



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

YOLO COUNTY PLANNING COMMISSION

CHAIR: Leroy Bertolero
VICE-CHAIR: Don Winters
MEMBERS: Jeb Burton; Mary Kimball; Mary Liu; Jeff Merwin; Don Peart

AGENDA

THURSDAY JUNE 12, 2008

Board of Supervisors Chambers
625 Court Street, Room 206
Woodland, CA. 95695

Please refer to the last page of this agenda for notices regarding accommodations for persons with disabilities and for appeals of Planning Commission actions.

ADMINISTRATIVE AGENDA

8:30 a.m.

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. APPROVAL OF MINUTES
 - 3.1 Minutes of May 8, 2008.
4. PUBLIC REQUESTS

The opportunity for members of the public to address the Planning Commission on any subject relating to the Planning Commission, but not relative to items on the present agenda. The Planning Commission reserves the right to impose a reasonable limit on time afforded to any individual speaker.

5. CORRESPONDENCE

5.1 Yolo County Resource Conservation District Annual Report

CONSENT AGENDA

8:40 a.m.

6.1 None

TIME SET AGENDA

8:45 a.m.

7.1 **2007-049** and **2007-050**: Use permit for a re-established marina and an associated road abandonment in the Agricultural Preserve (A-P) zone. The property is located on the Sacramento River near the I-5 bridge at Elkhorn, east of the City of Woodland (APN: 057-210-18). A Mitigated Negative Declaration has been prepared for this project. Owner/Applicant: Elkhorn Marina (C. Baracco)

9:00 a.m.

7.2 **2001-112**: One year extension of a 3-lot commercial Tentative Subdivision Map in the Highway Commercial (CH) zone. The project is located at Barnard St., north of the City of Woodland (APN: 027-430-03). A Categorical Exemption has been prepared for this project. Owner/Applicant: Swift (D. Rust)

9:15 a.m.

7.3 **2006-090**: Adoption of the proposed Downtown Mixed Use (DMX) zoning district as an amendment to the Yolo County Code and rezoning of properties in downtown Esparto along Yolo Avenue and Woodland Avenue from C-2 (Community Commercial) to DMX. (APN: numerous). A Negative Declaration has been prepared for this project. Owner/Applicant: Yolo County (E. Parfrey)

9:30 a.m.

7.4 **2008-025**: 2007 Annual review of mining permits compliance within the Cache Creek Area Plan (K. Schwartz/Parks)

10:00 a.m.

7.5 SB 18 Tribal Consultation Workshop (Michele LaPena)

LUNCH

Reconvene at Planning and Public Works Department, 292 W. Beamer Street, Woodland

1:00 p.m.

7.6 Joint meeting with the Capay Valley General Plan Advisory Committee, Clarksburg General Plan Advisory Committee, Dunnigan Advisory Committee, Esparto Citizens Advisory Committee, Knights Landing General Plan Citizens Advisory Committee, Madison Advisory

Committee, Yolo Zamora Citizens Advisory Committee, and West Plainfield Advisory Committee on Airport Development.

- A. Committee and Commission roles and responsibilities.
- B. Meeting requirements.
- C. Comment areas.
- D. County support.
- E. Open discussion of local community issues.

REGULAR AGENDA

8. DISCUSSION ITEMS

8.1 None

9. DIRECTOR'S REPORT

A report by the Assistant Director on the recent Board of Supervisor's meetings on items relevant to the Planning Commission and an update of the Planning and Public Works Department activities for the month. No discussion by other Commission members will occur except for clarifying questions. The Commission or an individual Commissioner can request that an item be placed on a future agenda for discussion.

10. COMMISSION REPORTS

Reports by commission members on information they have received and meetings they have attended which would be of interest to the commission or the public. No discussion by other commission members will occur except for clarifying questions.

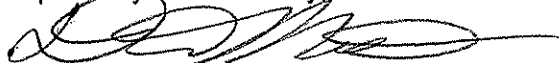
11. FUTURE AGENDA ITEMS

The opportunity for commission members to request that an item be placed on a future agenda for discussion. No discussion by other commission members will occur except for clarifying questions.

12. ADJOURNMENT

The next scheduled meeting of the Yolo County Planning Commission is July 10, 2008.

Respectfully submitted by,



David Morrison, Assistant Director
Yolo County Planning and Public Works Department

***** NOTICE *****

If requested, this agenda can be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 and the Federal Rules and Regulations adopted in implementation thereof. Persons seeking an alternative format should contact David Morrison, Assistant Director for further information. In addition, a person with a disability who requires a modification or accommodation, including auxiliary aids or services, in order to participate in a public meeting should telephone or otherwise

contact David Morrison, Assistant Director as soon as possible and preferably at least 24 hours prior to the meeting. David Morrison, Assistant Director may be reached at 530-666-8041, or at e-mail david.morrison@yolocounty.org, or at the following address: Yolo County Planning and Public Works Department, 292 West Beamer Street, Woodland, CA 95695.

***** NOTICE *****

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 that Board within fifteen days from the date of the action. A written notice of appeal specifying the grounds 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.



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PUBLIC NOTICE OF JOINT MEETING

THE YOLO COUNTY PLANNING COMMISSION MEETING WITH ALL CITIZENS ADVISORY COMMITTEES

**THURSDAY JUNE 12, 2008
1:00 p.m.**

**Cache Creek Room
Planning and Public Works Department
292 W. Beamer Street, Woodland**

This is a Joint Meeting with All Members of:

**Capay Valley General Plan Advisory Committee,
Clarksburg General Plan Advisory Committee,
Dunnigan Advisory Committee,
Esparto Citizens Advisory Committee,
Knights Landing General Plan Citizens Advisory Committee,
Madison Advisory Committee,
Yolo Zamora Citizens Advisory Committee, and
West Plainfield Advisory Committee on Airport Development**

AGENDA

- A. Committee and Commission roles and responsibilities**
- B. Meeting requirements**
- C. Comment areas**
- D. County support of Citizens Committees**
- E. General Plan Update**
- F. Open discussion of local community issues**

This is an opportunity for all appointed members of the Yolo County's land use citizens advisory committees to meet with the Planning Commission and County staff to talk about shared procedures and concerns. Please attend if you can. These joint meetings are held on a semi-annual basis.

For further information, contact David Morrison, Assistant Director, at 530-666-8041, or at e-mail david.morrison@yolocounty.org



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PLANNING COMMISSION STAFF REPORT

June 12, 2008

ZF#2007-049 and 2007-050: Use permit for a re-established marina and an associated road abandonment in the Agricultural General (A-1) zone. A Mitigated Negative Declaration has been prepared for this project. (C. Baracco) (**Attachment A**).

APPLICANT: Robert Newton
P.O. Box 160273
Sacramento, CA


OWNER: Hugh Turner
169 North Valentine
Fresno, CA

LOCATION: The property is located on the Sacramento River near the I-5 bridge at Elkhorn, east of the City of Woodland (APN: 057-210-18 and -17) (**Attachment B**)

GENERAL PLAN: Agriculture
ZONING: Agricultural General (A-1)
SOILS: Sycamore silty clay loam (Class II)
Tyndall sandy loam (Class III)
FLOOD ZONE: A (area within the 100-year flood plan) B (area within the 500-year flood plan)

ENVIRONMENTAL DETERMINATION: Mitigated Negative Declaration

REPORT PREPARED BY:


Craig Baracco, Associate Planner

REVIEWED BY:


David Morrison, Assistant Director

RECOMMENDED ACTIONS:

That the Planning Commission:

1. **HOLD** a public hearing and receive comments and;
2. **CONTINUE** this agenda item to a later date, so that the applicant can provide additional information concerning biological resources on the project site, and a complete review of the project under CEQA may be completed.

REASONS FOR RECOMMENDED ACTIONS:

The continuance will allow the applicant to provide additional information concerning biological resources on the project site. This additional information will allow staff to complete the analysis of the project for the Mitigated Negative Declaration. Holding the public hearing will allow the Planning Commission to review the project and receive public testimony. Once the additional information is submitted, Staff anticipates that this project can be brought back before the Commission with a recommendation of approval.

AGENDA ITEM 7.1

PROJECT DESCRIPTION:

The project (ZF#2007-049) proposes removal of two existing dock sections and replace them with a new 62-slip marina on the west bank of the lower Sacramento River, just north of the Interstate 5 freeway bridge in Yolo County. The marina will be used for year-round berthing of recreational boats. No boat launching facilities or refueling facilities are proposed. A harbormaster's office and elevated platform for marina services, and a 36-space parking area will be constructed on the landward side of the levee (parcel 057-210-17). A boat parking area with 21 ten foot by forty foot spaces, five boat storage buildings 6,000 square feet in size, and a caretaker's office (2,900 square feet) will be constructed on the west side of County Road 117 (APN: 057-210-18).

The marina facilities consist of two floating dock sections that will be accessed by an elevated landing and two bridge and stairway structures. The dock section farthest from shore will be located approximately 170 feet from shore and measure 490 feet long by 46 feet wide. The dock section closest to shore will be located approximately 70 feet from shore and measure 710 feet long and 50 feet wide. The docks will be constructed of galvanized metal with encased flotation. A sheet pile debris barrier will extend 80 feet from shore at the upstream (north) end of the marina. The total water surface area covered by the dock structures and berthed vessels will be approximately 1.6 acres.

A total of 210 16-inch diameter steel piles will be driven to support the docks and access structures. A total of 150 piles will be driven into the bed of the Sacramento River using a barge-mounted pile driver. The remaining 60 piles will be driven out of the water on shore.

There is an existing domestic water well and septic system on parcel APN 057-210-17, which served a previously demolished home. These existing systems may have to be upgraded or supplemented through the construction of a new well or septic system under permit from Yolo County Environmental Health.

The marina's hours of operation will be from 7:00 am to 10:00 pm. The marina will have three full-time employees. The project is expected to generate 216 vehicle trips per day at full capacity, based on projections, and will require up to three truck deliveries per day. Security will be provided with a fenced perimeter and gate.

A request to abandon a section of public right-of-way thirty feet in width and 1400 feet in length that runs along the southern border of APN 057-210-18, is also included in this project (ZF# 2007-050). The applicant is asserting that this section of right-of-way should have been merged when Caltrans reconveyed the property back to Yolo County.

Surrounding Land Uses and Setting: The Sacramento River lies to the east of the project site. An existing marina, which includes boat launch and refueling facilities, is currently in operation on the eastern shore of the river in Sacramento County directly east of the project site. All parcels surrounding the project are zoned A-1 (General Agriculture) and designated Agriculture in the Yolo County General Plan. A residence is located approximately 400 feet north of the project location. No other development exists on adjacent parcels. A rail line lies adjacent to the project site. The I-5 bridge over the Sacramento River is directly south of the project. County Road 117 divides the two parcels upon which the project is located, and County Road 22 bounds the project to the west.

ANALYSIS:

The following issues were examined in the course of reviewing this project through the environmental and development review process.

Biology: According to a biological study prepared for the applicant (*Biological and Essential Fish Habitat Assessment for the Elkhorn Marina Project*, Jones & Stokes, November 2007), the California Natural Diversity Data Base identifies five "special status species" that may be found in the vicinity of the project site. They are the Central Valley Steelhead, North American green sturgeon and three varieties of Chinook salmon. To minimize the impact of marina construction and operations on these species and their habitat, the following mitigation measures are incorporated:

- (a) *All in-water construction activities in the Sacramento River shall be limited to the period June 1 through October 31 to avoid the primary migration periods of listed salmonids.*
- (b) *In-water pile driving will be restricted to the period July 1 through September 30 to avoid or minimize exposure of adults and juvenile salmonids to underwater pile driving sounds.*
- (c) *Pile driving shall be conducted by barge to minimize disturbance of riparian habitat.*
- (d) *Following construction, native riparian vegetation shall be planted on disturbed or exposed soils to control erosion and offset any losses of vegetation on the waterside slope of the levee.*
- (e) *The owner/operator shall enforce a no-wake zone for boats operating in and in the vicinity of the marina through the posting of signs and other mechanisms.*

The biological study prepared for the applicant did not address biological resources on the land side of the project. As discussed above in Reasons for Recommended Actions, staff recommends that the Planning Commission continue this item to allow the applicant time to complete the biological assessment pertaining to land based biological resources.

Water Quality/Flooding: A majority of the site is located in the 100-year floodplain. As a condition of approval, the applicant shall be required to either raise all proposed buildings out of the 100-year flood hazard area by elevating the pads of the buildings so that the finished flood elevations would be one foot above the base flood elevation or to construct the buildings to dry-proofing standards as required by the California Building Code and Federal Emergency Management Agency standards.

To ensure water quality, the applicant shall obtain a General Construction Activity Stormwater Permit (SWPPP), and a National Discharge Elimination System (NPDES) permit. The permits are required to control both construction and operational activities that may adversely affect water quality. The project will be required to utilize Best Management Practices (BMPs) to prevent pollution from leaving the property through stormwater runoff and entering the Sacramento River.

Traffic/Parking/Safety: Long-term changes to local traffic circulation resulting from the proposed project would be additional employee and customer trip generation. According to traffic studies found in *Trip Generation*, Institute of Transportation Engineers (1991) a marina can be expected to generate an average of 3.48 vehicle trips per day per berth. With 62 slips planned, the project could generate approximately 216 vehicle trips per day. This increase would add approximately 22 morning and evening peak hour trips to the region's transportation network. County Roads 117 and 22 currently serve very limited development in the rural area and have very low existing traffic levels. This increase would not significantly affect volume to capacity ratios, and road

improvements will not be required.

Traffic safety is an issue with the project. Driveways from the boat storage area and marina will be connected to County Road 117. A rail line cuts between the two parcels upon which the project is located, and a railroad crossing is located on CR 117 between the two driveways. The presence of multiple connections, and crossings of CR 117 in a limited stretch of roadway is a design feature that could create a potentially significant impact, unless mitigated. Therefore, the applicant is required to install signage to warn the traveling public. Required signs shall include *Slow Traffic Ahead*, *Cross Traffic Ahead* and *Do not Block Railroad*.

The project would be required to meet standard parking requirements established in the Yolo County Zoning Code. On-site parking adequate to serve both employees and customers of the project is included in the project site plan. Parking facilities for vehicles towing boats will also be provided. Therefore, approval of the project would ensure adequate parking supply.

Aesthetics: The Sacramento River is a well-known scenic area, and the project site is highly visible to members of the traveling public along Interstate 5. To prevent significant degradation of the visual character of the site and its surroundings, the project will be required to submit a detailed landscaping and irrigation plan for the project site, keep the site free of graffiti, trash, and visual clutter, and keep all boats docked at the marina in good working order and repair.

COMMENTS FROM OTHER AGENCIES:

A "Request for Comments" was circulated for the proposed project from August 14, 2007, to August 28, 2007. This project was reviewed by the County Development Review Committee on January 9, 2008 and May 15, 2008.

An Initial Study/Mitigated Negative Declaration was prepared and circulated from May 9, 2008, to June 9, 2008. Comments received during both review periods were incorporated into the project where feasible. A summary of comments is provided below:

| AGENCY | COMMENTS | RESPONSE |
|----------------------------------|--|-------------------------------------|
| Yolo County Environmental Health | Septic and water systems shall be constructed under permit from YCEH. Project may be subject to the requirements of a Hazardous Materials Business plan. | Included in Conditions of Approval. |
| Yolo County Public Works | The applicant is required to obtain an encroachment permit and to pave the driveway approaches. Additional safety signage is required. | Included in Conditions of Approval. |
| Yolo County Building Division | Property is largely in the 100 year floodplain and is required to either elevate or flood proof all buildings. | Included in Conditions of Approval. |

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| California State Lands Commission | The applicant shall secure an amended lease agreement with the California State Lands Commission to reflect the increased size of the marina. | Included in Conditions of Approval. |
| Yolo County Parks and Resources Department | The applicant shall take measures to ensure individual boat owners maintain boat launch permits | Included in Conditions of Approval. |

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 within fifteen days from the date of the action. A written notice of appeal specifying the grounds 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** - Elevation
- Attachment C** - Initial Study/Negative Declaration
- Attachment D** - Mitigation Monitoring Program
- Attachment E** - Findings
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APPEALS:

