).

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

Please refer to the attached Planning Commission Staff Report dated January 28, 2010, for a detailed project description and staff analysis.

Discussion of Compensation

At the last Planning Commission public hearing for the requested right-of-way abandonment, the Planning Commission asked staff to consider whether or not compensation should be required if County Road 75A were to be abandoned. Staff addressed this issue in the last staff report and, at the Commission's request, the Office of the County Counsel conducted further analysis after the last meeting.

Based on that analysis, which included conversations with other jurisdictions, the Office of the County Counsel has concluded that the issue of compensation needs to be considered on a case-by-case basis. The following factors will be applied:

- Whether the County has fee title or merely a right-of-way easement for the road at issue. [As noted in the last staff report, lands owned in fee title will be sold in accordance with the Government Code.]
- If the County holds only an easement, whether the terms of the easement provide that it terminates once it is no longer needed for public road purposes.

- Whether the County paid any sum to acquire its easement interest.
- Whether the County, at its own cost, has performed any maintenance or improvements within the easement that have a remaining useful life.
- If other factors indicate that the easement may have some value, whether the easement is clearly of a de minimis nature, such that it can be seen with certainty that an appraisal will cost more than the easement would be worth.

These are general factors that will be evaluated for all proposed abandonments. Depending upon the facts associated with a particular application, additional factors may also be identified for consideration. Altogether, there may be instances where compensation will be required as a condition of approval for a proposed abandonment, even if the County only holds an easement for the right-of-way.

The present application does not present such a situation. As previously documented, the County holds only an easement for CR 75A. It acquired this easement by dedication (i.e., at no cost) upon the recording of the Tancred Subdivision map. The County has no records of any expenditures for maintenance or improvement of the road except for a gravel and oil penetration treatment performed in 1974. Such maintenance typically has a useful life of 10 years or less, and the road was widened and subsequently resurfaced by the Tribe at its own cost in 2002 and 2004, respectively.

These facts demonstrate that there is no proper basis for seeking compensation as part of the abandonment of this right-of-way. It has no present or prospective public value as a road, the County paid nothing to obtain it, and it has not completed any improvements that have residual value. County staff therefore do not recommend conditioning the abandonment upon the payment of any sum.

Finally, as requested, a summary list of previously abandoned road right-of-ways is attached (**Attachment G**). No vacated right-of-ways to date have required compensation.

Survey Discussion

The project was also continued to clarify a discrepancy between the exhibit prepared for the project (November 2009) and a record of survey prepared for Wyatt Ranch, LLC, (lands of Cassil and Neal) in December, 2006 (**Attachment H**). Fortunately, both exhibits were prepared by the same civil engineering and land surveying agency. Christopher Lerch of Laugenour and Meikle explains that CR 75A, as shown on the Wyatt Ranch 2006 survey, was a drafting error. It was drawn as shown on the County Assessor's parcel map. According to Mr. Lerch, when the Tribe contacted Laugenour and Meikle regarding abandonment of County Road 75A, they researched the county archives for the Board of Supervisor's original acceptance of the road. The description referred to the right-of-way as shown on the Tancred Subdivision map. Laugenour and Meikle prepared a description and exhibit of actual right-of-way. Additionally, a "Dependent Resurvey and Survey" of Rumsey Rancheria prepared by the Bureau of Land Management, July 8, 1982, shows CR 75A as drawn on the Tancred Subdivision map (**Attachment I**).

According to Yolo County Public Works staff, the plat provided by the applicant for the County Road 75A abandonment appears to match the right-of-way accepted by the county. The right-of-way is shown to extend about 2,431 feet from the centerline of State Route 16 to the end of the right-of-way.

The Record of Survey for Wyatt Ranch, LLC, dated December 12, 2006, was referenced during the January 28, 2010, Planning Commission Meeting as showing County Road 75A extending all the

way to the neighboring parcel to the east. This record of survey does not accurately reflect the county's road right-of-way for County Road 75A. The record of survey shows a road right-of-way length of about 2,675 feet extending from the centerline of State Route 16 all the way to the neighboring parcel. This is over 200 feet farther than the end of the accepted and maintained county road right-of-way. This 200 foot plus section appears to be property owned by the United States (north half) and the Tribe (south half), and does not contain a county road easement.

A record of survey cannot create an easement; it is a map on which a licensed land surveyor shows established property boundaries. The Record of Survey for Wyatt Ranch, LLC, incorrectly shows the county road easement extending to the neighboring parcel to the east. This is in conflict with the Tancred Subdivision map, which is referenced on the actual record of survey. The county's road right-of-way ends over 200 feet before the neighboring property line, and is fully contained with the U.S. and Tribe parcels.

A site inspection on December 16, 2009, showed no evidence that Cache Creek has been accessed by vehicle at the eastern property line. Any further discussions of prescriptive rights or private easement would have to occur between property owners and are not a necessary part of the consideration of this application.