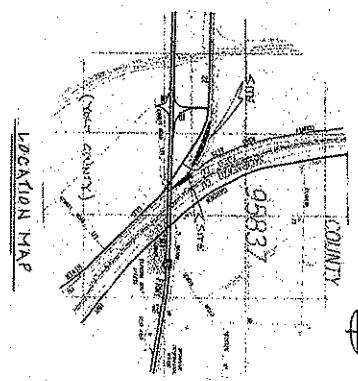
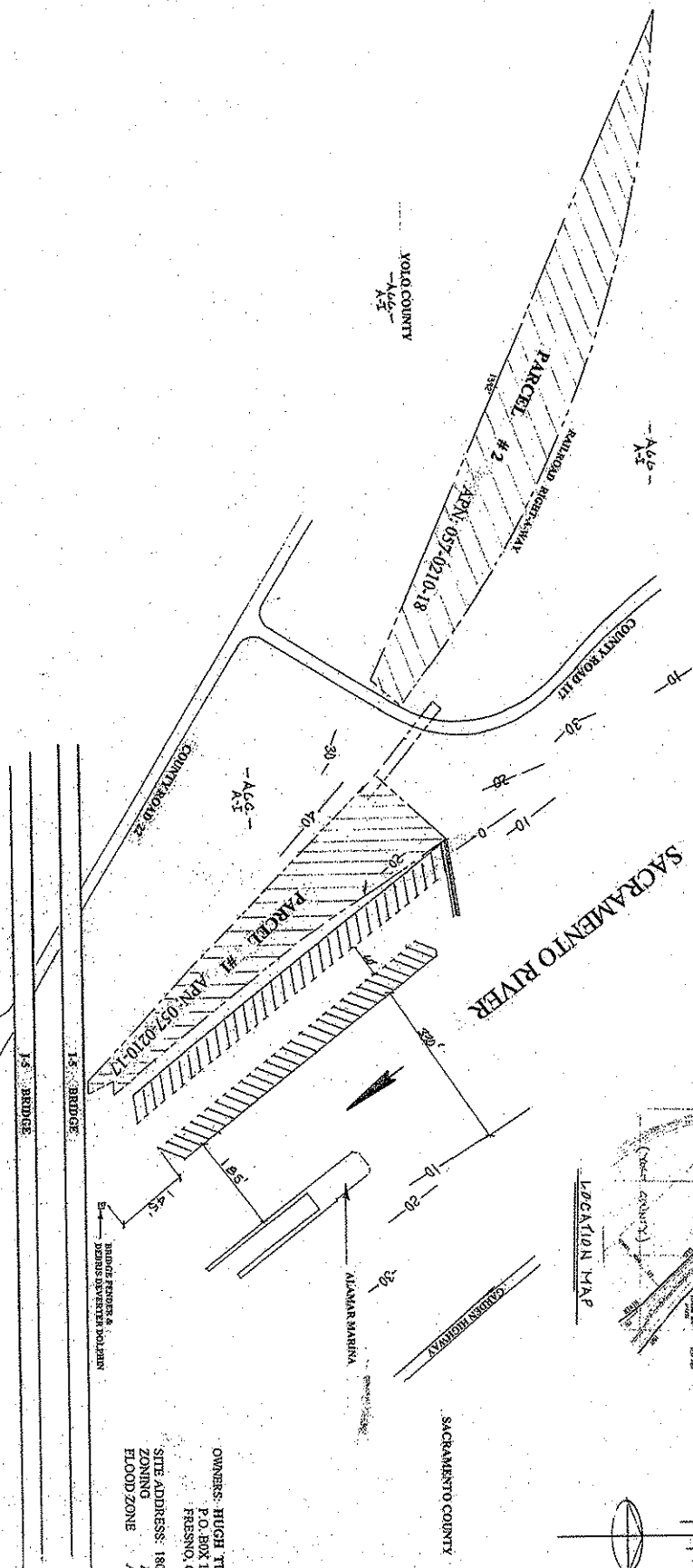
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- Attachment G** - Aerial Photo

ZONING CHANGE REQUEST MARINA EXPANSION

ELKHORN MARINA
1809 COUNTY RD. 117
YOLO COUNTY, CA
A "HUGH TURNER"
PROJECT



OWNERS: HUGH TURNER
P.O. BOX 12426
FRESNO, CALIFORNIA 95691
SITE ADDRESS: 18095 CR 117
ZONING: A-1
FLOOD ZONE: A1B

SHEET INDEX

| | |
|-----------------------|--|
| TITLE SHEET | |
| KEY MAP SHEET | |
| BOAT STORAGE & OFFICE | |
| OFFICE ROAD & DOCKS | |
| DOCKS & DOCK SHEET | |
| PROPOSED ZONING | |
| CROSS SECTIONS SHEET | |

SITE PLAN

EXISTING ZONING: A-1
PROPOSED ZONING: C

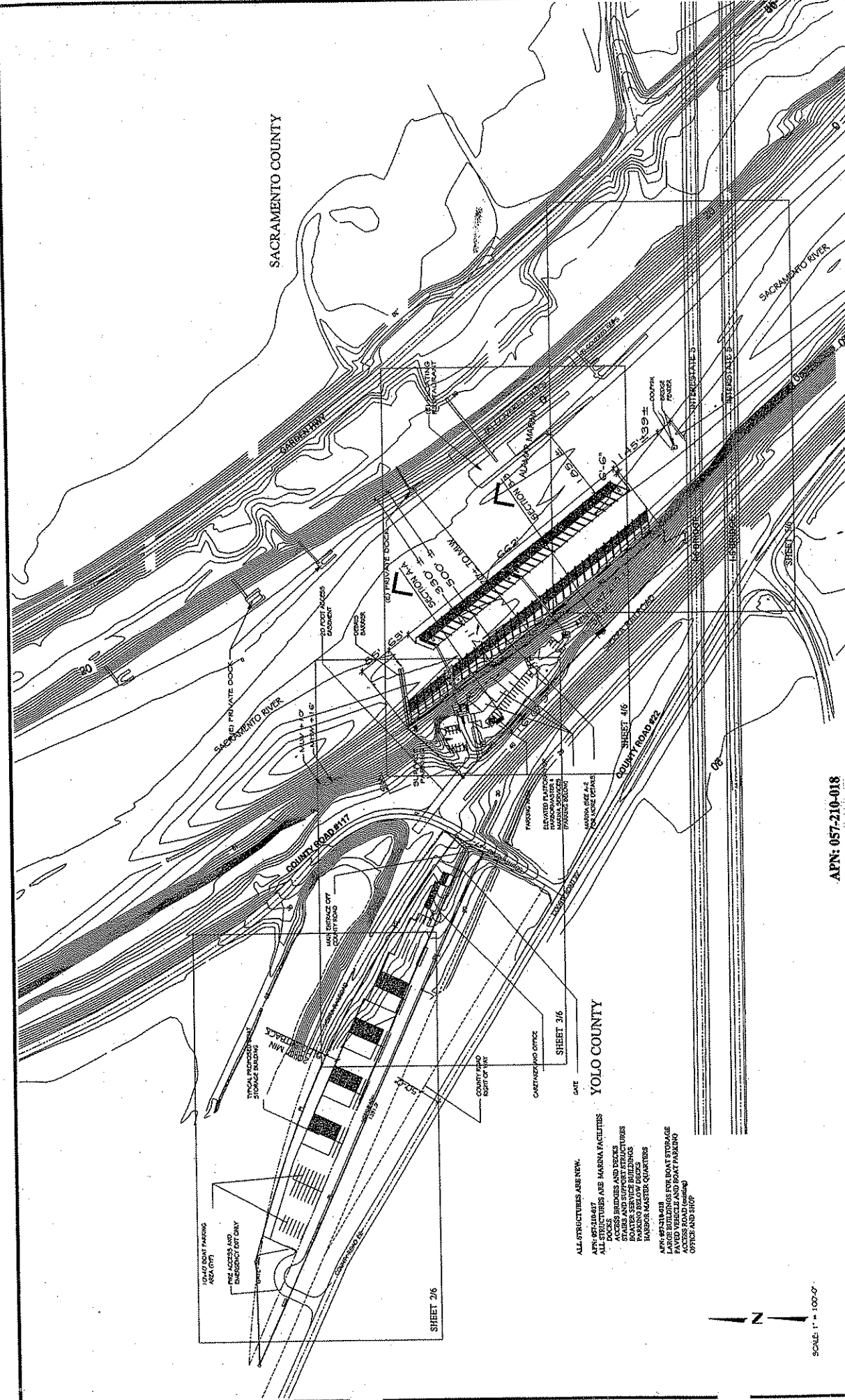
ACREAGE:
PARCEL #1
PARCEL #2
APN: 057-210-018
APN: 057-210-017

| | | | | | | | |
|--------------|-------|--------------|-----|--------|---------------|------|-------|
| DESIGNED BY: | DATE: | DESCRIPTION: | BY: | SCALE: | SUBMITTED BY: | RCE: | SHEET |
| DRAFTED BY: | | REVISION: | | | | | 1 |
| CHECKED BY: | | | | | | | of 1 |

NEWTON ASSOCIATES
ENGINEERING DESIGN
P.O. BOX 80273
SACRAMENTO, CALIFORNIA
(916) 433-8880

TITLE SHEET
ELKHORN MARINA
1809 COUNTY RD 117
YOLO COUNTY, CA
CALIFORNIA

Attachment A Site Plan



APN: 057-210-018
 APN: 057-210-017

ALL STRUCTURES ARE NEW.
 APN: 057-210-017
 ALL STRUCTURES ARE MARINA FACILITIES
 ACCESS BRIDGES AND DECKS
 STAIRS AND SIDE BUILDINGS
 PARKING BELOW DECK
 MARINA MASTER QUARTERS
 APN: 057-210-018
 LARGE BUILDINGS FOR BOAT STORAGE
 ACCESS ROADS (CONCRETE)
 OFFICE AND SHOP

SHEET 1 OF 6
 KEY MAP SHEET
 BEARHORN MARINA
 YOLO COUNTY, CA
 COUNTY OF

SUBMITTED BY:
 ROBERT R. NEWTON
 R.C.E. 15175

SCALE
 FIELD BOOKS
 JOB NO.
 DRAWING NO.

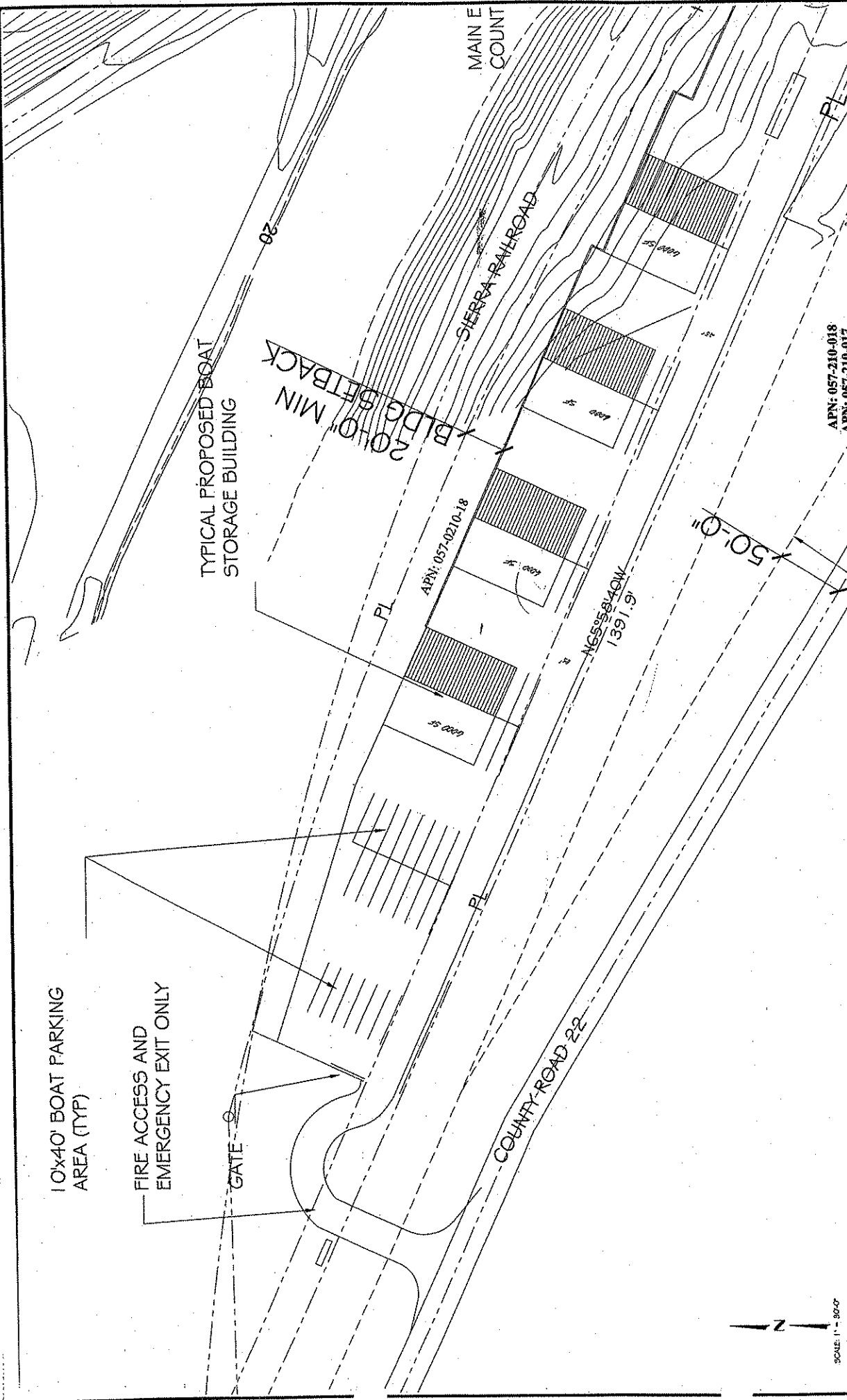
NEWTON ASSOCIATES
 ENGINEERING DESIGN
 P.O. BOX 160273
 SACRAMENTO, CALIFORNIA
 (916) 481-8850

| REV. | DATE | DESCRIPTION | BY | APP'D |
|------|------|-------------|----|-------|
| | | | | |
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DESIGNED BY:
 DRAFTED BY:
 CHECKED BY:

BENCH MARK: ELEV. DATUM:
 DESCRIPTION:

SCALE: 1" = 100'-0"



SCALE: 1" = 30'-0"

DESIGNED BY: _____

DRAWN BY: _____

CHECKED BY: _____

| AREA | DATE | DESCRIPTION | BY | APP'D |
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NEWTON ASSOCIATES
ENGINEERING DESIGN
PO BOX 160273
SACRAMENTO, CALIFORNIA
(916) 483-5880

FIELD BOOKS: _____

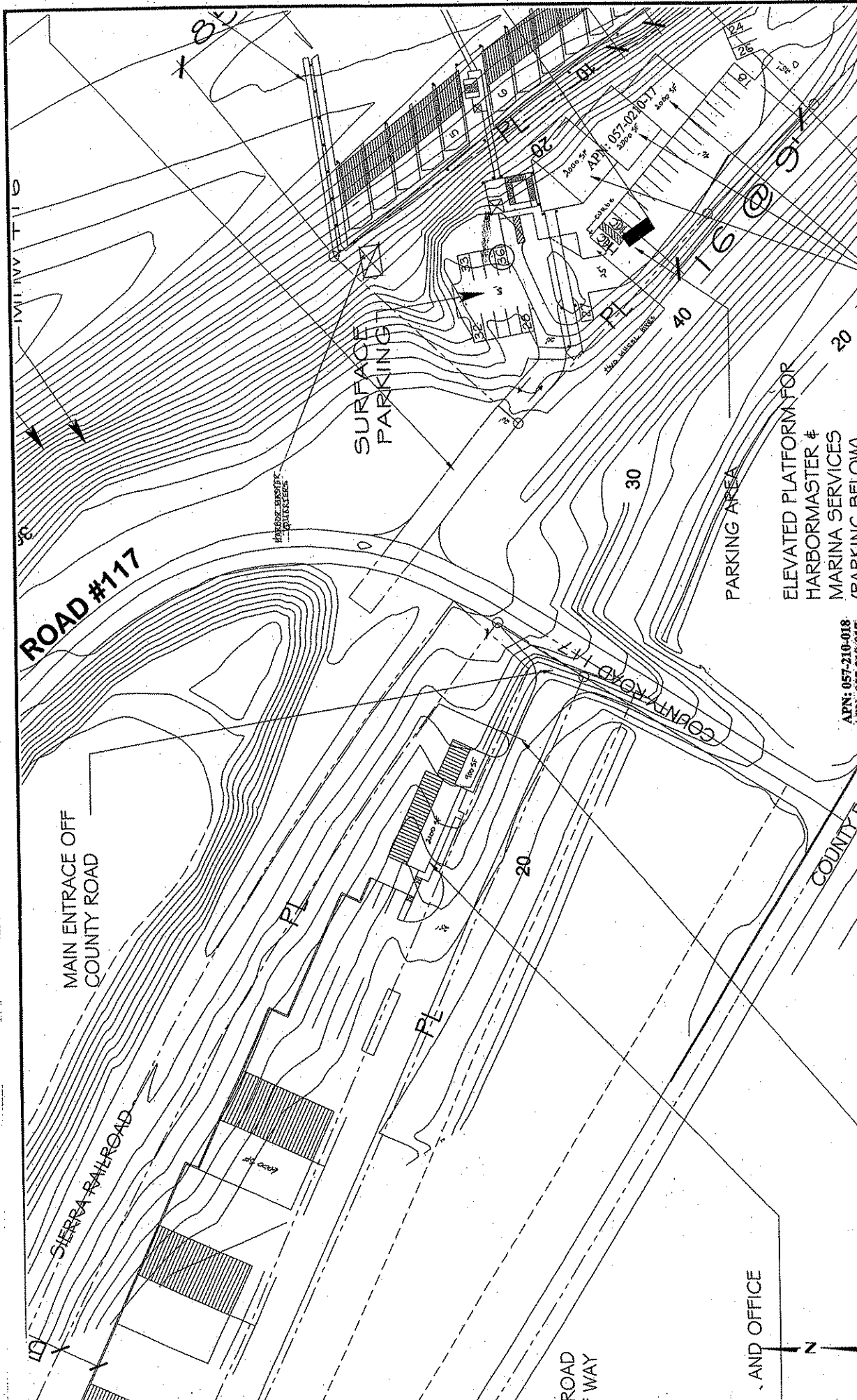
SCALE: 1" = 30'

SUBMITTED BY: ROBERT R. NEWTON R.C.E. 15175

APN: 057-210-018
APN: 057-210-017

BOAT STORAGE & OFFICE
ELKHORN MARINA
1899 COUNTY RD 117
YOLO COUNTY, CA
CALIFORNIA

SHEET 2 OF 6



SCALE: 1" = 300'