As indicated in the January 28, 2010, Planning Commission staff report (**Attachment F**), under Agency Comments, a letter dated December 9, 2009, was submitted by Robert Lando, representing the adjacent property owner, James Cassil, which expressed opposition to the proposed abandonment. The letter inferred that Mr. Cassil had legal access rights to his property from CR 75A. Upon receipt of the December 9, 2009, letter, staff attempted to contact Mr. Lando without success. Messages were left with his assistant during December and January. On January 27, 2010, staff received a call from Mr. Lando and a discussion took place regarding the discrepancy in surveys. As stated above, staff had previously confirmed with Chris Lerch of Laugenour and Meikle that the survey prepared for the Wyatt Ranch showed a drafting error. Mr. Lando acknowledged the error and inquired if the County could grant an easement to Mr. Cassil. Staff informed Mr. Lando that the easement request would be a private matter between the Tribe and Mr. Cassil to resolve. Staff has not heard from Mr. Lando since that discussion.

At the January 28, 2010, Planning Commission hearing, Mr. Cassil provided testimony concerning his rights to access his property from CR 75A. The Planning Commission moved to continue the item, in part, so the adjoining property owners (the Tribe and Mr. Cassil) could discuss the matter. According to the applicant, Jim Ethers, Director of Land Management for the Tribe, and Mr. Cassil met to discuss the possibility for an offer of easement a few days after the January Planning Commission meeting. However, at this time, the Tribe has declined to offer an easement if there is no legal obligation requiring them to do so.

The Planning and Public Works Department received additional correspondence from Mr. Cassil on March 2, 2010 (**Attachment J**).

Abandonment Proceedings

Prior to filing a formal application for a road abandonment, applicants typically consult with Planning and Public Works staff to determine the road's public value, as well as its relevancy to the General Plan Circulation map, and any other applicable General Plan policies. If it can be predetermined that the road is necessary for existing and future public use, alternatives are discussed. Often, an applicant will not pursue an abandonment request if it is clear that staff may not be able to support the request. However, this does not preclude an applicant from exercising their ability to file a formal application. Once an application is filed, it is processed much like any other discretionary entitlement request. A road abandonment request is initially evaluated for its consistency with the General Plan,

as discussed below.

In order to support a road abandonment request, the jurisdiction processing the application must make findings under Sections 8320 through 8325 of the Streets and Highways code to ensure a petition has been filed and determine that the proposed right-of-way has no existing or prospective public use. Jurisdictions are also required to report on the project's consistency with the general plan. Section 8313 of the Streets and Highways Codes states:

(a) If the proposed vacation of a street, highway, or public service easement is within an area for which a general plan is adopted by a local agency, the legislative body of the public entity shall consider the general plan prior to vacating the street, highway, or public service easement.

(b) The procedure prescribed in Section 65402 of the Government Code shall be followed if that section applies to the proposed vacation. If Section 65402 of the Government Code does not apply to the proposed vacation, the legislative body may submit the proposed vacation to the local planning commission or planning agency and give the commission or agency an opportunity to report upon the proposed vacation.

Section 65402 of the Government Codes (Planning and Zoning Laws) states:

(a) If a general plan or part thereof has been adopted, no real property shall be acquired by dedication or otherwise for street, square, park or other public purposes, and no real property shall be disposed of, no street shall be vacated or abandoned, and no public building or structure shall be constructed or authorized, if the adopted general plan or part thereof applies thereto, until the location, purpose and extent of such acquisition or disposition, such street vacation or abandonment, or such public building or structure have been submitted to and reported upon by the planning agency as to conformity with said adopted general plan or part thereof. The planning agency shall render its report as to conformity with said adopted general plan or part thereof within forty (40) days after the matter was submitted to it, or such longer period of time as may be designated by the legislative body.

If the legislative body so provides, by ordinance or resolution, the provisions of this subdivision shall not apply to: (1) the disposition of the remainder of a larger parcel which was acquired and used in part for street purposes; (2) acquisitions, dispositions, or abandonments for street widening; or (3) alignment projects, provided such dispositions for street purposes, acquisitions, dispositions, or abandonments for street widening, or alignment projects are of a minor nature.

In the case of County Road 75A, which is considered a local serving road, abandonment of the public right-of-way would not create a conflict with the circulation map adopted with the 2030 General Plan (**Attachment K**). A "Local Road" is defined in the 2030 General Plan as:

Primarily providing service to adjacent land uses and connecting with other local and county roads. Local roads are typically developed as two-lane undivided roadways. Local roads are only shown on the circulation element diagram for orientation purposes and are not considered General Plan Roadways.

Abandoning a local road that serves only lands owned or held in trust for the benefit of the Tribe will not affect circulation in the county, nor does it conflict with any policies designed to protect the public's interest.