DESIGNED BY: _____
 DRAFTED BY: _____
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BENCH MARK: ELEV. _____ DATE: _____
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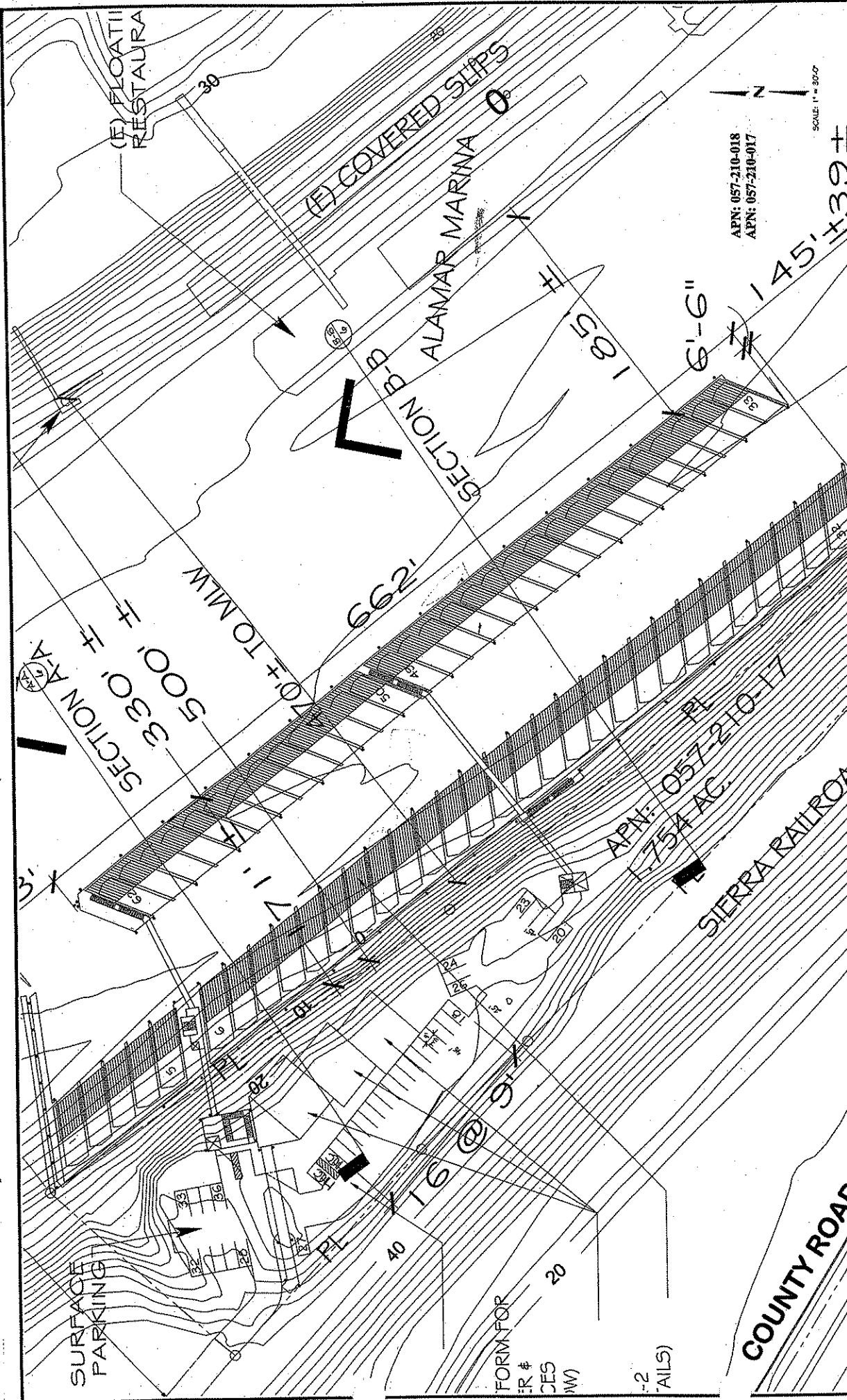
NEWTON ASSOCIATES
 ENGINEERING DESIGN
 PO BOX 760273
 SACRAMENTO, CALIFORNIA
 (916) 483-3880

APN: 057-210-018
 APN: 057-210-017

FIELD BOOKS: _____
 SCALE: _____
 SHEETS: 3 OF 6

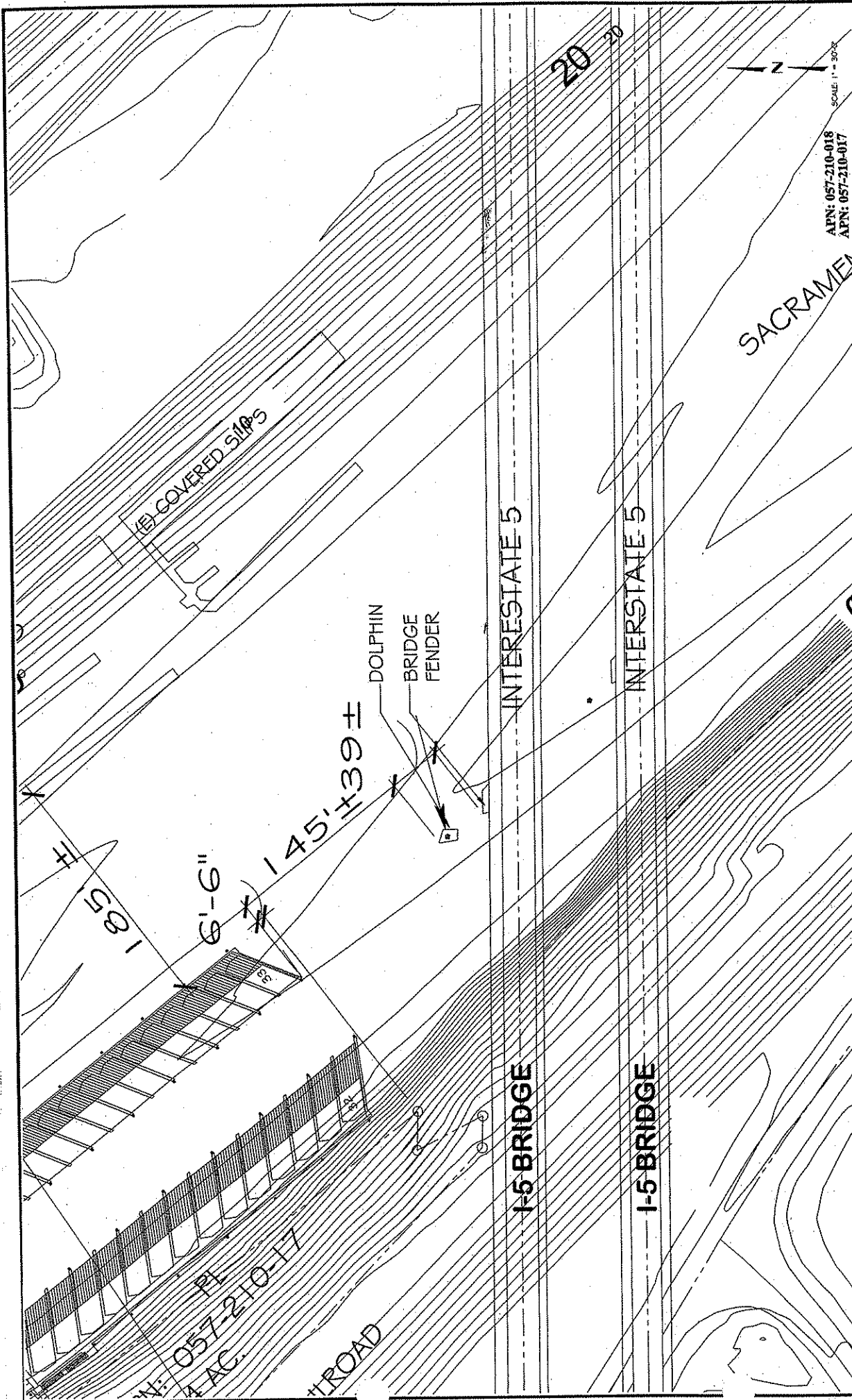
OFFICE, ROADS & DOCKS
 ELKHORN MARINA
 189 COUNTY RD. 117
 YOLO COUNTY, CA
 CALIFORNIA

SUBMITTED BY: ROBERT R. NEWTON R.C.E. 15175



| | | | |
|--------------|------------------------|-------|---|
| DESIGNED BY: | BRIDGES & DOCK SHEET | SHEET | 4 |
| DRAFTED BY: | ELIZABETH MARINA | OF | 6 |
| CHECKED BY: | 1800 COUNTY ROAD 117 | | |
| | YUBO COUNTY, CA | | |
| | COUNTY OF | | |
| APPROVED: | APN: 057-210-018 | | |
| | APN: 057-210-017 | | |
| | APN: 057-210-017 | | |
| | 1.754 AC. | | |
| | 145' x 39'± | | |
| | 6'-6" | | |
| | SCALE: 1" = 30'-0" | | |
| | FIELD BOOKS | | |
| | SCALE | | |
| | SUBMITTED BY: | | |
| | ROBERT R. NEWTON | | |
| | R.C.E. 18175 | | |
| | NEWTON ASSOCIATES | | |
| | ENGINEERING DESIGN | | |
| | PO BOX 160273 | | |
| | SACRAMENTO, CALIFORNIA | | |
| | (916) 483-9880 | | |
| | BENCH MARK: | | |
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APN: 057-210-018
 APN: 057-210-017
 SCALE: 1" = 30'-0"

SACRAMENTO COUNTY
 ELKHORN MARINA
 1899 COUNTY RD. 117
 COUNTY OF CALIFORNIA

SHEET 5 OF 6

DOCK SHEET CONT.

SUBMITTED BY: ROBERT R. NEWTON
 R.C.E. 15175

SCALE: _____
 SUB NO. _____
 DRAWING NO. _____

FIELD BOOKS: _____

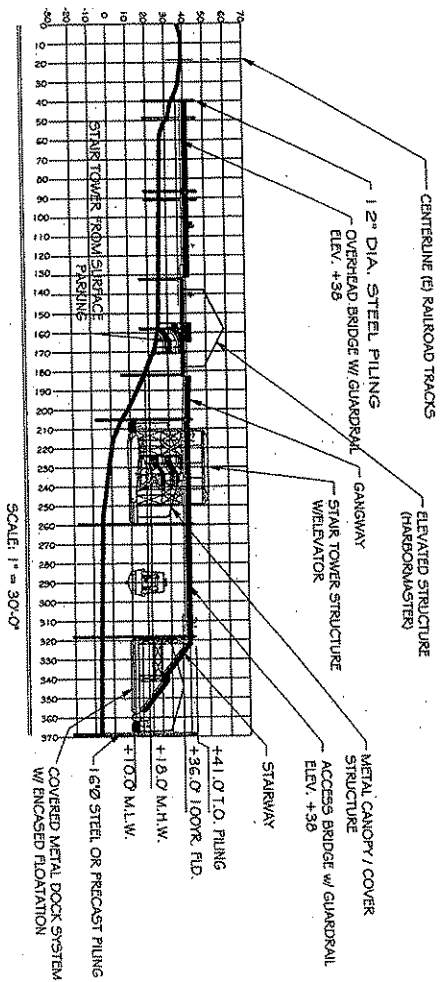
NEWTON ASSOCIATES
 ENGINEERING DESIGN
 P.O. BOX 162723
 SACRAMENTO, CALIFORNIA
 (916) 483-9860

MA

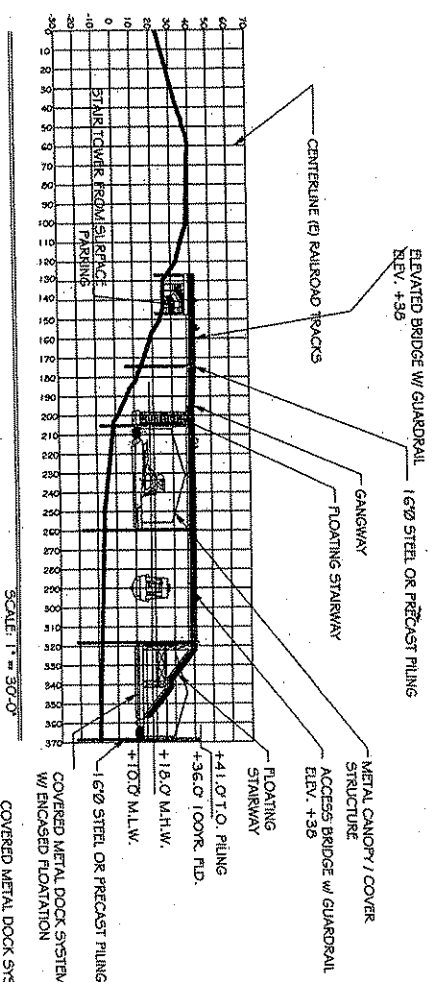
| REV. DATE | DESCRIPTION | BY | DATE |
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BENCH MARK: ELEV. _____ DATUM: _____
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CROSS-SECTION A-A
 A-A
 6

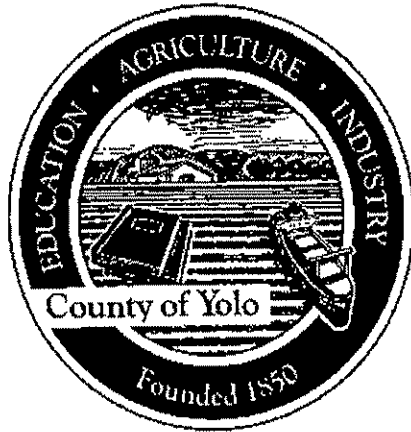


CROSS-SECTION B-B
 B-B
 6

SCALE: 1" = 30'-0"

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|--|-----------|-------------|----|--------|-------------------------|-------------------|---|-------------|-------|-----------------------------------|--------------|---|-----------------------|
| DESIGNED BY: DRAWN BY: CHECKED BY: | REV. DATE | DESCRIPTION | BY | APP'D. | BENCH MARK: ELEV. _____ | DESCRIPTION: DATA | NEWTON ASSOCIATES ENGINEERING DESIGN P.O. BOX 150223 SACRAMENTO, CALIFORNIA (916) 483-9890 | FIELD BOOKS | SCALE | SUBMITTED BY: ROBERT R. NEWTON | R.C.E. 15175 | CROSS SECTIONS SHEET ELKHORN MARINA 1660 COUNTY RD. #17 YOLO COUNTY, CA CALIFORNIA | SHEET 5 OF 5 |
| | | | | | | | | | | | | | |

Attachment B Elevation



**YOLO COUNTY PLANNING & PUBLIC WORKS
DEPARTMENT**

**Newton Associates
Marina/Road Abandonment**

May 9, 2008

**INITIAL STUDY/ MITIGATED NEGATIVE DECLARATION
ZONE FILE # 2007-049 and 2007-050**

**Attachment C
Initial Study/Mitigated Negative Declaration**

Negative Declaration / Initial Environmental Study

1. **Project Title:** Zone Files 2007-049 and 2007-050 (Newton/Turner)
2. **Lead Agency Name and Address:**
Yolo County Planning and Public Works Department
292 West Beamer Street
Woodland, CA 95695
3. **Contact Person and Phone Number:** Craig Baracco at (530) 666-8833 or
craig.baracco@yolocounty.org
4. **Project Location:** The project site is located both east and west of the intersection of County Roads 117 and 22, just north of the Interstate 5 Sacramento River Bridge on the west bank of the Sacramento River, five miles to the east of the City of Woodland. (APNs: 057-210-17 & -18).
5. **Project Sponsor's Name and Address:**

| | |
|--------------------------|---------------------|
| Applicant: Robert Newton | Owner: Hugh Turner |
| P.O. Box 160273 | 169 North Valentine |
| Sacramento, CA 95816 | Fresno, CA |
6. **General Plan Designation(s):** Agriculture
7. **Zoning** A-1 (General Agriculture).
8. **Description of the Project:** Conditional Use Permit to allow the construction and operation of a marina and associated buildings. Abandonment of a section of public right-of-way. See further details in "Project Description," below.
9. **Surrounding Land Uses and Setting:** The Sacramento River lies to the east of the project site. An existing marina, which includes boat launch and refueling facilities, is currently in operation on the eastern shore of the river in Sacramento County directly east of the project site. All parcels surrounding the project are zoned A-1 (General Agriculture) and designated Agriculture in the Yolo County General Plan. A residence is located approximately 400 feet north of the project location. No other development exists on adjacent parcels. A rail line lies adjacent to the project site. The I-5 bridge over the Sacramento River is directly south of the project.
10. **Other public agencies whose approval is required:** State Department of Fish and Game, US Fish and Wildlife Service, State Lands Commission, Army Corp of Engineers, Department of Boats and Waterways, National Marine Fisheries Service.
11. **Other Project Assumptions:** The Initial Study assumes compliance with all applicable State, Federal, and Local Codes and Regulations including, but not limited to, County of Yolo Improvement Standards, the California Building Code, the State Health and Safety Code, and the State Public Resources Code.

PROJECT DESCRIPTION

The project (ZF2007-049) applicant proposes to remove two existing dock sections and replace them with a new 62-slip marina on the west bank of the lower Sacramento River, just north of the Interstate 5 freeway crossing in Yolo County. The marina will be used for year-round berthing of recreational boats. No launching facilities, refueling, or sewage pumpout facilities are proposed. A harbormasters office and elevated platform for marina services, and 36- space parking area will be constructed on the landward side of the levee (parcel 057-210-17). A boat parking area with 21 ten feet by forty feet spaces, five boat storage buildings 6,000 square feet in size, and a caretakers office (2,900 square feet) will be constructed on the west side Country Road 117 (APN: 057-210-18).

The marina facilities consist of two floating dock sections that will be accessed by an elevated landing and two bridge and stairway structures. The dock section farthest from shore will be located approximately 170 feet from shore and measure 490 feet long by 46 feet wide. The dock section closest to shore will be located approximately 70 feet from shore and measure 710 feet long and 50 feet wide. The docks will be constructed of galvanized metal with encased flotation. A sheet pile debris barrier will extend 80 feet from shore at the upstream (north) end of the marina. The total water surface area covered by the dock structures and berthed vessels will be approximately 1.6 acres.

A total of 210 16-inch diameter steel piles will be driven to support the docks and access structures. A total of 150 piles will be driven into the bed of the Sacramento River using a barge-mounted pile driver. The remaining 60 piles will be driven out of the water on shore.

There is an existing domestic water well and septic system on parcel APN 057-210-17, which served a previously demolished home. These existing systems may have to be upgraded or supplemented though the construction of a new well or septic system under permit from Yolo County Environmental Health.

The marina's hours of operation will be from 7:00 am to 10:00 pm. The marina will have three full-time employees. The project is expected to generate 216 vehicle trips per day at full capacity, based on projections, and will require up to three truck deliveries per day. Security will be provided with a fenced perimeter and gate.

A request to abandon a section of public right-of-way thirty feet in width and 1400 feet in length that runs along the southern border of parcel APN 057-210-18 is also included in this project (ZF 2007-050). The applicant is assuring that this section of right-of-way should have been merged when Cal-trans reconveyed the property back to Yolo County.

See attached site plan and application materials.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project. These issues have been discussed in detail below, and mitigation measures have been recommended to reduce impacts to a less than significant level.

- | | | |
|--|---|--|
| <input type="checkbox"/> Aesthetics | <input checked="" type="checkbox"/> Agricultural Resources | <input checked="" type="checkbox"/> Air Quality |
| <input checked="" type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology / Soils |
| <input type="checkbox"/> Hazards & Hazardous Materials | <input checked="" type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Land Use / Planning |
| <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise | <input type="checkbox"/> Population / Housing |
| <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation | <input checked="" type="checkbox"/> Transportation / Traffic |
| <input type="checkbox"/> Utilities / Service Systems | <input type="checkbox"/> Mandatory Findings of Significance | |

DETERMINATION:

On behalf of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to the earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.



Planner's Signature

Craig Baracco

Planner's Printed name

5/9/08
Date

PURPOSE OF THIS INITIAL STUDY

This Initial Study has been prepared consistent with CEQA Guidelines Section 15063, to determine if the project as described herein may have a significant effect upon the environment.

EVALUATION OF ENVIRONMENTAL IMPACTS

A brief explanation is required for all answers.

"No Impact" answers are adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g. the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards.

A determination that a "Less than Significant Impact" would occur is appropriate when the project could create some identifiable impact, but the impact would be less than the threshold set by a performance standard or adopted policy. The initial study should describe the impact and state why it is found to be "less than significant."

"Potentially Significant Impact" is appropriate if there is substantial evidence that an effect is significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

"Potentially Significant Unless Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less than Significant Impact". The initial study must describe the mitigation measures and briefly explain how they reduce the effect to a less than significant level.

Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration, pursuant to Section 15063 (c)(3)(D) of the California Government Code. Earlier analyses are discussed in Section XVII at the end of the checklist.

Preparers are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g. general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated. A source list should be attached and other sources used or individual contacts should be cited in the discussion.

I. AESTHETICS

| Would the project: | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|-------------------------------------|--------------------------|
| a) Have a substantial adverse effect on a scenic vista? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b) Substantially damage scenic resources, including, but not limited to, trees, rock croppings, and historic buildings within a state scenic highway? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c) Substantially degrade the existing visual character or quality of the site and its surroundings? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Discussion of Impacts

- a) *Less than significant.* The project is located just north of Interstate Highway 5. The portion within view of the project is not designated as a scenic highway. Although the project is not located within view of any scenic highways or vistas, the view of the Sacramento River from the I-5 Bridge may be considered a scenic view by some.
- b) *Less than significant.* See (a) above. Approximately 20 mature trees exist on the site and will need to be removed to allow for the construction of boat storage buildings. The adjoining roadways and highways are not listed or designated as a scenic highway.
- c) *Less Than Significant With Mitigation Incorporated.* The project site is currently undeveloped and contains bare ground and existing vegetation. The project will include the construction of a number of buildings, including boat storage buildings, a caretaker office, a harbormaster platform and two parking areas. A sixty-two slip marina will be constructed on the surface of the Sacramento River. This new construction will substantially change the visual character of the existing land and water. The proposed is consistent with existing conditions in the area, as a similar marina facility already exists on the Sacramento County side of the river, directly east of the project. The Sacramento River is a well-known scenic area and the project site is highly visible to members of the traveling public along Interstate 5. To prevent significant degradation of the visual character of the site and its surroundings, the following mitigation measure is required.

Mitigation Measure 1

- (a) *A condition of the Use Permit shall require the owner-operator to ensure that all boats docked at the marina shall be kept in good working order and repair. Non-operative or abandoned craft shall not be allowed to remain in dock. All boats, buildings, and structures shall be kept clean and free from graffiti, trash and visual clutter. All trash enclosures and storage areas will be screened from the viewing public.*
- (b) *Prior to issuance of building permits, the applicant shall submit a detailed landscaping and irrigation plan for the project site to be approved by the Planning and Public Works Director. A variety of native plants, shrubs and grasses shall be used to enhance the visual character of the site and to visually integrate the project into the surrounding area.*
- d) *Less Than Significant Impact.* The project would generate additional light and glare into a rural area currently limited in artificial nighttime light sources. However, lighting associated with any new development would be required to meet the design criteria of the Yolo County Code requiring that lighting must be directed away from neighboring properties and the night sky.

II. AGRICULTURAL RESOURCES:

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:

| | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|--|--------------------------------|--|-------------------------------------|-------------------------------------|
| (a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| (b) Conflict with existing zoning for agricultural use or a Williamson Act contract? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| (c) Involve other changes in the existing environment which due to their location or nature, could result in conversion of farmland, to non-agricultural use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Discussion of Impacts

- (a) *Less Than Significant Impact.* The project parcel is currently zoned A-1 or Agricultural General. The property is not currently in active agricultural production. Under the Yolo County Zoning Code boating and associated activities falls under the definition of "rural recreation." Rural recreation is defined as outdoor sporting or leisure activities that require large open space areas and do not have any significant detrimental impact on agriculture lands in the general vicinity of the activity. If the rural recreation involves the use of permanent builds such as found in this project, a conditional use permit is required. The project is a conditional use allowed under A-1 zoning and consistent with an agricultural setting.
- (b) *Less Than Significant Impact.* The property is not currently in active agricultural production. The proposed project would not conflict with existing zoning for agricultural use or with any Williamson Act contracts, since the site is not under contract and the use is conditionally allowed under A-1 zoning.
- (c) *No Impact.* A boat marina is a rural recreational use compatible with the presence of agriculture on surrounding lands. The project will not impact any existing agricultural use nor induce conversion of agricultural lands to a non-agricultural use.

III. AIR QUALITY:

Where applicable, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

| | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|-------------------------------------|-------------------------------------|
| a) Conflict with or obstruct implementation of the applicable air quality plan? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| d) Expose sensitive receptors to substantial pollutant concentrations? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| e) Create objectionable odors affecting a substantial number of people? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Discussion of Impacts

a, b) *Less than Significant Impact.* The project is within the Yolo-Solano Regional Air Quality Management District (YSAQMD). The district is currently a non-attainment area for ozone (State and Federal ambient standards) and Particulate Matter (State ambient standards). While air quality plans exist for ozone, none exists (or is currently required) for PM₁₀. Yolo County is in an attainment area for carbon monoxide (the State and Federal ambient standards are met), since Yolo County has relatively low background levels of carbon monoxide. The project would contribute incrementally to the non-attainment of these air quality standards. There would be short-term construction impacts as well as long-term mobile source (traffic) emissions due to new customer and employee traffic. The project could substantially conflict with or obstruct implementation of the Sacramento Area Regional Ozone Attainment Plan (November, 1994), or the goals and objectives of the County's General Plan.

Effects on air quality can be divided into short-term construction-related effects and those associated with long-term aspects of the project, e.g., auto trips generated by marina users.

The YSAQMD sets threshold levels for use in evaluating the significance of criteria air pollutant emissions from project-related mobile and area sources in the *CEQA Air Quality Handbook* (YSAQMD, 2007). These significance thresholds include:

Reactive Organic Gases (ROG): 54 pounds per day (ppd)
 Oxides of Nitrogen (NOx): 54 ppd
 Particulate Matter (PM₁₀): 80 ppd

The YSAQMD also indicates the "trigger levels" for specific land uses that are generally associated with the threshold levels. For example, a subdivision of 340 single-family units, or an industrial park of 465,000 square feet, or a supermarket of 18,000 square feet, are all assumed to generate emissions that exceed the thresholds noted above.

The marina can be expected to generate an average of 3.48 vehicle trips per day per berth. With 62 slips planned, the project would generate approximately 216 vehicle trips per day. This traffic would create air emissions equal to 1.75 daily pounds of ROG, 2.47 pounds of NOx, and .47 pounds of PM₁₀. These air emissions are lower than the thresholds set by the YSAQMD for ROG, NOx, and PM₁₀.

c) *Less than Significant Impact.* Development projects are considered cumulatively significant by the YSAQMD if the following two conditions are met:

1. The project requires a change in the existing land use designation (i.e., general plan amendment, rezone); and
2. Projected emissions (ROG, NO_x, or PM₁₀) of the project are greater than the emissions anticipated for the site if developed under the existing land use designation.

Under these criteria, the proposed marina would not be considered cumulatively significant since a General Plan Amendment or rezone would not be required and projected emissions for the project would be consistent with emissions anticipated from the existing land use designation.

- d) *No Impact.* The project is not located near a school or any other sensitive receptors.
- e) *Less than Significant Impact.* Some objectionable odors may result from the operation, maintenance and cleaning of boats. However, the project is located in a rural setting, with very few people nearby and no significant population that could be effected.

IV. BIOLOGICAL RESOURCES

| Would the project: | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|--|--------------------------------|--|-------------------------------------|-------------------------------------|
| a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b) Have a substantial adverse effect on any riparian habitat or sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native residents or migratory wildlife corridors or impede the use of native wildlife nursery sites? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Discussion of Impacts

a)b)c)d) *Less Than Significant With Mitigation Incorporated.* According to a biological study prepared by the applicant (*Biological and Essential Fish Habitat Assessment for the Elkhorn Marina Project*, Jones & Stokes, November 2007), the California Natural Diversity Data Base identifies five "special status species" that may be found in the vicinity of the project site (Table 1). "Special status species" includes those that are listed as "threatened" or "endangered" and are afforded legal protection under either (or both) the California and U.S. Endangered Species Acts (ESAs), as well as species that lack legal protection under the ESAs but have been characterized as "sensitive" by state resource agencies or organizations (such as the California Native Plant Society) with acknowledged expertise.

The project is located in an area that is a known habitat for the Swainson's hawk. The county participates in the Yolo County Joint Powers Agency, which requires mitigation for every acre of Swainson's hawk habitat land that is developed. The project would be required to pay a fee of \$8,660 per acre. The fees are used to purchase conservation easements on habitat lands used by the hawk.

The project area has been identified as an area of critical habitat for three of the five special status species as indicated in the table below.

**TABLE 1
SPECIAL STATUS SPECIES**

| Species | Status/Critical Habitat? |
|---|--------------------------|
| <u>Fish</u> Sacramento River winter-run Chinook salmon ESU (<i>Oncorhynchus tshawytscha</i>) | Endangered/Yes |
| Central Valley spring-run Chinook salmon ESU (<i>O. tshawytscha</i>) | Threatened/Yes |
| Central Valley Steelhead DPS (<i>O. mykiss</i>) | Threatened/Yes |
| Southern DPS of North American green sturgeon (<i>Acipenser medirostris</i>) | Threatened/No |
| Central Valley fall-/late fall-run Chinook salmon ESU (<i>O. tshawytscha</i>) | Threatened/No |

Source: *Biological and Essential Fish Habitat Assessment for the Elkhorn Marina Project*, Jones & Stokes, November 2007

Abbreviations Key:

ESU = Evolutionary Significant Units
DPS = Distinct Population Segments

The project has the potential to significantly impact several special status species and/or their critical habitat unless the following mitigation measure are implemented:

Mitigation Measure 2:

Conditions of Approval for the Use Permit shall include:

- (a) The project shall be required to pay a fee of \$8,660 per disturbed acre to the Yolo County Joint Powers Agency for mitigation for the loss of Swainson's hawk habitat.
- (b) All in-water construction activities in the Sacramento River shall be limited to the period June 1 through October 31 to avoid the primary migration periods of listed salmonids.
- (c) In-water pile driving will be restricted to the period July 1 through September 30 to avoid or minimize exposure of adults and juvenile salmonids to underwater pile driving sounds.
- (d) Pile driving shall be conducted by barge to minimize disturbance of riparian habitat.
- (e) Following construction, native riparian vegetation shall be planted on disturbed or exposed soils to control erosion and offset any losses of vegetation on the waterside slope of the levee.
- (f) The owner/operator shall enforce a no-wake zone for boats operating in and in the vicinity of the marina through the posting of signs and other mechanisms.

- e) *Less than Significant Impact.* There are no other biological resources on the site, such as existing heritage oak trees, that would be affected by development.
- f) *No Impact.* The updated plan would not conflict with the provisions of any adopted Habitat Conservation Plan (HCP), Natural Community Conservation Plan (NCCP), or other approved local, regional, or state habitat conservation plan.

V. CULTURAL RESOURCES

| Would the project: | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|-------------------------------------|-------------------------------------|
| a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Disturb any human remains, including those interred outside of formal cemeteries? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Discussion of Impacts

- a) *No impact.* The project site is not known to have any historical significant or significant characteristics as defined by the criteria within the CEQA Guidelines. The project site is currently vacant and has no structures of any kind.
- b) *No Impact.* The project site is not known to include any archaeologically significant characteristics as defined by the criteria in the CEQA Guidelines.
- c) *No impact.* No paleontological resources are known or suspected and no unique geologic features exist on the project site.
- d) *Less than Significant Impact.* No human remains are known or predicted to exist in the project area. However, the potential exists during construction to uncover previously unidentified resources. Section 7050.5 of the California Health and Safety Code states that, when human remains are discovered, no further site disturbance shall occur until the county coroner has determined that the remains are not subject to the provisions of Section 27491 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of any

death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, in the manner provided in Section 5097.98 of the Public Resources Code. If the coroner determines that the remains are not subject to his or her authority and the remains are recognized to be those of a Native American, the coroner shall contact the Native American Heritage Commission within 24 hours.

VI. GEOLOGY AND SOILS

| Would the project: | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|--|--------------------------------|--|-------------------------------------|-------------------------------------|
| a) Expose people or structures to potential substantial adverse effects including the risk of loss, injury, or death involving rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known Fault? Refer to Division of Mines and Geology Special Publication 42. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b) Expose people or structures to potential substantial adverse effects including the risk of loss injury, or death involving strong seismic ground shaking? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c) Expose people or structures to potential substantial adverse effects including the risk of loss injury, or death involving seismic-related ground failure, including liquefaction? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| d) Expose people or structures to potential substantial adverse effects including the risk of loss, injury, or death involving landslides? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) Result in substantial soil erosion or the loss of topsoil? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| f) Be located on a geologic unit or soil that is unstable or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| g) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| h) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Discussion of Impacts

- a) *Less than Significant Impact.* The project site can be expected to experience moderate to strong ground shaking during future seismic events along major active faults throughout Northern California or on smaller active faults located in the project vicinity. However, the project will comply with all applicable Uniform Building Code requirements, in order to obtain Building Permit approval from the Yolo County Planning and Public Works Department.
- b) *Less than Significant Impact.* See response to (a), above. Any major earthquake damage on the project site is likely to occur from ground shaking and seismically related ground and structural failures. Local soil conditions, such as soil strength, thickness, density, water content, and firmness of underlying bedrock affect seismic response. Seismically induced shaking and some damage should be expected to occur during an event but damage should be no more severe in the project area than elsewhere in the region. Framed construction on proper foundations constructed in

accordance with Uniform Building Code requirements is generally flexible enough to sustain only minor structural damage from ground shaking. Therefore, people and structures would not be exposed to potential substantial adverse effects involving strong seismic ground shaking.

- c) *Less than Significant Impact.* Geologic hazard impacts that are associated with expansive soils include long-term-differential settlement and cracking of foundations, disruption and cracking of paved surfaces, underground utilities, canals, and pipelines. However, County records show that the project is located on soils rated "normal" or non-expansive.
- d) *No impact.* The project site is relatively level and approval of the project would not expose people or structures to potential landslides.
- e) *Less Than Significant Impact.* The project will induce the construction of a number of new buildings including six boat storage buildings, an administration office, a harbormaster building and the paving of two parking areas. Existing Yolo County regulations require a Storm Water Pollution Prevention Plan be obtained before any grading can occur and requires the use of soil erosion control techniques which in turn would reduce the possibility of any significant soil erosion from occurring.
- f) *Less Than Significant Impact.* See comments in VI (a-d) above.
- g) *Less Than Significant Impact.* See comments in VI (c) above. County records show that the soils upon which the project is located are rated "normal" or non-expansive.
- h) *Less Than Significant Impact.* The project will be served by a septic system to be constructed on-site. The septic system will be permitted through Yolo County Environmental Health and will need to meet all the requirements of the Yolo County Health Code.

VII. HAZARDS AND HAZARDOUS MATERIALS

| Would the project: | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|--|--------------------------------|--|-------------------------------------|-------------------------------------|
| a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working within the project area? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Discussion of Impacts

- a) *Less than Significant Impact.* A number of substances considered hazardous which are used in the cleaning and maintenance of boats could be used and stored on the site. A condition of approval requires that the applicants meet all the requirements of a Hazardous Materials Business Plan, including safe use, storage, and disposal of all hazardous material, as administered by Yolo County Hazardous Materials Division. The project does not include refueling facilities; nor there will be storage of fuel on the site. The total volume of hazardous materials is expected to be low, and therefore less than significant.
- b) *Less than Significant Impact.* Construction of the boating facility will involve the use of heavy equipment, which uses small amounts of oils and fuels and other potentially flammable substances typically associated with such activities. The proposed project would not, however, result in a significant risk of explosion or accidental release of hazardous substances and is, therefore, considered to have a less than significant impact. See (a), above.
- c) *No impact.* The project is not located within a quarter mile of a school.
- d) *No impact.* The project is not located on a site that is included on a list of hazardous materials sites compiled by the Yolo County Environmental Health Department-Hazardous Waste Site Files pursuant to Government Code 65962.5. The proposed project would not expose people to known existing sources of potential health hazards.
- e) *Less than Significant Impact.* The project is located approximately 1.5 miles due west of the Sacramento International Airport. However, take-offs and landings from Sacramento International run north-south and the project is not within the runway clearance zones established to protect the adjoining land uses in the vicinity from noise and safety hazards associated with aviation accidents.
- f) *No impact.* The project site is not located within the vicinity of a private airstrip.
- g) *No impact.* The project would not interfere with any adopted emergency response or evacuation plans.
- h) *No impact.* The project site is not located in a wildland area and, therefore, would not be at risk from wildland fires.