AGENCY COMMENTS

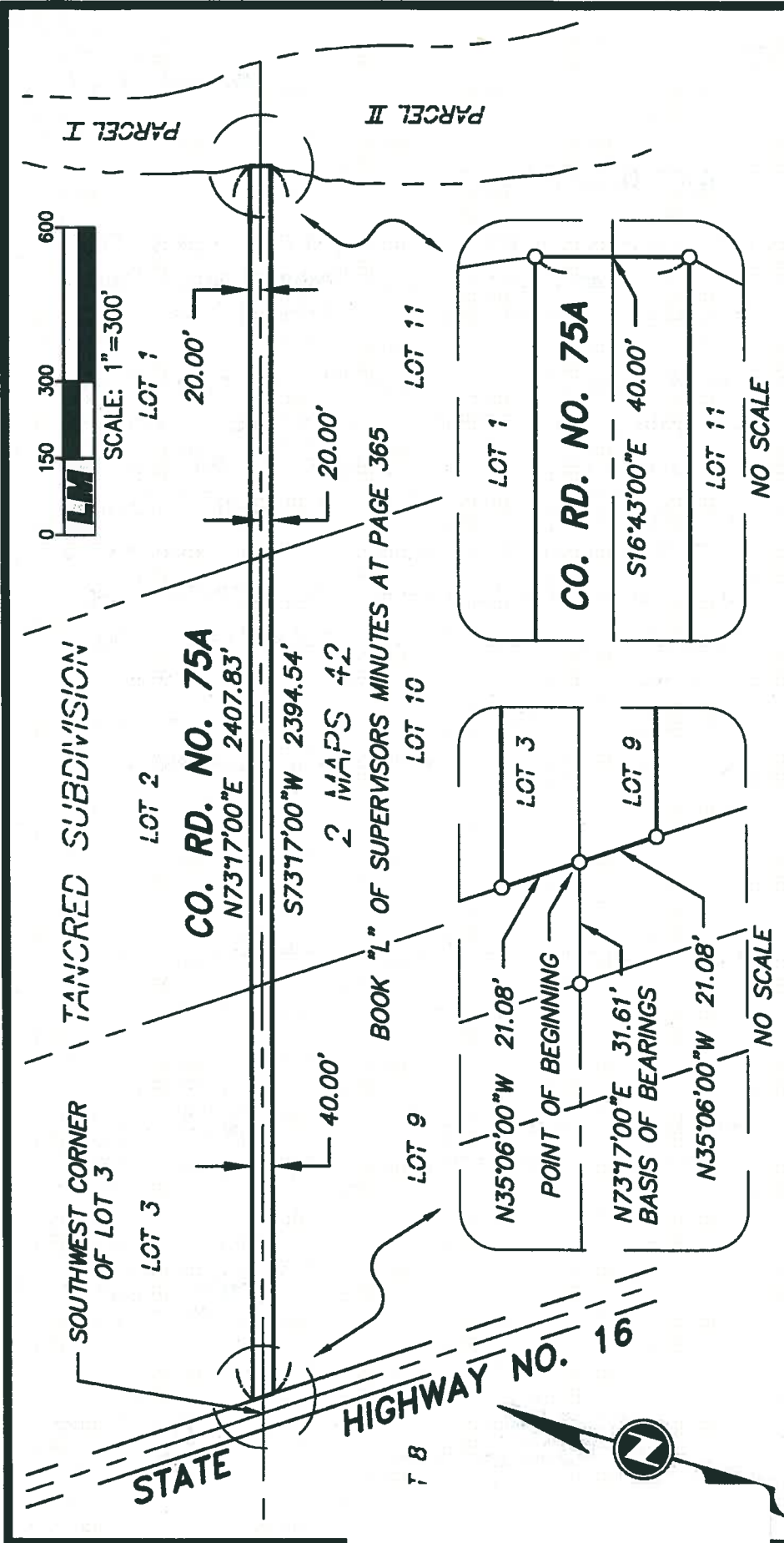
This report has been reviewed by County Counsel. In addition, the Yolo County Public Works division reconfirmed their position that right-of-way for County Road 75A was accepted by the county on the Tancred Subdivision map in 1911.

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
- Attachment F** - January 28, 2010, Planning Commission Staff Report
- Attachment G** - Summary List of Abandoned County Roads
- Attachment H** - 2006 Record of Survey for Wyatt Ranch
- Attachment I** - 1982 BLM Survey of Rumsey Rancheria
- Attachment J** - Letter from Jim Cassil dated March 2, 2010
- Attachment K** - 2030 General Plan Circulation Map



ATTACHMENT A

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

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

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

#2303-15-J

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.




Christopher W. Lerch

11-13-2009
Date



TO THE HONORABLE BOARD OF SUPERVISORS
OF THE COUNTY OF YOLO
STATE OF CALIFORNIA

We, the undersigned freeholders of the County of Yolo, State of California, being at least ten in number, hereby petition the Honorable Board of Supervisors of the County of Yolo to abandon
abandonment of CR 754.

in Yolo County, under the provisions of § 8300 et seq of the Streets and Highways Code in the State of California.