VIII. HYDROLOGY AND WATER QUALITY

| Would the project: | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|-------------------------------------|--------------------------|
| a) Violate any water quality standards or waste discharge requirements? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b) Significantly deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

- | | | | | |
|---|--------------------------|-------------------------------------|-------------------------------------|--------------------------|
| c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| f) Otherwise substantially degrade water quality? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| h) Place within a 100-year flood hazard area structures, which would impede or redirect flood flows? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| j) Inundation by seiche, tsunami, or mudflow? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Discussion of Impacts

a) c) e) f) *Less than Significant Impact With Mitigation Incorporated.* The project site does not have access to any existing or proposed storm water drainage systems. Implementation of the proposed project will result in modified drainage patterns to accommodate new construction and paving, potentially increasing the flow of stormwater off-site, including into the Sacramento River. Such stormwater flow has the potential of conveying contaminants and affecting water quality. The project has the potential to significantly impact water quality unless the following mitigation measure are implemented:

Mitigation Measure 3

- (a) *As a Condition of Approval of the use permit, the applicant shall obtain a General Construction Activity Stormwater Permit (SWPPP) and a National Discharge Elimination System (NPDES) permit. The permits are required to control both construction and operational activities that may adversely affect water quality.*
- (b) *The applicant shall utilize Best Management Practices (BMPs) to prevent pollution from entering the Sacramento River. Such BMPs should include, but no be limited to:*
 - i. *Storing materials and equipment to prevent spills or leaks.*
 - ii. *Developing and implementing a spill prevention and cleanup plan*
 - iii. *Installing traps, filter, or other devices to prevent contaminants from leaving the site and entering the Sacramento River; and using barriers, such as strawbales or plastic, to minimize the amount of uncontrolled runoff that could exit the site.*
- (c) *The applicant shall submit a grading and drainage plan for the site for review and approval of County Public Works.*

b) *Less than Significant Impact.* The project will be served thought with an on-site well. There is an existing well on the property and a new well may need to be constructed to serve increased need. The amount of domestic water use would not exceed the recharge capacity of the agricultural land.

The domestic well will operate under permit form Yolo County Environmental Health and meet all the requirements of County and State Health Codes.

- g, h) *Less Than Significant With Mitigation Incorporated.* Large portions of the project site are located within the 100-year floodplain, as designated by the Federal Emergency Management Agency. A smaller section of property is located in the 500-year floodplain.

Mitigation Measure 4

(a) *As a Condition of Approval of the use permit, the applicant shall be required to either raise all proposed buildings out of the 100-year flood hazard area by elevating the pads of the buildings so that the finished flood elevations would be one foot above the base flood elevations or to construct the buildings to dry-proofing standards as required by the California Building Code and Federal Emergency Management Agency standards.*

- i) *Less Than Significant Impact.* The project site is not located immediately down stream of a dam, but is located down stream from the Shasta dam, which could expose individuals to risk from flooding. However the likelihood of such a dam failure should be considered highly unlikely, and is less than significant in its impact.
- j) *Less Than Significant Impact.* While at least theoretically possible, the Sacramento River is generally not considered a sufficiently large body of water to pose a significant seiche or tsunami hazard. In addition, the project site is relatively flat and is not located near any physical or geologic features that would produce a mudflow hazard.

IX. LAND USE AND PLANNING

| Would the project: | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|------------------------------|-------------------------------------|
| a) Physically divide an established community? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Conflict with any applicable habitat conservation plan or natural community conservation plan? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Discussion of Impacts

- a) *No impact.* The project is located in a rural setting, not in or near any establish community.
- b) *No impact.* The project is consistent with the Yolo County General Plan, and with Yolo County zoning requirements for a conditional use.
- c) *No Impact.* The County does not have an adopted HCP or NCCP. As a result, the project would not conflict with any applicable habitat conservation plan or natural community conservation plan, nor would it conflict with the Yolo County Draft Natural Community Conservation Plan.

X. MINERAL RESOURCES

| Would the project: | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|--------------------|--------------------------------|--|------------------------------|-----------|
|--------------------|--------------------------------|--|------------------------------|-----------|

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Discussion of Impacts

- a) *No Impact.* The project site is not designated as an area of significant aggregate deposits, as classified by the State Department of Mines and Geology.
- b) *No Impact.* See above response to X (a).

XI. NOISE

| Would the project result in: | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|--|--------------------------------|--|-------------------------------------|-------------------------------------|
| a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b) Exposure of persons to or generation of excessive groundborne vibration noise levels? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| e) For a project located within an airport land use plan or, where such a plan has not been adopted within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Discussion of Impacts

- a) *Less than Significant Impact.* No persons as a result of the proposed project would be located near any significant sources of noise generation and would not be exposed to levels in excess of any standards established in the Yolo General Plan. Noise levels experienced by employees and customers would be consistent with the standards for rural areas found in the Yolo County General Plan.
- b) *Less than Significant Impact.* Potential ground borne vibration may occur during construction of the project, including pile driving 210 support structures. However, since there are no nearby sensitive receptors, this is not expected to be significant and would be short term in nature.
- c) *Less than Significant Impact.* The project will result in a slight increase in ambient noises from the operation of boats and increased car traffic to the site. However, existing sources of noise for the area include an existing boat dock to the east, and traffic along the I-5 corridor. Given the existing sources of ambient noise the impact of the project is anticipated to be less than significant.

- d) *Less than Significant Impact.* Construction could involve the use of trucks and equipment that create noise. See comments from section (a) and (b) for comments concerning construction noise. Temporary and periodic impacts related to construction noise are expected to be less than significant.
- e) *Less than Significant Impact.* The project is located approximately 1.5 miles due west of the Sacramento International Airport. However, take-offs and landings from Sacramento International run north-south and the project is not within the runway clearance zones established to protect the adjoining land uses in the vicinity from noise and safety hazards associated with aviation accidents.
- f) *No Impact.* The project site is not located near a private airstrip and would not be exposed to noise from any private airstrip.

XII. POPULATION

| Would the project: | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|------------------------------|-------------------------------------|
| a) Induce substantial population growth in an area, either directly (e.g., by proposing new homes and businesses) or indirectly (e.g., through the extension of roads or other infrastructure)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Discussion of Impacts

- a) *No Impact.* No housing is including in this project. The marina does not include facilities for houseboats or "live aboard" units and will not serve such vessels. The project does not involve the extension of roads or other infrastructure that could induce population growth. The abandonment of a small portion of right-of-way is included in the project. Existing roads will serve the project.
- b) *No Impact.* Construction of the proposed project would not displace any existing housing.
- d) *No Impact.* Construction of the project would not displace any people.

XIII. PUBLIC SERVICES

Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service rations, response time or other performance objectives for any of the public services:

| | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-----------------------|--------------------------------|--|-------------------------------------|-------------------------------------|
| a) Fire protection? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b) Police Protection? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c) Schools? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Parks? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

- e) Other public facilities?

Discussion of Impacts

- a) *Less than Significant Impact.* The Elkhorn Fire District provides primary service to the project site. The project would not trigger the need for increase in fire fighting capacity. All new construction will be required to pay for their fair share amount of the fire protection equipment and facilities needed to provide adequate service through development fees.
- b) *Less than Significant Impact.* The proposed project would not significantly impact police services provided by the Yolo County Sheriff's Department. All new construction will be required to pay property taxes for sheriff's protection.
- c) *No Impact.* No housing is including in this project and thus have no impact on existing school facilities.
- d) *Less than Significant Impact.* The project does not include boat launch facilities and will induce additional demand for such facilities. Boat launch facilities currently exist at the marina on the Sacramento County side of the river, at a public facility located in Knights Landing and at the Elkhorn Regional Park. These existing facilities should be capable of meeting the increased demand for boat launching facilities.
- e) *No Impact.* All other service providers have been provided an opportunity to comment on the proposed project. No potentially significant impact has been identified by any service providers.

XIV. RECREATION

- | | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|--|--------------------------------|--|-------------------------------------|-------------------------------------|
| a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have been an adverse physical effect on the environment? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Discussion of Impacts

- a) *No Impact.* There should be little if any impact on existing park facilities. The project will provide an increase in recreation facilities to existing residents of the area and the region.
- b) *Less than Significant Impact.* The project is the construction and operation of a recreational facility, namely a marina to be used for recreational boating. The impacts to the environment due to this project are identified and where appropriate, mitigated for throughout the other sections of this document.

XV. TRANSPORTATION/TRAFFIC

- | Would the project: | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|-------------------------------------|--------------------------|
| a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase on either the number of vehicle | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

trips, the volume to capacity ratio on roads, or congestion at intersections)?

- | | | | | |
|--|--------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e) Result in inadequate emergency access? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| f) Result in inadequate parking capacity? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

a) b) *Less than Significant.* According to traffic studies found in *Trip Generation*, Institute of Transportation Engineers (1991) a marina can be expected to generate an average of 3.48 vehicle trips per day per berth. With 62 slips planned, the project would generate approximately 216 vehicle trips per day. This increase would add approximately 22 morning and evening peak hour trips to the region's transportation network. County Roads 117 and 22 currently serve very limited development in the rural area and have very low existing traffic levels. This increase would not significantly affect volume to capacity ratios and would be considered less than significant.

The project has the potential to affect traffic on the Sacramento River. The marina will extend 170 feet into the river. The existing marina on the eastern shore extends approximately 140 feet into the river. The navigable space between the two marinas is approximately 185 feet. This distance should allow for the continued flow of boat traffic and result in a less than significant impact.

- c) *No Impact.* The project would not result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks.
- c) *Less than Significant Impact With Mitigation Incorporated.* Driveways from the boat storage area and marina will be connected to County Road 117. A rail line cuts between the two parcels upon which the project is located and a railroad crossing is located on CR 117 between the two driveways. The presence of multiple connections and crossings of CR 117 in a limited stretch of roadway is a design feature that could create a potentially significant impact unless mitigated:

Mitigation Measure 5

As a condition of approval of the use permit, prior to the start of marina operation, the applicant shall install signage, as approved by the Department of Planning and Public Works, to warn the traveling public of the following:

- *Slow Traffic Ahead*
- *Cross Traffic Ahead*
- *Do not Block Railroad*

e) *Less than Significant Impact.* The project would be required to install paved driveway connections to County Road 117 and to comply with the requirements of the Elkhorn Fire District and the County Planning and Public Works Department for driveway design. With these improvements the project would not result in inadequate emergency access.

- f) *Less than Significant Impact.* The project would be required to meet standard parking requirements established in the Yolo County Zoning Code. On-site parking sufficient to serve both employees and customers of the project is included in the project site plan. Parking facilities for vehicles towing boats will also be provided. Therefore, approval of the project would ensure adequate parking supply.
- g) *No Impact.* The project would not conflict with adopted policies, plans, or programs supporting alternative transportation. There is no transit to the site.

XVI. UTILITIES AND SERVICE SYSTEMS

| Would the project: | Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|-------------------------------------|-------------------------------------|
| a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| g) Comply with federal, state, and local statutes and regulations related to solid waste. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Discussion of Impacts

- a) *No Impact.* The facility will be served by a self-contained septic system established for domestic wastewater purposes. The Yolo County Environmental Health Department regulates the design and monitoring of septic systems.
- b) *Less than Significant Impact.* The project will be served with an on-site well. There is an existing well on the property and a new well may need to be constructed to serve increased need. Wastewater will be disposed of through a domestic septic system. The project is not located in an area served by an existing water or sewer system.
- c) *Less than Significant Impact.* The project is not connected to any existing stormwater system. Implementation of the proposed project will result in modified drainage patterns to accommodate new construction and paving. These impacts are discussed in section VIII above and **Mitigation Measure 3.**
- d) *Less than Significant Impact.* Domestic water supplies will be available in the project area with an on-site well. No expanded water supply entitlements will be required apart from existing rights to groundwater.

- e) *No Impact.* The project is not located in an area served by a wastewater treatment provider. The project will served by a septic system, and will be required to meet all relevant regulations and requirements from Yolo County Environmental Health for the operation of such a system.
- f) *Less than Significant Impact.* The existing Yolo County landfill would adequately accommodate the additional development; therefore, the project would not significantly impact the disposal capacity of the landfill.
- g) *No Impact.* The project would be required to comply with all solid waste regulations as implemented and enforced by the County of Yolo.

| | | | |
|--------------------------------|--|------------------------------|-----------|
| Potentially Significant Impact | Less Than Significant With Mitigation Incorporated | Less Than Significant Impact | No Impact |
|--------------------------------|--|------------------------------|-----------|

XVII. MANDATORY FINDINGS OF SIGNIFICANCE --

- | | | | | |
|---|--------------------------|--------------------------|-------------------------------------|--------------------------|
| a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plan or animal or eliminate important examples of the major periods of California history or prehistory? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects)? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c) Does the project have environment effects which will cause substantial adverse effects on human beings, either directly or indirectly? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Discussion of Impacts

- a) *Less Than Significant Impact.* Based on the analysis and mitigation provided in this Initial Study, potential environmental impacts of the proposed project would be less than significant. No important examples of major periods of California history or prehistory in California were identified. Mitigation measures have been recommended to reduce any potential impacts to the habitat and/or range of the identified special status species.
- b) *Less than Significant Impact.* Based on the analysis and mitigation provided in this Initial Study, potential environmental impacts of the project would be less than significant. Mitigation measures have been recommended to reduce potential impacts related to traffic, aesthetics, biology, and hydrology (flooding) to below the significance threshold.
- c) *Less Than Significant Impact.* Based on the analysis provided in this Initial Study, less than significant impacts to human beings would result from the proposed project. The project as proposed would not have substantial adverse effects on human beings, either directly or indirectly.

REFERENCES

Application materials, including site plans, architectural drawing, and written project description.

California Department of Fish and Game, Staff report regarding mitigation impacts to Swainson's hawks in the Central Valley of California, 1994.

Institute of Transportation Engineers, Trip Generation, 1991

Jones & Stokes *Biological and Essential Fish Habitat Assessment for the Elkhorn Marina Project*
November 2007

Yolo County, Yolo County Code

Yolo County, 1983 Yolo County General Plan.

Yolo-Solano Regional Air Quality Management District, CEQA Air Quality Handbook, 2007.

FINDINGS
ELKHORN MARINA USE PERMIT
(ZF #2007-049)

Upon due consideration of the facts presented in this staff report and at the public hearing for Zone File #2007-049, the Yolo County Planning Commission finds the following:

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

California Environmental Quality Act (CEQA) and Guidelines

1. That the recommended Initial Study/Mitigated Negative Declaration was prepared in accordance with the California Environmental Quality Act (CEQA) and is the appropriate environmental document and level of review for this project.

The environmental document for the project, prepared pursuant to Section 15000 et. seq. of the CEQA Guidelines, provides the necessary proportionate level of analysis for the proposed project, and sufficient information to reasonably ascertain the project's potential environmental effects. The environmental review process has concluded that there will not be a significant effect on the environment as a result of the proposed project with the incorporated mitigation measures.

General Plan

2. That the proposal and requested land use is in conformity with the General Plan.

The following General Plan Policies are relevant in reviewing this project.

Con 23. Sacramento River and Putah Creek. Yolo County shall encourage additional use of Sacramento River and Putah Creek Water.

Rec 6 Riverfront. Development of riverfront recreation areas shall offer recreational facilities, visual aesthetics and open space amenities, while insuring access to the river for all residents.

Rec 7 Urban Waterfront Land Uses. Yolo County shall require that a portion of urban waterfront, other than the Port of Sacramento and existing industrial uses, should be used for water-dependent activities including, but not limited to, recreation, tourism, scenic public walkways, waterview restaurants, marinas, fishing access, small waterfront parks, and interpretation projects with retained and enhanced riparian vegetation.

The project will provide increased riverfront recreation facilities in the form of both a marina and boat storage. This project will provide increased recreational actives and shall encourage additional use of the Sacramento River for recreational purposes.

Attachment E

Zoning Code

In accordance with Section 8-2.404.5 of the Yolo County Code, the Planning Commission finds the following:

3. The requested land use is listed as a conditional use in the zoning regulations and is allowed under the following authorization:

The property is zoned Agricultural General (A-1). The proposed new uses are consistent with the A-1 designation under Section 8-2.604.4. Rural recreation with permanent buildings is listed as a conditional use. "Rural Recreation" is defined as outdoor sporting or leisure activities that require large open space areas and do not have any significant detrimental impact on agricultural use of lands.

Use Permit

In accordance with Section 8-2.2804 of the Yolo County Code, the Planning Commission finds the following:

4. The requested use is essential or desirable to the public comfort and convenience.

The proposed new use provides a valuable recreational service to the public. It is desirable for uses of this type to be located in a rural area to take advantage of an existing waterway.

5. The requested land uses will not impair the integrity or character of a neighborhood or be detrimental to public health, safety, or general welfare.

The requested uses will create little or no impact to the character of the area. An existing marina exists in close proximity to the proposed project. The proposed project is consistent with similar development found along the Sacramento River. As conditioned, the project will not be detrimental to public health, safety, or general welfare.

6. The requested use will be in conformity with the General Plan.

Compatibility with General Plan Policies is discussed at #2 above. This project is in conformity with General Plan policies Con 23, Rec 6 and Rec 7.

7. Adequate utilities, access roads, drainage, sanitation, and/or other necessary facilities will be provided.

As conditioned and with mitigation measures incorporated, adequate utilities, access roads, drainage, sanitation, and/or other necessary facilities will be provided in this project as approved.

CONDITIONS OF APPROVAL

ZF2007-049

Elkhorn Marina

Planning

1. The applicant shall be responsible for all costs associated with implementing the Conditions of Approval contained herein. The applicant shall comply with both the spirit and the intent of all applicable requirements of the Yolo County General Plan, the County Code, and these Conditions of Approval.
2. The subject project shall be only for the uses approved by this Use Permit. The project is approved for a commercial marina as described in the Project Description sections of this report. Any modification to the approved plans, extent, or manner of operation of the facility shall be submitted for review and approval to the Director of the Planning and Public Works Department.
3. This Use Permit shall commence within one year from the date of the Planning Commission's approval or said permit shall be null and void. The Director of Planning and Public Works may grant an extension of time; however, such an extension shall not exceed a maximum of one year.
4. The facility will not include refueling facilities. No "live aboard" vessels will be allowed. If the owner/applicant wishes to add refueling, boat ramp, or live aboard facilities to this project, they shall make an application to amend this Use Permit subject to review by the Planning and Public Works Department, and approval of the Planning Commission.
5. Any proposed sign for the marina shall comply with the requirements of the Yolo County sign regulations (Section 8-2.2406 of the County Code).
6. Any lighting used on the site shall be so arranged as to direct light away from adjoining lots and the night sky.
7. The applicant shall apply for and maintain a Yolo County Business License prior to commencement of the marina operations.

Resources

8. Individual boat owners utilizing the County boat launch facility at Elkhorn Regional Park shall each maintain a proper boat launch permit and pay all applicable fees. The marina shall not use or maintain shared boat launch permits.

Attachment F

Public Works

9. A County encroachment permits will be required for all work within the County right-of-way.
10. Paved commercial driveway access shall be constructed and completed by the applicant according to Yolo County Improvement Standards, prior to final occupancy.
11. The applicant shall submit a grading and drainage plan for each site for review by the county. Applicant shall submit hydrology calculations that demonstrate that there will be no negative downstream impacts during a 10-year event. All plans and reports shall be signed and sealed by a licensed California civil engineer.
12. Prior to issuance of grading permits, the applicant shall obtain a General Construction Activity Stormwater Permit and a National Pollutant Discharge Elimination System (NPDES) permit from the Regional Water Quality Control Board. The permits are required to control both construction and operation activities that may adversely affect water quality. The applicant shall also prepare a Storm Water Pollution Prevention Plan (SWPPP) that describes the site, erosion and sediment controls, means of waste disposal, implementation of approved local plans, control of post-construction sediment and erosion control measures and maintenance responsibilities, and non-stormwater management controls.
13. The applicant shall coordinate with Regional Water Quality Control Board (RWQCB) to determine storm water discharge requirements for preventing contaminants from leaving the site and entering the Sacramento River, and if an Industrial SWPPP is required for each site. The applicant shall document the RWQCB's direction, and notify the county of their determinations prior to submittal of the drainage plans.
14. The applicant shall submit a signage and striping plan for review by the county. Plan shall be signed and sealed by a licensed California civil engineer
15. The applicant shall determine if any other safety measures are required by the governing railroad authority for the rail line between the marina and the boat storage facility.

Building

16. Unless otherwise authorized by the Planning and Public Works Director, grading, excavation, and trenching activities shall be completed prior to November 1st of each year to prevent erosion.
17. All building permit plans shall be submitted to the Planning and Public Works Department for review and approval in accordance with County Building Standards prior to the commencement of any construction.

18. The applicant shall pay the appropriate fees prior to the issuance of Building Permits, including, but not limited to, School and Fire District fees, County Facilities Fees and Environmental Health Fees.

Environmental Health

19. The water system will likely be classified as a public water system that will be regulated under permit by Yolo County Environmental Health. Monitoring wells should precede the installation of a domestic well and testing to assure that the water quality for the marina is equivalent to that of a community water system. The modification of the existing well or construction of a new domestic well will be required to be done under permit by Yolo County Environmental Health.
20. Disposal of domestic wastewater by way of a septic system is allowable under permit from Environmental Health. Liquid waste, other than domestic sewage must not be disposed of into the septic system. Prior to issuance of any building permits, detailed plans for Environmental Health shall approve either existing or newly proposed septic system and leach field.
21. The applicant shall meet all of the Hazardous Materials Business Plan requirements of Yolo County Environmental Health.

State and Federal Agencies

22. Prior to issuance of building permits the applicant shall secure all necessary permits from all relevant agencies, including, but limited to, a Fish and Game, Army Corps of Engineers, Department of Boats and Waterways, and the National Marine Fisheries Service.
23. Prior to issuance of building permits, the applicant shall secure an amended lease agreement with the California State Lands Commission to reflect the increased size of the marina.
24. As this project will have an impact to fish and/or wildlife habitat, assessment of fees under Public Resources Code Section 21089, and as defined by Fish and Game Code Section 711.4, will be necessary. The fees (\$1875.76) are payable by the project applicant upon filing of the Notice of Determination by the lead agency, within five working days of approval of this project by the Planning Commission.

County Counsel

25. In accordance with Yolo County Code Section 8-2.2415, the applicants, owners, their successors or assignees 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 attack, 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.

26. The County shall promptly notify the applicant of any claim, action or proceeding and that the County cooperate fully in the defense. If the County fails to promptly notify the applicant of any claim, action, or proceeding, or 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 the action. 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.

Mitigation Measures

The following Mitigation Measures identified in the first circulation of the Initial Study/Mitigated Negative Declaration for the project are added as project approval conditions (these items have the original numbering in the Initial Study document).

Mitigation Measure 1:

(a) A condition of the Use Permit shall require the owner-operator to ensure that all boats docked at the marina shall be kept in good working order and repair. Non-operative or abandoned craft shall not be allowed to remain in dock. All boats, buildings, and structures shall be kept clean and free from graffiti, trash and visual clutter. All trash enclosures and storage areas will be screened from the viewing public.

(b) Prior to issuance of building permits, the applicant shall submit a detailed landscaping and irrigation plan for the project site to be approved by the Planning and Public Works Director. A variety of native plants, shrubs and grasses shall be used to enhance the visual character of the site, and to visually integrate the project into the surrounding area.

Mitigation Measure 2:

- (a) The project shall be required to pay a fee of \$8,660 per disturbed acre to the Yolo County Joint Powers Agency for mitigation for the loss of Swainson's hawk habitat.*
- (b) All in-water construction activities in the Sacramento River shall be limited to the period June 1 through October 31 to avoid the primary migration periods of listed salmonids.*
- (c) In-water pile driving will be restricted to the period July 1 through September 30 to avoid or minimize exposure of adults and juvenile salmonids to underwater pile driving sounds.*
- (d) Pile driving shall be conducted by barge to minimize disturbance of riparian habitat.*
- (e) Following construction, native riparian vegetation shall be planted on disturbed or exposed soils to control erosion and offset any losses of vegetation on the waterside slope of the levee.*
- (f) The owner/operator will enforce a no-wake zone for boats operating in and around the vicinity of the marina.*

Mitigation Measure 3:

- (a) As a condition of approval, the applicant shall be required to either raise all proposed buildings out of the 100-year flood hazard area by elevating the pads of the buildings so that the finished flood elevations would be one foot above the base flood elevation or to construct the buildings to dry-proofing standards as required by the California Building Code and Federal Emergency Management Agency standards.*

Mitigation Measure 4:

- (a) *As a Condition of Approval of the use permit, the applicant shall obtain a General Construction Activity Stormwater Permit (SWPPP) and a National Discharge Elimination System (NPDES) permit. The permits are required to control both construction and operational activities that may adversely affect water quality.*
- (b) *The applicant shall utilize Best Management Practices (BMPs) to prevent pollution from entering the Sacramento River. Such BMPs should include, but no be limited to:*
 - i. *Storing materials and equipment to prevent spills or leaks.*
 - ii. *Developing and implementing a spill prevention and cleanup plan*
 - iii. *Installing traps, filter, or other devices to prevent contaminants from leaving the site and entering the Sacramento River; and using barriers, such as straw bales or plastic, to minimize the amount of uncontrolled runoff that could exit the site.*
- (c) *The applicant shall submit a grading and drainage plan for the site for review and approval of County Public Works.*

Mitigation Measure 5:

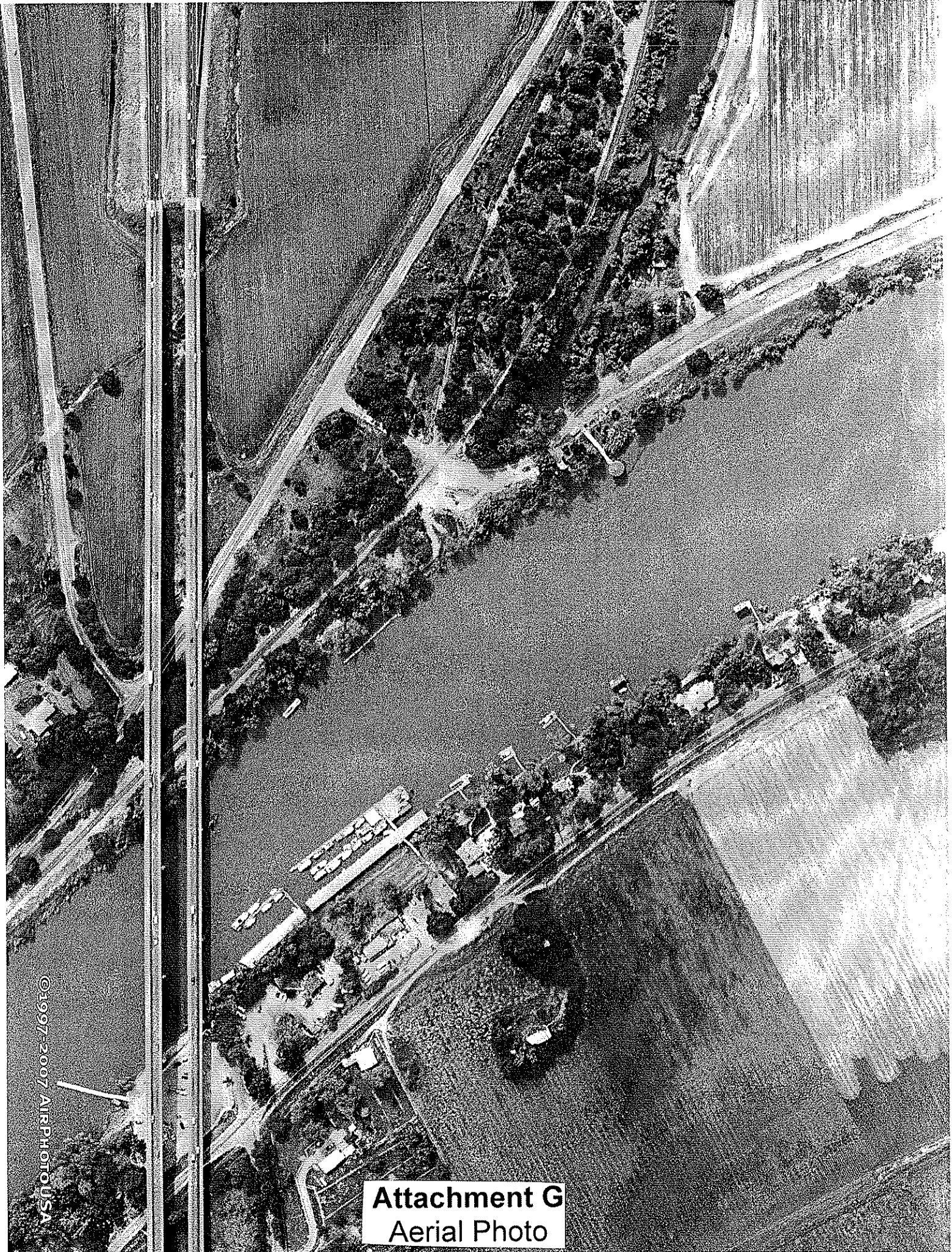
- (a) *As a Condition of Approval, prior to the start of marina operation, the applicant shall install signage, as approved by the Department of Planning and Public Works, to warn the traveling public of the following:*
 - *Slow Traffic Ahead*
 - *Cross Traffic Ahead*
 - *Do not Block Railroad*

Failure to comply with the **CONDITIONS OF APPROVAL** as approved by the Planning Commission may result in the following:

- Non-issuance of future building permits;
- Legal action.

Failure to comply with the **CONDITIONS OF APPROVAL** as approved by the Planning Commission may result in the following:

- Non-issuance of future building permits;
- Legal action.



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Attachment G
Aerial Photo



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

May 2008

FILE #2001-112: Time extension of one year for Tentative Parcel Map (TPM) #4547 (Swift Development) approved by the Planning Commission on May 11, 2006. The TPM was approved to divide approximately 9.1 acre parcel into four separate commercial parcels of 2.5, 1.0, 4.6 and 1.0 acres (APN: 027-430-031), zoned C-H (Commercial Highway) north of the City of Woodland (**Attachment B**).


APPLICANT: Swift Construction, Inc (Ralph Swift)
8850 Auburn –Folsom Road
Granite Bay, CA 95746
(916) 791-0401

LOCATION: The project consists of approximately 9.1 acres located Yolo County, southeast of the intersection of Interstate 5 and West Street, north of the City of Woodland (**Attachment A**).

GENERAL PLAN: Highway Service Commercial
ZONING: Commercial Highway (C-H)
SOILS: Hillgate loam (Class IV, Storie 54).
FLOOD ZONE: "A-1 to A-30" – area of 1 to 3 foot FHB's determined.

ENVIRONMENTAL DETERMINATION: Notice of Exemption

REPORT PREPARED BY:


Donald Rust, Principal Planner

REVIEWED BY:


David Morrison, Assistant Director

RECOMMENDED ACTION

That the Planning Commission:

1. **HOLD** a public hearing and receive public testimony on the proposed extension of Tentative Parcel Map #4547; and

2. **APPROVE** the proposed time extension of one year for Tentative Parcel Map #4547 to May 11, 2009.

REASONS FOR RECOMMENDED ACTION

Under the Subdivision Map Act, the Planning Commission has considerable discretion in acting on an application for a tentative map extension. The Map Act does not provide any criteria for evaluating such applications. Accordingly, as with other types of agency actions, the Planning Commission may take any action that is not arbitrary or unreasonable.

The applicant has been steadily working towards completion of the Final Parcel Map requirements over the past two years. However, coordination between the County and City regarding drainage, flooding, and traffic impacts have required more time than anticipated. Staff recommends that the extension be granted as allowed under State law to give the applicant additional time to complete the required actions for the Final Map before May 11, 2009.

PROJECT DESCRIPTION

The proposed project is the first extension of time for the Tentative Parcel Map (**TPM#4547**) for the Swift Development project, originally approved by the Planning Commission on May 11, 2006. The approved Tentative Parcel Map would divide an existing ±9.1 acre parcel into four parcels of, 4.6, 1.0 2.5, and 1.0 acres. All of the proposed parcels are currently vacant. The proposed project is located just north of the City of Woodland in unincorporated Yolo County. The site is bordered by commercial uses to the west and Interstate 5 to the north and east. Agricultural land uses are adjacent to the southern boundary of the proposed project site. The proposed site is also located within the City of Woodland 's Urban Limit Line and Planning Area Boundary.

The project site is identified as Parcel Number 027-430-03, and zoned Highway Service Commercial (CH) by both the City of Woodland and the Yolo County. The proposed project involves the creation of four parcels for development as a potential hotel site and commercial retail complex. The subject property has indirect access to County Road 99 through Barnard Court, a County road. A private easement would provide on-site access to Parcel D. The water and sewer services to the parcel will be provided by the City of Woodland. Public Utilities would be provided by Pacific Gas & Electric and Pacific Bell.

BACKGROUND

The objective of the project is to provide commercial, retail and hotel uses for the motoring public, within the vicinity of Interstate 5 in accordance with the Yolo County General Plan, which provides for such land uses.

As the project is located within the City of Woodland's Urban Limit Line, but outside the existing City Limit, it is subject to the Woodland Area General Plan Urban Development Policy, a joint planning document adopted and last amended in 1997 by the City of Woodland and Yolo County. In addition, the project is subject to an agreement executed by and between the applicant's predecessor-in-interest, the County, and the City of Woodland in May 1998. This agreement (Yolo County Agreement No. 98-77) contains several provisions that govern the processing and approval of this tentative parcel map. Among other things, it requires:

- Any development of the property to be consistent with the Woodland General Plan and all applicable City requirements and standards;
- Any development of the property to be limited to an expansion of existing highway commercial uses;
- Payment of all City and County fees, charges and assessments applicable to the development of the property; and
- The developer to execute a written agreement to annex the property to the City upon City's request.

County Planning Staff have been working with the City of Woodland in reviewing the proposal to ensure that the project meets the requirements of the Agreement and the City Development Policy. County Planning Staff believes that the project as proposed is consistent with the City Development Policy. Further, if the property is developed in the manner proposed by the applicant, the City has agreed that the development would "constitute an expansion of existing highway commercial uses" within the meaning of Agreement No. 98-77.

Currently, there is an existing Denny's Restaurant on the north side of Barnard Street and a proposed Arco Gas Station and convenience store under review by the City of Woodland and Yolo County staff. The proposed gas station and convenience store is located at the southeast corner of Barnard Street and County Road 99.

Progress since May 2006

The applicant has been working with both the City of Woodland and Yolo County staff to comply with the conditions of approval (COA) for the Parcel Map. There are several important conditions that remain outstanding regarding the installation of the various infrastructure components of the proposed project, specifically: flooding, drainage, and road improvements. The City of Woodland, Yolo County and the applicant are working together to resolve the issues to complete the project in a timely manner.