That at least two of the said freeholders are residents of the district wherein said County highway (s) lies.

WHEREFORE, petitioners pray that the Honorable Board of Supervisors of the County of Yolo, set a time and place for the hearing of this petition, and that notice be given of the date set for hearing as required by § 8320 of the Streets and Highways Code of the State of California.

Date: 11 - 4, 2009

(All writing must be legible or it will not count)

| Initial Petitioner: | Address | Phone |
|------------------------|---|-----------------------|
| 1. <u>Mayra Walker</u> | <u>2387 Mack Pl.</u> <u>Woodland 95776</u> | <u>(530) 304-5107</u> |

| Freeholders: | Name | Address | Phone |
|--------------|-------------------------|--|-------------------------------------|
| 2. | <u>Jerry Famb</u> | <u>2455 Co. Rd. 41 Rumsey</u> | <u>530-796-3253</u> |
| 3. | <u>Jim Ethers</u> | <u>7585 Webster St. Grinda</u> | <u>681-2492</u> |
| 4. | <u>Tim Muehr</u> | <u>7587 CR 49 Grinda</u> | <u>320-1608</u> |
| 5. | <u>Carol M. Miller</u> | <u>12215 G. Rd. 84A Capay, CA</u> | <u>530 787-4154</u> |
| 6. | <u>David Fruxe</u> | <u>1360 Amherst Way Woodland CA</u> | <u>530-666-6071</u> |
| 7. | <u>Howard R. Plani?</u> | <u>1807 Olvera Dr. Woodland</u> | <u>530-400-4656</u> |
| 8. | <u>Domingo Perez</u> | <u>WOODBRIETGES</u> | <u>796-3699</u> |
| 9. | <u>M. P. O. Box 52</u> | <u>Grinda</u> | <u>9627</u> |
| 10. | <u>Shirley Newman</u> | <u>7214 Farmers Central Rd. Woodland, CA</u> | <u>95716</u> <u>530 400 0625</u> |

[Handwritten signature]

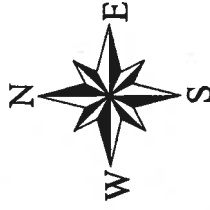
ZF #2009-044

Yolo County

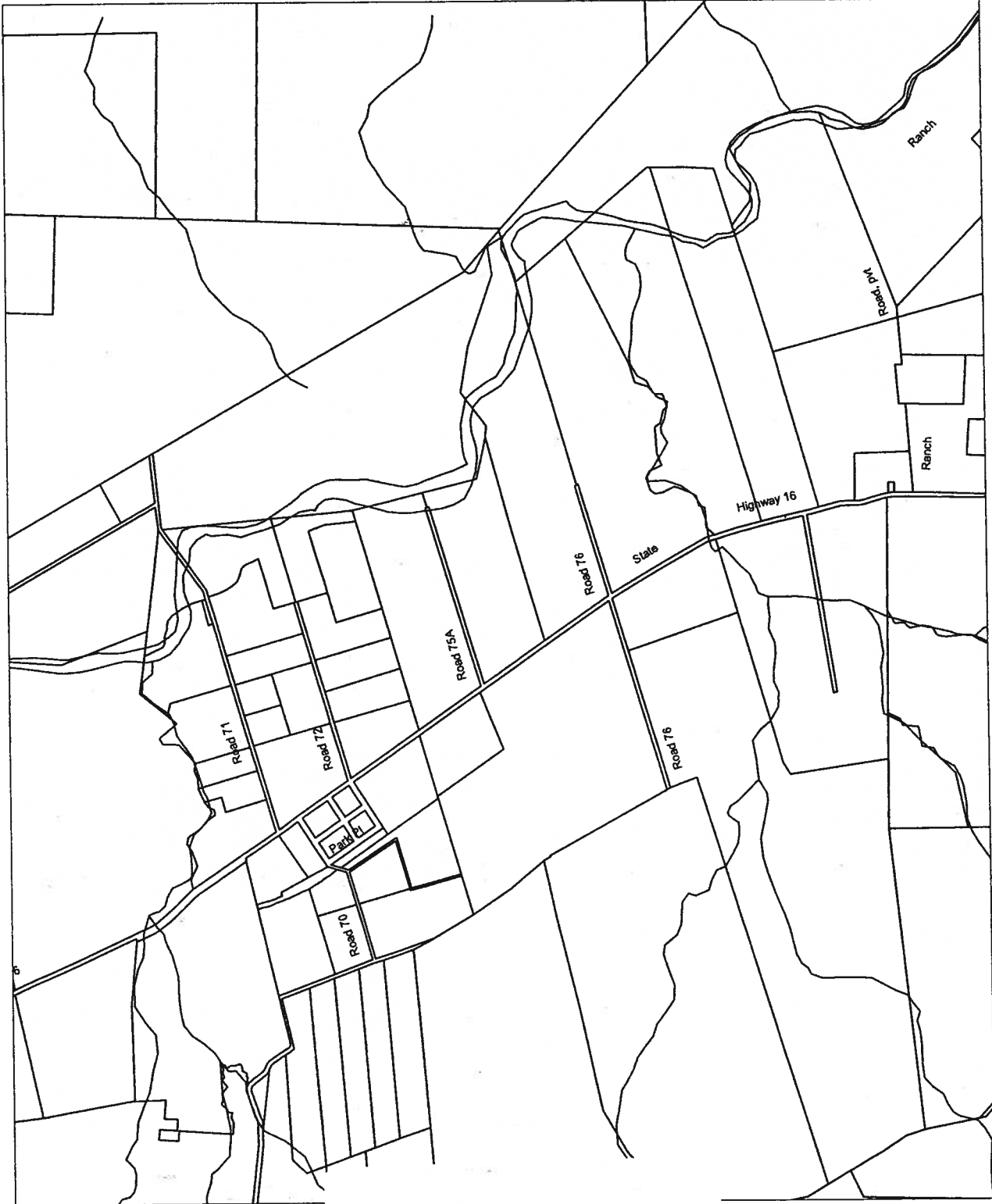
Planning and

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: 3.11.2010

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.



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:

REVIEWED BY:

Stephanie Cormier, Associate Planner

David Morrison, Assistant Director

RECOMMENDED ACTIONS

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1. **HOLD** a public hearing and receive comments;
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ATTACHMENT F

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 | Included in the Conditions of Approval. |

| | | |
|---|--|--|
| | <p>title or highway easement 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**

| | | |
|--|--|--|
| | | |
|--|--|--|

AGENDA ITEM 7.1

Supervisors are requested to consider the following information in making their decision on the proposed project. The Board of Supervisors is requested to consider the following information in making their decision on the proposed project. The Board of Supervisors is requested to consider the following information in making their decision on the proposed project.

SUMMARY LIST OF ABANDONED COUNTY ROADS

1971

January 11, 1971, Resolution #71, abandoned a portion of County Road 103 (north side of CR 22).

1988

June 7, 1988, Minute Order No. 88-307: Approved a Use Permit which included as a condition of approval, abandonment of a portion of County Road 56.

1996

August 2, 1995, Minute Order No. 94-342: Approved fee waiver associated with abandonment of CR 127.

August 27, 1996, Minute Order No. 96-359: Resolution No. 96-134, vacate County Road 127.

2000

September 26, 2000, Resolution No. 00-206, vacating a certain portion of Locust Street in Knights Landing.

2002

September 3, 2002, Resolution No. 02-153, summary vacation of a portion of road right-of-way along country Club Drive in El Macero.

November 26, 2002, Resolution No. 02-206, summary vacation of a portion of road easement lying between County Road 93, County Road 94B, County Road 24, and State Route 16

2003

June 24, 2003, Minute Order No. 03-189: Resolution No. 03-115, summary vacation of a portion of Fremont Street road easement lying between Cleveland Street (CR 51) and Forest Street in Guinda.

September 2, 2003, Minute Order No. 03-250: Resolution No. 03-140, initiate vacation of a portion of road easement on CR 90A (old CR 12), including existing bridge (22C-161) on CR 90A over Bretona Creek (public hearing set for September 23, 2003).

2004

April 6, 2004, Minute Order No. 04-119: Resolution No. 04-56, abandon a portion of Front Street and East Street in Zamora.

ATTACHMENT G

May 16, 2004, Minute Order No. 06-167, issuance of encroachment permit to Department of Water Resources for construction of emergency levee repairs along Cache Creek, resulting in County Road 97B being shortened by approximately 200 feet, with future abandonment proceedings to abandon that portion of the road once DWR project is complete.

June 1, 2004, Minute Order No. 04-204: Resolution No. 04-104, vacate a portion of County Road 95B from SR 45 south to the Colusa Basin Drain, and County road 108 between CR 95B and CR 98A.

2006

June 27, 2006, Minute Order No. 06-226: Resolution No. 06-98, abandon a portion of County Road 5, east of CR 89 and the Tehama-Colusa Basin Drain, east of Dunnigan.

October 3, 2006, Minute Order No. 06-317: Resolution No. 06-141, vacating a portion of County Road 100A, between Cities of Davis and Woodland.

2007

July 17, 2007, Minute Order 07-220: Resolution No. 07-102, abandon Aldrich road (also known as third Street) in Capay.

2008

September 23, 2008, Resolution No. 08-137, abandon a 40-foot wide strip of road right of way, southwest of Capay at the western terminus of CR 23.