AGENCY COMMENTS

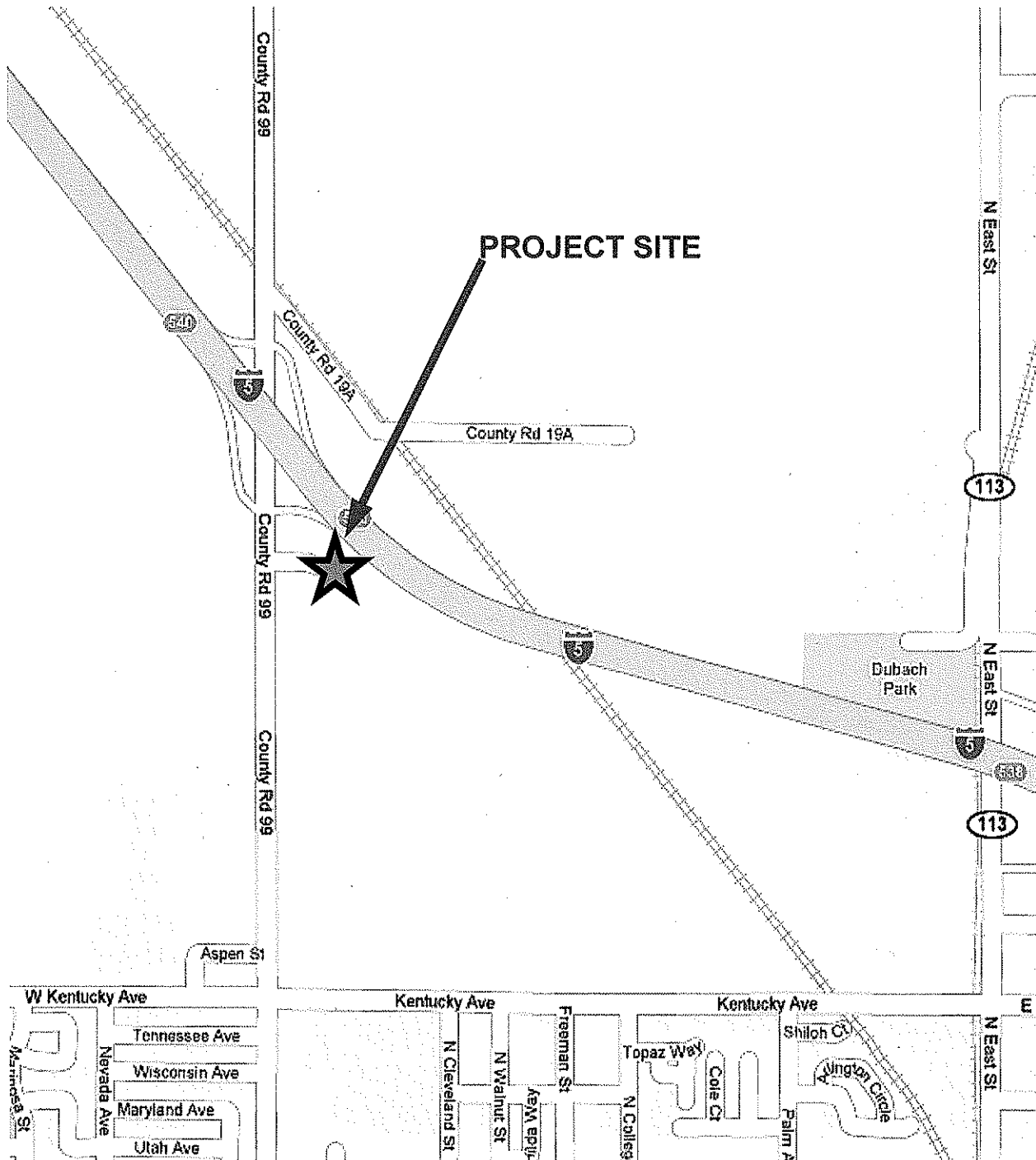
A Request for Comments was prepared and circulated to departments and agencies that provided comment regarding Tentative Parcel Map 4547 from May 9, 2008 to May 30, 2008. No additional comments have been received.

ATTACHMENTS

- A: Location Map
- B: Tentative Parcel Map #4547
- C: Original Conditions of Approval
- D: Yolo County Agreement No. 98-77
- E: Findings
- F: Categorical Exemption

ATTACHMENT A

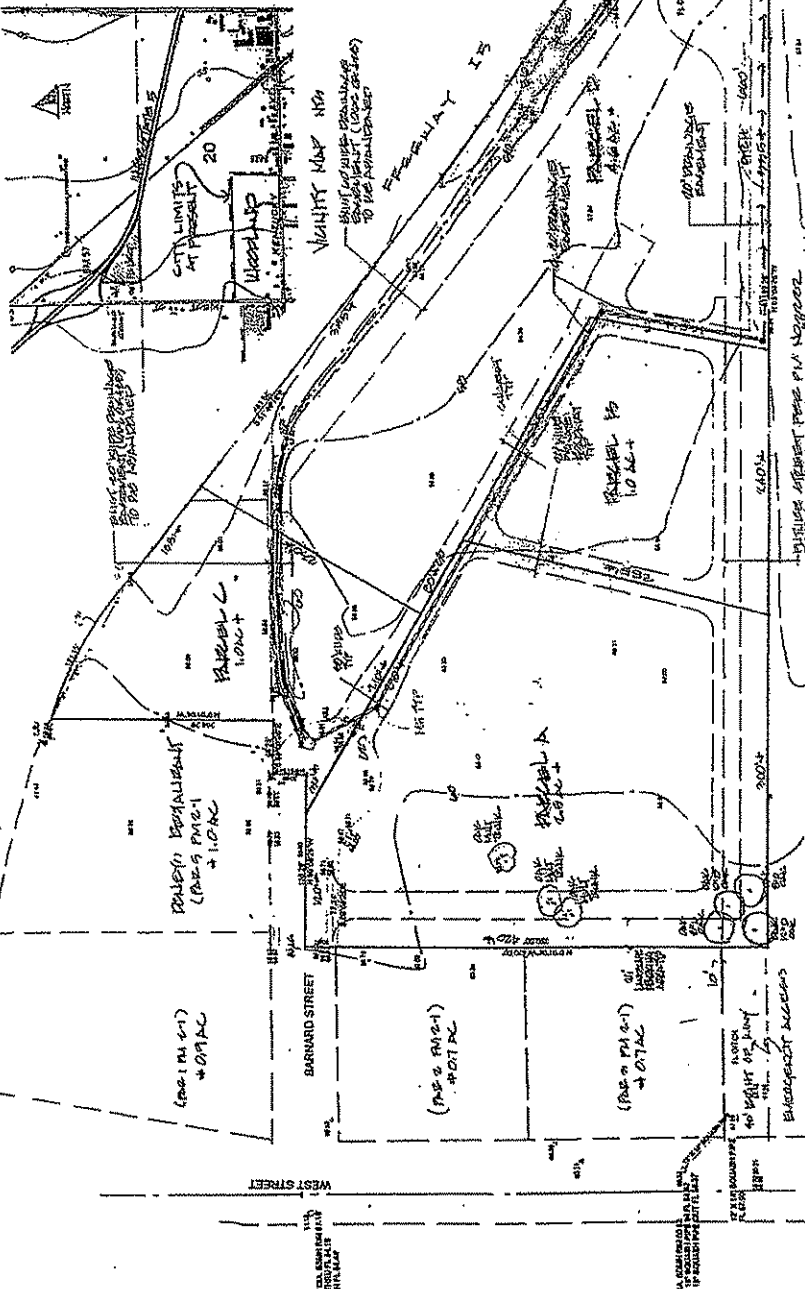
LOCATION MAP



ATTACHMENT B

TENTATIVE MAP

DEVELOPMENT PLAN
CITY OF WOODLAND, YUBA COUNTY
 SUBJECT: THE MAP OF PARCELS 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.



NOTE: ALL EXIST. ENCUMBRANCES ON SUBJECT PARCELS TO BE REPLICATED

LEGAL FACILITY

NO. OF PROPOSED PARCELS 4
 MIN. PARCEL SIZE 1 AC

I, **SWIFT CONSTRUCTION INC./ THE ORCHARD AT WOODLAND**, HEREBY CERTIFY THAT THE ABOVE STATEMENTS ARE CORRECT AND THAT ALL ACCOMPANYING DOCUMENTS ARE ACCURATE.

OWNER: THE ORCHARD AT WOODLAND
 TRM 45477
 FILE # 14-0008-112

DATE: 09/29/03

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PARCEL MAP 4547

SWIFT CONSTRUCTION INC. / THE ORCHARD AT WOODLAND

CONDITIONS OF APPROVAL:ZF# 2001-112

The property owner/applicant is in written agreement with draft conditions of approval, mitigation measures and monitoring program for the project. The recommended conditions, mitigation measures and monitoring program contained in this report reflect minor semantic changes completed during preparation of the report for the purpose of providing greater clarity.

General

The applicant shall be responsible for all costs associated with implementing the Conditions of Approval contained within this staff report.

The Parcel Map for the project shall be filed and recorded at the applicant's expense, with the Yolo County Planning and Public Works Department. The Parcel Map shall be filed for approval within two years from the date of approval by the Planning Commission of the Tentative Parcel Map. If the Parcel Map is not filed for approval within two years, then the Tentative Parcel Map shall become null and void without any further action in accordance with the California State Subdivision Map Act.

The Parcel Map submitted for recordation shall have the Parcel Map Number (PM # 4547) indelibly printed on it. Said PM # 4547 shall be prepared with the basis of bearings being the State Plane Coordinate System, North American Datum (NAD 83) pursuant to Article 9, Section 8-1.902 (f) of the Yolo County Code.

The project shall be developed in compliance with all adopted Conditions of Approval, Mitigation Measures and Monitoring Program for Zone File #2001-112, Parcel Map #45437 as contained herein and identified.

The applicant shall pay the appropriate fees prior to the issuance of Building permits, including but not limited to the Woodland Unified School District, City of Woodland Fire District, County Facilities Fees and Yolo County Environmental Health fees. Pursuant to Yolo County Agreement No. 98-77, payment of both City and County fees is required in connection with the development of the subject property.

Planning

1. The project shall be constructed and developed, including private and public improvements, in compliance with all applicable Federal and State laws, Yolo County Code regulations, and County Engineering Design Specifications and Standards.
2. Construction activities shall be limited from 7:00 a.m. to 6:00 p.m., Monday through Friday, 8:00 a.m. to 6:00 p.m. on Saturday.
3. The applicant shall provide off street parking for all commercial development for the new parcel map as required pursuant to Section 8-2.2504 of the Yolo County Code. Said parking places shall be delineated on the plot map submitted with the building permit application.
4. If any building pad is to be raised, a soils report for the pad prepared by a geo-technical engineer will be required. Building foundations and slabs shall comply with any special requirements included in the soils reports.

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5. All commercial buildings shall have a fire suppression system installed, which shall conform to the latest conditions of NFPA 13 and local requirements.
6. All building plans shall be submitted to the Planning and Public Works Department for review and approval in accordance with County Building Standards prior to the commencement of any construction.
7. As required by Agreement No. 98-77, the applicant shall provide the Planning and Public Works Department with an approval or other appropriate documentation from the City of Woodland demonstrating its agreement to provide water and sewer services to all improvements on the subject property prior to building permit approval.
8. The applicant shall provide to the Planning and Public Works Department, an 'will serve letter" from the City of Woodland to have water and sewer services provided, prior to building permit approval.
9. An encroachment permit will be required for all construction within the County's Right of Way.
10. Payment of mitigation fees to the Habitat Conservation JPA for the conversion of 9.1 acres to urban uses. Fee payment must be made prior to and is a condition for final parcel map approval.

City of Woodland

11. The proposed design of the individual sewer and water services shall be subject to the review and approval of the City of Woodland. The design, construction, of all on site improvements shall meet applicable City of Woodland standards. As required by Section 3 of Agreement No. 98-77. Within the City's right of way, all construction methods and materials shall be in accordance with the City of Woodland's Standard Plans and Specifications. The City of Woodland shall inspect all improvements within the City's right of way.
12. An encroachment permit is required for all construction within the City's right of way.
13. If required by the City of Woodland, water services shall be individually metered, and shall have individual reduced pressure backflow prevention devices (BFD) installed on the service side of the meters. Individual service, BFD, and meter sizes shall be based on calculations (City of Woodland water meter sizing forms) including estimated fire flows through building sprinklers.

Infrastructure and Improvements

15. Prior to Final Map recordation, engineered improvement plans for all on-site and off-site infrastructure and improvements shall be submitted to the Planning and Public Works Department by the applicant. No later than the submittal of engineered improvement plans, the applicant shall submit detailed cost estimates for all on-site and off-site infrastructure and improvements. Such cost estimates shall be of a sufficient amount for construction of all required and proposed on-site and off-site public and private roadway improvements including grading, roadbase work, paving, sidewalk, curb and gutters, signing and striping, lighting, landscaping and irrigation, masonry walls; and all necessary improvements for subdivision storm drainage, water supply, waste water systems, etc.
16. Prior to Final Map recordation, all cost estimates shall be subject to review and verification as determined by the Director of the Planning and Public Works Department, and a performance bond or other instrument, acceptable to the County, shall be posted by the applicant. The bond/instrument shall be for the amount sufficient to cover the cost estimate of constructing all on-site and off-site infrastructure and improvements as required pursuant to Condition No. 3

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above, and required by the project conditions of approval and mitigation measures, contained herein. The bond/instrument shall be released accordingly upon satisfactory completion of all improvements and State and local permit final.

17. Prior to issuance of the first building permit in the parcel map, all parcel map infrastructure and improvements, as required by the project conditions of approval and mitigation measures contained herein, shall be completed by the applicant as determined by the Director of the Planning and Public Works Department.
18. A proposed 40' emergency access shall be a dedicated easement, constructed to Yolo County Standards as identified by County of Yolo Improvement Standards and Specifications (ST – P240). The applicant shall provide for rights of access and use of the emergency easement by the public.
19. If any right-of-way dedication is deemed necessary as determined by review and approval of the engineered improvement plans required by Condition No. 3 above, that right-of-way shall be the responsibility of the applicant including acquisition costs. All necessary legal descriptions and exhibits for recordation shall be prepared by the applicant and submitted to the Planning and Public Works Department. If in the event the applicant is unsuccessful in obtaining any necessary right-of-way the applicant may request that the County to condemn the property area in question through eminent domain proceedings. The applicant shall be responsible for all costs associated with eminent domain proceedings and condemnation including appraisal charges, County administrative costs (legal or otherwise), all court and acquisition costs, etc. Final condemnation shall be subject to Board of Supervisors approval.
20. Prior to Final Map recordation any encroachment permit, as required by the State Department of Transportation (Caltrans), for work to be done within State right-of-way areas, shall be evidenced to the Planning and Public Works Department including a copy of the Caltrans stamped and approved engineered improvement plans. The drainage and hydrology study as required herein shall also be provided to Caltrans for review and comment. Verification of such review and any comments received shall be obtained by the applicant and provided to the Planning and Public Works Department prior to Final Map recordation.
21. Prior to Final Map recordation, the applicant shall submit a Parcel Map "Master Tree List" for review and approval by the Director of the Planning and Public Works Department, and for the purpose of preparing, reviewing and approving detailed landscape and irrigation plans prior to development of each parcel within the commercial project. Six to twelve varieties of trees shall be submitted. In addition to other factors, review of the types of trees shall include planting size (minimum 15 gallon), rate of growth, size at maturity, climatic resiliency, foliage, etc. The final "Master Tree List" shall require approval by the Director of the Planning and Public Works Department prior to Final Map recordation.
22. Prior to Final Map recordation the engineered improvement plans as required by Condition No. 3 above, shall include details and drawings for the construction of a minimum six-foot high fence for screening and protection along the entire South property line of proposed Parcels A, B and D and the entire western edge of the detention basin. The fence shall be completed concurrent with parcel improvements and shall be completed prior to the issuance of the first building permit.
23. Individual freestanding signs shall not be allowed for each parcel in a commercial development. A common shared freestanding sign may be allowed for the purpose of providing identification to one business/tenant from each parcel. The common freestanding sign shall be located on the "Designated Remainder", near the north end of the commercial project, Engineering and design details for the common sign shall be submitted No later than the building permit application and shall be subject to review and approval by the Director of the Planning and

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Public Works Department including size, height, display area (square feet), final placement of the sign, etc.

Operation and Management

24. All private facilities, improvements, infrastructure, systems, equipment, common areas, etc., shall be operated and maintained by the property owner and/or the proposed property owners association utilizing Best Management Practices (BMP's), and in such a manner, and with such frequency, to insure for public health, safety and general welfare.
25. All costs of ownership, operation and maintenance of private facilities, improvements, infrastructure, systems, equipment, common areas, etc., shall be the responsibility of the property owner and/or the proposed property owners association. The property owners association shall be sufficiently funded for the purpose of ongoing and long-term operation and maintenance of all facilities, improvements, infrastructure, systems, equipment, common areas, etc., including the accumulation of a sufficient reserve fund for long-term major repair and/or replacement of the commercial projects water service lines, sanitary waste water lines and service systems including the detention pond, lift pump system, and storm drainage system.
26. Prior to Final Map recordation, a copy of the recorded documents for the easement identified on the proposed tentative map as: "Right of Way/Emergency Access Easement for Ingress and Egress over the Southern 40 feet (Parcel 4 of Parcel Maps Book 2 Page 1 County of Yolo) APN: 027-430-03, shall be sufficiently evidenced to, and is subject to review and approval by, the Director of the Planning and Public Works Department.