LEGEND OF SYMBOLS AND ABBREVIATIONS:

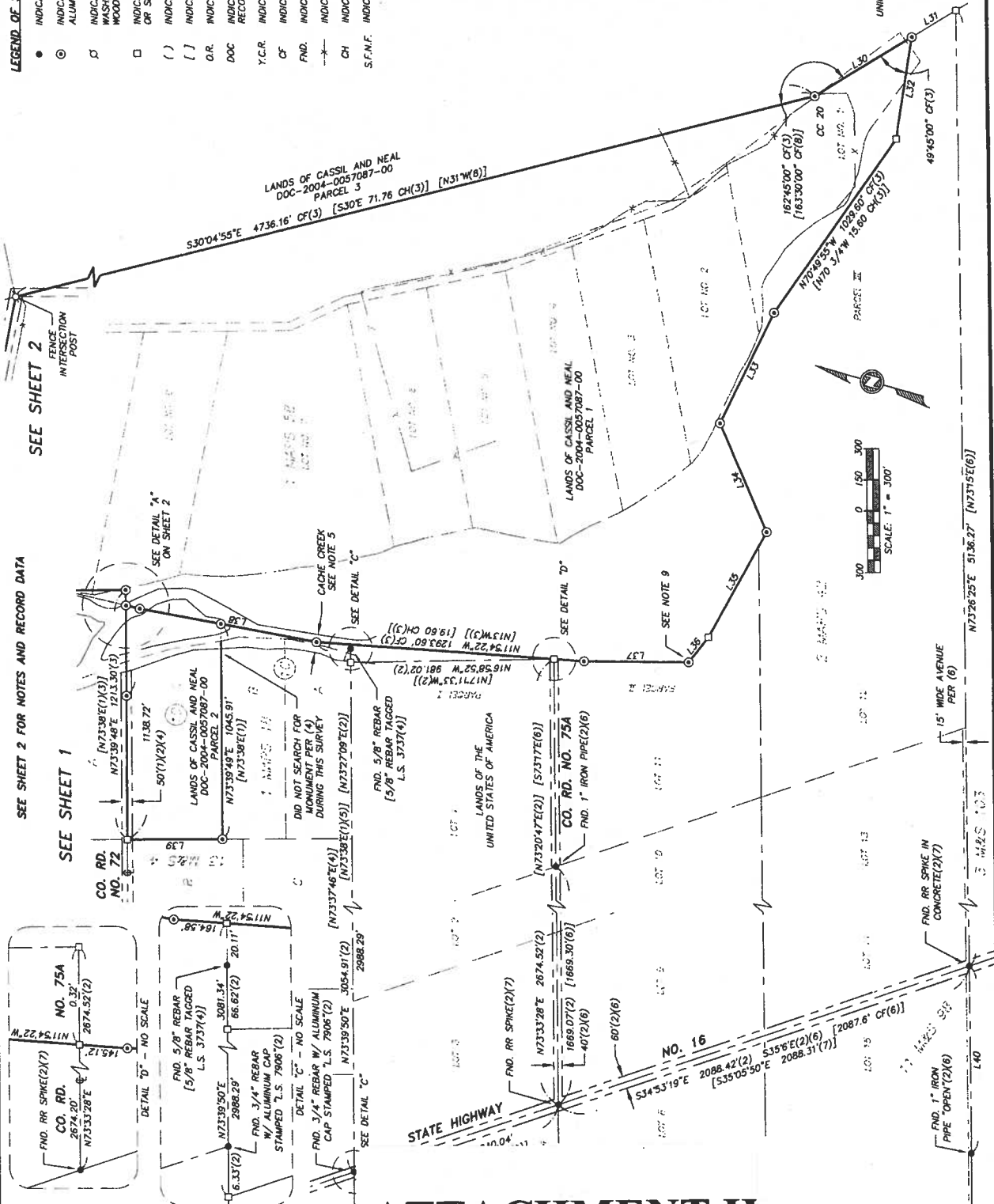
- INDICATES MONUMENT FOUND AS NOTED
- ⊙ INDICATES SET 3/4"x24" REBAR WITH A 1 1/2" ALUMINUM CAP STAMPED "L.S. 7906"
- ⊙ INDICATES SET 3" PK MAIL WITH A 2" BRASS WASHER STAMPED "L.S. 7906" IN A 5"x10" WOOD POST
- INDICATES DIMENSION POINT, NOTHING FOUND OR SET
- () INDICATES RECORD DATA
- [] INDICATES INFORMATION PER RECORD DATA
- O.R. INDICATES OFFICIAL RECORDS OF YOLO COUNTY
- DOC INDICATES DOCUMENT NUMBER, YOLO COUNTY RECORDS
- Y.C.R. INDICATES YOLO COUNTY RECORDS
- CF INDICATES CALCULATED FROM
- FND. INDICATES FOUND
- INDICATES EXISTING FENCE LINE
- CH INDICATES CHAINS
- S.F.N.F. INDICATES SEARCHED FOR, NOTHING FOUND

| LINE | BEARING | LENGTH |
|------|--|-------------------------------------|
| L30 | S47°19'55"E [S47°14'E(3)] [8.32 CH(3)] | 548.12' CF(3) |
| L31 | S47°19'55"E [S47°12'E(6)] | 248.08' |
| L32 | S82°55'05"W [S47°12'E(6)] | 488.67' CF(3) [17.57 CH(3)] |
| L33 | N79°34'46"E [S81°14'E(3)] | 59.07' CF(3) [19.00 CH(3)] |
| L34 | N77°04'55"W [S81°14'E(3)] | 570.00' CF(3) [8.85 CH(3)] |
| L35 | N77°04'55"W [N77°04'55"W] | 590.80' CF(3) [8.80 CH(3)] |
| L36 | N68°04'55"W [N68°04'55"W] | 153.54' [147.18' CF(3)] |
| L37 | N15°24'22"W [N16°1/2'W(3)] | 502.83' [515.46' CF(3)] |
| L38 | S05°09'22"E [S8°30'E(1)] | 72.81' CH(3) 860.64' CF(3) |
| L39 | S8°14'E(3) [S8°14'E(3)] | 806.0' (1) [13.04 CH(3)] |
| L40 | N16°22'00"W(4) [N23°15'44"E(2)] [N23°15'44"E(6)] [N23°15'00"E(7)] | 452.59' 805.74(2) [905.50(6)] |

RECORD OF SURVEY
CRUNCH, LLC
 BEING A PORTION OF A PORTION OF RANCHO CANADA DE CAPAY IN TOWNSHIP 11 NORTH, RANGE 3 WEST, MOUNT Diablo BASE AND MERIDIAN UNINCORPORATED AREA OF YOLO COUNTY, CALIFORNIA

LM
 CIVIL ENGINEERING
 LAND SURVEYING
 PLANNING

AUGENBURG AND MEYER
 ONE CORNER STATE ST. SUITE 200
 YOLO, CA 95926
 TEL: (530) 862-4600



ATTACHMENT H

TOWNSHIP 11 NORTH, RANGE 3 WEST, OF THE MOUNT DIABLO MERIDIAN, CALIFORNIA

DEPENDENT RESURVEY AND SURVEY

A history of surveys is contained in the field notes.

This plat represents a dependent resurvey and survey of the Bussey Rancheria in Lot 37 (lancho Mendocino) of T. 11 N., R. 3 W., Mount Diablo Meridian, California. The survey was made by the courses in their true original locations according to the best available evidence.

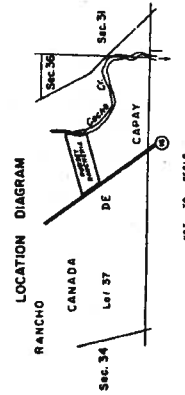
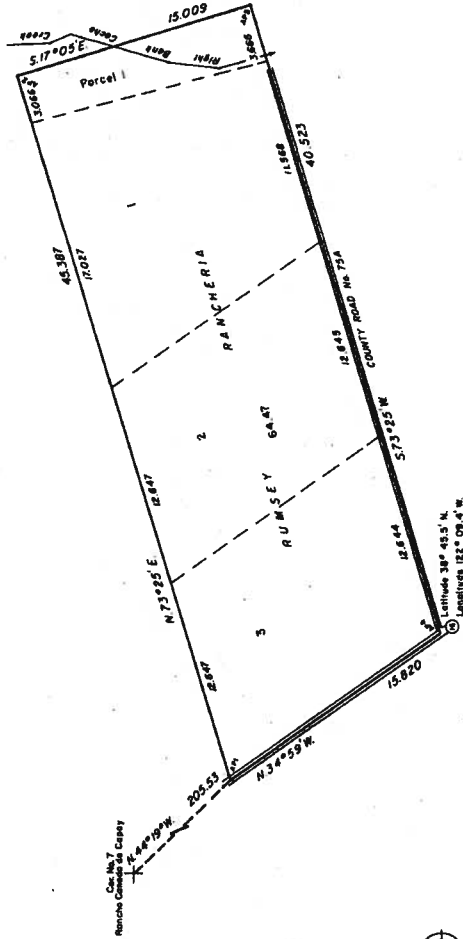
Surveys were executed by Robert W. Dahl, Cadastral Surveyor, beginning May 11, 1978, and completed April 24, 1978, pursuant to Special Instructions dated April 24, 1978, for Group No. 717, California.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Sacramento, California July 8, 1982

This plat is strictly conformable to the approved field notes and the survey being here correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

C. J. ...
Chief Cadastral Surveyor



Jim C. Cassil
P. O. Box 174
Brooks, California 95607

March 2, 2010

Yolo County Planning Commission
County of Yolo
Planning and Public Works Department
292 West Beamer Street
Woodland, California 95695-2598

Re: Road Right-of-Way Abandonment Request
County Road 75A

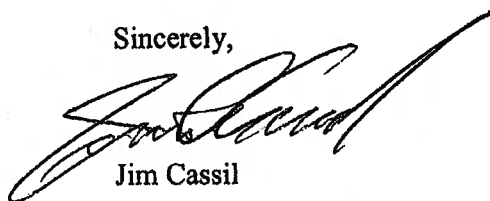
Dear Sir/Madam:

This letter is to request that I be notified as to any meeting, hearings or discussions concerning the County abandoning **Road 75A** as it provides historical access to the Cassil Ranch, for many known as the Wyatt Ranch.

County Road 75A has been used to provide legal access to the Wyatt Ranch for over 50 years and we are adamantly opposed to its abandonment as it would cause me and the property significant harm. The Planning Commission at its last meeting on this subject requested that myself and the tribe get together to try to resolve this. We have contacted their representative on several occasions who has declined to discuss the issue with me. I am willing to try to resolve this issue if possible.

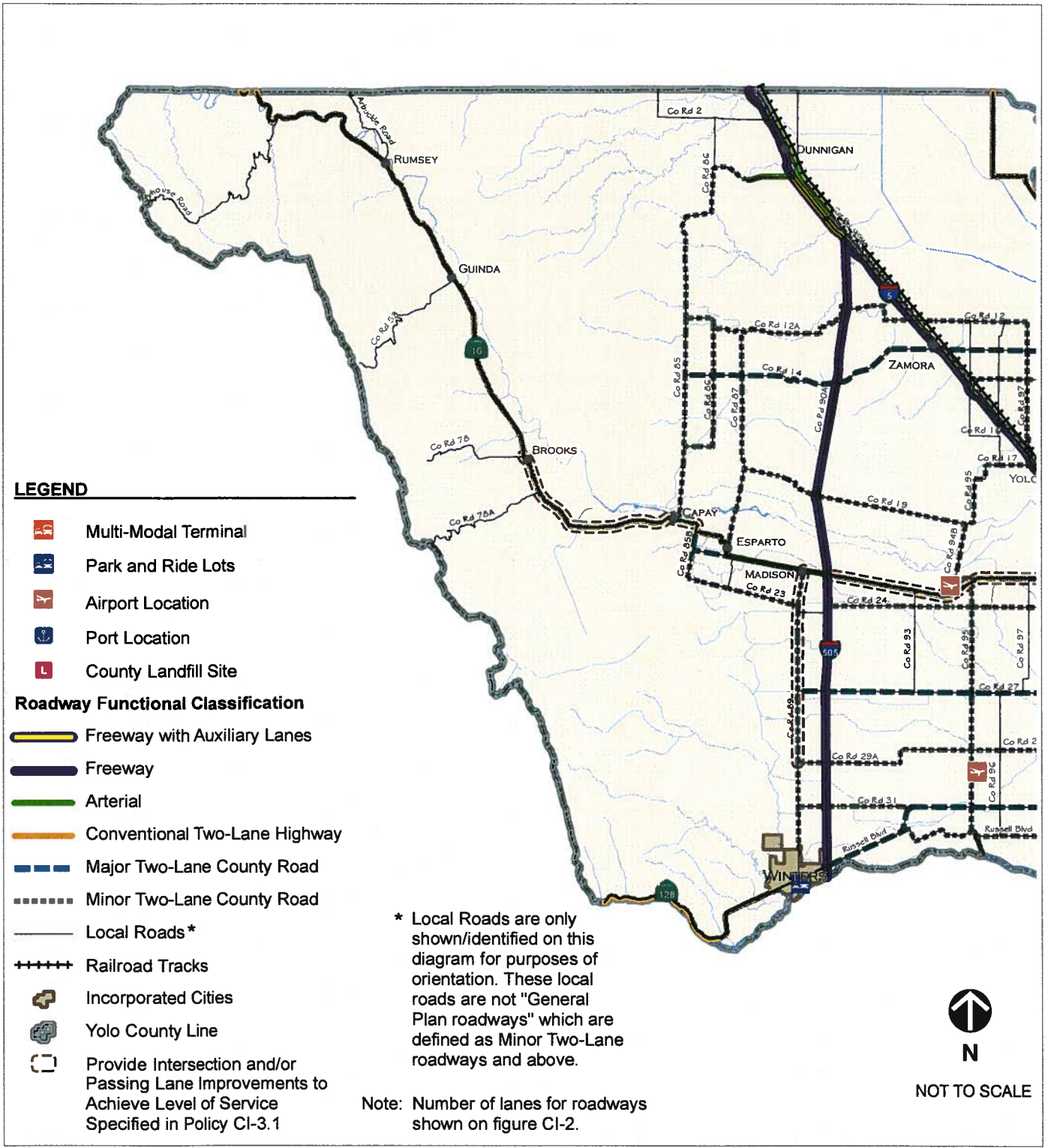
Thank you very much for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Cassil', written in a cursive style.

Jim Cassil

ATTACHMENT J



Source: Fehr & Peers, 2008.