Parcel Development

27. Prior to building permit application submittal for each parcel within the commercial development, Site Plan review and approval by the Director of the Planning and Public Works Department shall be required for the development of each parcel. Development of each parcel shall be subject to the following development standards and information submittal requirements.
 - a) Driveway access to and from the proposed private road for each parcel shall be limited to a maximum of two driveways. Driveway width may be sufficient to accommodate two-way traffic; however, shall not be of an excessive width or more than what is necessary to accommodate two-way passenger vehicles, transit bus and RV's.
 - b) A detailed internal automotive, bicycle, and pedestrian circulation and parking plan shall be submitted addressing drive aisle locations and widths, parking spaces, bike racks and public transit stop locations including space dimensions; and parking lot curbing, striping, directional markings and signing, and intended connection location to the proposed County Road 99 bike route, etc. Proposed vehicle parking space quantities and types shall be subject to review pursuant to Yolo County Zoning Code Parking requirements. Details of the final parking and circulation plan shall be reviewed and approved by the Director of the Planning and Public Works Department prior to building permit issuance. All parking lot and circulation improvements shall be completed prior to the issuance of a Certificate of Occupancy for each parcel.
 - c) Development of each parcel shall include construction of a two-way drive aisle access to all adjoining parcels including: 1) if the adjoining parcel is undeveloped, a drive aisle stub shall be constructed to allow connection to the adjoining parcel upon the parcel's subsequent development; or, 2) if the adjoining parcel was previously developed, construction of a drive aisle and completion of the connection to the

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parcel. Details of drive aisle regarding final location, width, length, etc., shall be reviewed and approved by staff prior to building permit issuance. All driveway and drive aisle improvements shall be completed prior to issuance of Certificate of Occupancy.

- d) A detailed landscape and irrigation plan shall be submitted and include, at a minimum, one 15 gallon parking lot tree of acceptable size (at maturity) and type for each six vehicle parking spaces (1:6). The parking lot trees shall be evenly spaced and disbursed over the entire parking field, and the types of trees selected shall, at maturity, provide substantial parking space/lot coverage and shade. The irrigation system shall be installed and designed for efficient water usage; however, supply adequate water to grow and sustain healthy site landscaping including trees, shrubs and ground cover. All parking lot landscaping and irrigation improvements shall be completed prior to the issuance of a Certificate of Occupancy for each parcel.

Each parking lot tree shall have a curbed tree well of sufficient depth and overhang distance to prevent tree damage from vehicle bumpers. On-site landscape strip areas shall be constructed along all property lines and include adequate ground cover, trees and shrubs, and be of a minimum of 10 feet in width along front property lines (adjacent to proposed private road), and 5 feet along rear property lines. Shared, side property lines, shall ultimately have a total of 10 foot wide landscape strips (a five foot landscape strip on each parcel). Development of each parcel shall include completion of half the shared landscape strip (five feet wide side along the side property line) including: 1) if the adjoining parcel is undeveloped, to allow completion of the landscape strip upon the parcel's subsequent development; or, 2) if the adjoining parcel was previously developed, completion of the 10 foot wide landscape strip.

- e) A detailed site lighting plan shall be submitted and include site lighting details and illumination levels as determined by "foot-candles". All building and site lighting shall be hooded and directed to the intended area of illumination and minimize off-site light spill on to adjacent roadways and parcels. Final site lighting plans including the level of illumination is subject to review and approval by the Director of the Planning and Public Works Department.
- f) All exterior refuse receptacles and containers shall be located entirely within a masonry block refuse enclosure for the purpose of screening. The front of each refuse enclosure shall be screened through the use of solid gates. Design details concerning the enclosure shall be submitted No later than the building permit application and shall be subject to review and approval by the Director of the Planning and Public Works Department.
- g) Project signs and advertising displays shall require separate permits and shall be reviewed for compliance with sign code provisions. All necessary Caltrans sign permits, if required, shall be evidenced to the Planning and Public Works Department prior to permit issuance. As required by Condition No. 13, only a single common freestanding sign shall be allowed for the entire commercial project.

Building

- 28. As part of the building permit application for each building, the applicant shall submit a site drainage plan showing the finished grade and floor elevation. This can be a surveyed plan or based on reference elevation points on the site.

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29. A soils report shall be prepared for any raised building pad area and shall be submitted with building permit application. The soils report shall be prepared by a California licensed geotechnical engineer.
30. Prior to issuance of a building permit for the first building all necessary permits as required by Federal, State and local agencies and districts shall be provided to the Planning and Public Works Department.

Public Utilities

33. The applicant shall contact Pacific Bell's Underground Service Alert (USA) two days prior to the commencement of any underground work to verify the existence of existing subsurface service and/or utility lines.
34. The applicant shall be responsible for installation and/or relocation costs of any public utilities required to service the project. Public utilities shall be installed in accordance with Uniform Building Code (UBC) requirements, and are subject to review and approval by the Yolo County Building Division. Any utility easements required for the purpose of serving the project shall be obtained by, and the responsibility of, the applicant (documentation, recordation, etc.), and are subject to review and approval by the Director of the Planning and Public Works Department prior to Final Map recordation.

County Counsel

35. In accordance with Yolo County Code Section 8-2.2415, 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. 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.

ACKNOWLEDGMENT OF CONDITIONS OF APPROVAL

I hereby concur with the Conditions of Approval as set forth in the Planning Commission Staff Report (ZF 2001-112) I understand that these conditions may be modified by the Planning Commission or during the course of the Planning Commission Hearing.

Signature of Authorized

| | |
|----------------------|------------|
| Representative _____ | Date _____ |
| Representative _____ | Date _____ |
| Owner _____ | Date _____ |

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

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Mitigation Measures & Monitoring Program

ZF #2001-112

(Tentative Parcel Map #4547, Swift Construction Inc./The Orchard at Woodland)

| Environmental Impact | Mitigation Measures | Reporting/ Monitoring Requirement | Responsibility for Compliance | Method of Compliance | Enforcement | Check-of Signature |
|----------------------|---------------------|-----------------------------------|-------------------------------|----------------------|-------------|--------------------|
|----------------------|---------------------|-----------------------------------|-------------------------------|----------------------|-------------|--------------------|

AESTHETICS

| | | | | | | |
|-------|--|--|--------------------------------------|------------------------------|------------------------|--|
| 1 (d) | No later than the submittal of Site Plan review application for each parcel to the Planning and Public Works Department, the applicant shall provide for review and approval a site lighting plan incorporating down lighting / directional devices for all exterior fixtures including building and parking lot lights minimizing off-site light spill onto adjacent land uses and roadways/I-5. Subsequent project sign plans shall be subject to review and approval with respect to light intensity prior to sign permit issuance. The site lighting plan shall be subject to review and approval by the Director of the Planning and Public Works Department. | No later than the submittal site plan review application | Planning and Public Works Department | Submit site lighting plan | Conditions of approval | |
| 1 © | No later than the submittal of Site Plan review application to the Planning and Public Works Department, the applicant shall provide for review and approval a site landscaping plan incorporating trees and shrubs along the I-5 / southbound off-ramp frontages adequate to minimize potential light and glare at maturity. | No later than the submittal site plan review application | Planning and Public Works Department | Submit site landscaping plan | Conditions of approval | |

BIOLOGICAL RESOURCES

| | | | | | | |
|--------|---|--------------------------------|--------------------------------------|---|------------------------|--|
| IV (a) | Prior to final map recordation the applicant shall participate in the Habitat Conservation Plan Process and payment of mitigation fees that will apply to the project's 9.1 acres. Fee payment must be made prior to and is a condition for final map approval. | Prior to final map recordation | Planning and Public Works Department | Payment of mitigation fees that will apply to the project's 9.1 acres | Conditions of approval | |
|--------|---|--------------------------------|--------------------------------------|---|------------------------|--|

ATTACHMENT C

Mitigation Measures & Monitoring Program

ZF #2001-112

(Tentative Parcel Map #4547, Swift Construction Inc./The Orchard at Woodland)

| Environmental Impact | Mitigation Measures | Reporting/ Monitoring Requirement | Responsibility for Compliance | Method of Compliance | Enforcement | Check-of Signature |
|----------------------|---------------------|-----------------------------------|-------------------------------|----------------------|-------------|--------------------|
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HYDROLOGY AND WATER QUALITY

| | | | | | | |
|------------|---|--------------------------------|--------------------------------------|--|------------------------|--|
| VIII (c/d) | <p>Prior to final map recordation detailed engineered improvement plans, and a detailed hydrology and drainage plan, for the entire parcel map and all affected proposed and existing storm drain facilities, including County Road 99, and the I-5 and County Road 99/I-5 interchange area, shall be submitted for, and subject to review and approval by, the Director of the Yolo County Planning and Public Works Department. The improvement plans, and hydrology and drainage plan, shall be for the purpose of clearly demonstrating that the project complies with Yolo County Improvement Standards; and:</p> <ol style="list-style-type: none"> 1. Demonstrate that all stormwater drainage structures and facilities installed or modified in conjunction with the project are designed to convey peak stormwater flows from the 10-year storm event; and 2. Demonstrate that the project provides detention of that incremental volume of stormwater runoff from a 100 year, 24-hour storm event generated as a result of the project as compared to current site runoff; | Prior to final map recordation | Planning and Public Works Department | Submit detailed engineered improvement, hydrology and drainage plans | Conditions of approval | |
|------------|---|--------------------------------|--------------------------------------|--|------------------------|--|

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Mitigation Measures & Monitoring Program

ZF #2001-112

(Tentative Parcel Map #4547, Swift Construction Inc./The Orchard at Woodland)

| Environmental Impact | Mitigation Measures | Reporting/ Monitoring Requirement | Responsibility for Compliance | Method of Compliance | Enforcement | Check-of Signature |
|----------------------|--|-----------------------------------|--------------------------------------|--|------------------------|--------------------|
| VIII (c/d) | <p>3. Demonstrate that the rate of stormwater discharge from the project site does not exceed the existing discharge rate; and</p> <p>4. Demonstrate that no net storm drain impacts and effects will occur on adjoining properties as a result of the project.</p> | Prior to final map recordation | Planning and Public Works Department | Submit detailed engineered improvement, hydrology and drainage plans | Conditions of approval | |
| | <p>6. All proposed and required storm drainage system modifications and improvements shall be designed, constructed and completed prior to issuance of the first building permit. Copies of the hydrology and drainage plan as required shall be furnished to Caltrans by the applicant for review and comment. Written verification of any requirements from Caltrans shall be provided to the Planning and Public Works Department prior to final map recordation.</p> | Prior to first building permit | Planning and Public Works Department | Complete required drainage improvement | Conditions of approval | |

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Mitigation Measures & Monitoring Program

ZF #2001-112

(Tentative Parcel Map #4547, Swift Construction Inc./The Orchard at Woodland)

| Environmental Impact | Mitigation Measures | Reporting/Monitoring Requirement | Responsibility for Compliance | Method of Compliance | Enforcement | Check-of Signature |
|----------------------|--|----------------------------------|--------------------------------------|----------------------------|------------------------|--------------------|
| VIII (a) | All permits and approvals as required by the State of California Regional Water Quality Control Board (RWQCB) shall be obtained by the applicant and evidenced to the Planning and Public Works Department prior to final map recordation. | Prior to first building permit | Planning and Public Works Department | All required RWQCB Permits | Conditions of approval | |
| | | | | | | |

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Mitigation Measures & Monitoring Program

ZF #2001-112

(Tentative Parcel Map #4547, Swift Construction Inc./The Orchard at Woodland)

| Environmental Impact | Mitigation Measures | Reporting/ Monitoring Requirement | Responsibility for Compliance | Method of Compliance | Enforcement | Check-of Signature |
|------------------------|---|-----------------------------------|--------------------------------------|---------------------------------|------------------------|--------------------|
| NOISE | | | | | | |
| XI (a) | <p>To ascertain noise attenuation methods as required by the Uniform Building Code (UBC), prior to building permit issuance for a hotel facility, the applicant shall submit to the Planning and Public Works Department complete data and current measurements of existing noise levels for I-5 including travel lanes and the southbound I-5 off-ramp. The measurements shall be taken by a qualified professional noise/acoustical firm, and as determined by the Director of the Planning and Public Works Department, shall be of adequate length and duration and the study shall be</p> <p>Sited hotel and guest pool area and the nearest proposed building to I-5.</p> | Prior to final map recordation | Planning and Public Works Department | Evidence | Conditions of approval | |
| PUBLIC SERVICES | | | | | | |
| XIII (a,b) | <p>Prior to Final Map recordation, a copy of the recorded documents for the easement identified on the proposed tentative map as: "Right of Way/Emergency Access Easement for Ingress and Egress over the Southern 40 feet (Parcel 4 of Parcel Maps Book 2 Page 1 County of Yolo) of APN: 027-430-03, shall be sufficiently evidenced, and the easement, constructed to Yolo County Standards as identified by County of Yolo Improvement Standards and Specifications (ST – P240). The applicant shall provide for rights of access and use of the emergency easement by the public.</p> | Prior to final map recordation | Planning and Public Works Department | Obtain all permits and licenses | Conditions of approval | |

ATTACHMENT C

Mitigation Measures & Monitoring Program

ZF #2001-112

(Tentative Parcel Map #4547, Swift Construction Inc./The Orchard at Woodland)

| Environmental Impact | Mitigation Measures | Reporting/ Monitoring Requirement | Responsibility for Compliance | Method of Compliance | Enforcement | Check-of Signature |
|----------------------|---------------------|-----------------------------------|-------------------------------|----------------------|-------------|--------------------|
|----------------------|---------------------|-----------------------------------|-------------------------------|----------------------|-------------|--------------------|

TRANSPORTATION AND TRAFFIC

| | | | | | | |
|----------|--|---|--------------------------------------|---|------------------------|--|
| XV (a,b) | As detailed in the "Swift Development Traffic Improvements" study and analysis of November 17, 2005(Exhibit A) the applicant will complete all improvements noted as "Opening Day Improvements" and pay the fair share cost to the City of Woodland for the phased Traffic "2020 Improvements" | Concurrent with subdivision development | Planning and Public Works Department | Submit detailed engineered improvement plans, and proof of fair share payment to City of Woodland | Conditions of approval | |
|----------|--|---|--------------------------------------|---|------------------------|--|

ATTACHMENT D

RECORDING REQUESTED BY
and WHEN RECORDED MAIL TO:

Janet Ruggiero
Community Development Department
City of Woodland
300 First Street
Woodland, CA 95695

FILED

JUL 17 1998

PAULA M. COOPER, CLERK OF THE BOARD
BY Stacy Cullender
DEPUTY

Agreement No. 98-77

AGREEMENT FOR THE DEVELOPMENT OF PROPERTY ON BARNARD STREET

THIS AGREEMENT (hereinafter 'Agreement') is entered into by and between the City of Woodland (hereinafter "City"), the County of Yolo (hereinafter "County") and Dr. Marion C. Barnard, Red Shield Servicing, Inc. and Overseas Medical and Health Education Foundation (hereinafter collectively, "Property Owners").

RECITALS

WHEREAS, the City of Woodland General Plan (hereinafter "Woodland General Plan") contains an urban development policy;

WHEREAS, the urban development policy was jointly adopted by both the City and the County;

WHEREAS, the urban development policy designates development authority for the entire Woodland General Plan area, which includes lands outside the City's boundaries;

WHEREAS, the urban development policy authorizes the expansion of existing urban uses in the County that are within the Woodland General Plan area, provided the expansion satisfies certain criteria set forth in the urban development policy, complies with all applicable City standards, and the land owner executes an agreement to annex the property to the City when such annexation is warranted;

WHEREAS, in 1973 the County approved a parcel map which divided an eleven (11) acre parcel of land located outside the city into five (5) parcels;

WHEREAS, City water and sewer services were extended to the parcels pursuant to an October 24, 1972, agreement between the City and Dr. Marion C. Barnard;

WHEREAS, the parcels, located on Barnard Street, are currently zoned Commercial-Highway;

WHEREAS, these parcels are within the Woodland General Plan area but are not in the city limits;

ATTACHMENT D

WHEREAS, Property Owners are seeking authorization to develop one or more of these parcels prior to annexation of the parcel to the City;

WHEREAS, both the City and County have determined that the development, as currently proposed, is an expansion of an existing non-residential use; and

WHEREAS, the City and County would like to work together to accommodate the proposed development.

NOW, THEREFORE, in consideration of the foregoing recitals, all of which are expressly incorporated into this Agreement, and the covenants set forth below, and in exchange for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City, County and Property Owners agree as follows:

TERMS

1. **Property Subject to Agreement**

The property subject to this Agreement (hereinafter "Subject Property") is located on Barnard Street, approximately 1500 feet north of the City. The Subject Property shall be more thoroughly described on the map attached hereto as Exhibit A and incorporated by reference.

This Agreement shall apply to those portions of real property within the Subject Property at such time and to the extent that the owner of said property agrees to the terms hereof by executing this Agreement. No other property shall be subject to the terms of this Agreement.

2. **Development Consistent with Woodland Area General Plan**

The parties agree that development of the Subject Property shall be consistent with the Woodland General Plan. The parties further agree that development of the Subject Property shall be strictly limited to expansions of existing highway commercial uses. For the purposes of this Agreement, "expansions of existing highway commercial uses" shall mean the enlargement, addition or intensification of existing highway commercial uses, and uses accessory thereto, which are identical or substantially similar in purpose and nature to existing uses and the principal use is other than residential.

Each party shall determine whether Property Owners' proposed development is an expansion of the existing highway commercial use. Should either party determine that the proposed development is not such an expansion, the County shall reject the proposed development as inconsistent with the Woodland General Plan.

Property Owners expressly agree to maintain and operate the Subject Property, once developed, in a manner consistent with an expansion of the existing highway commercial use. This duty regarding the maintenance and operation of the developed Subject Property shall expire upon the completion of annexation proceedings as set forth in section 5, below.

ATTACHMENT D

3. Development of Subject Property

The parties hereto agree that the design, construction and both on-site and right-of-way improvements for development of the Subject Property shall be governed by applicable City requirements and standards. Property Owners expressly agree to execute a written agreement regarding the construction of necessary right-of-way improvements when required by the City. The agreement executed pursuant to this section shall be recorded.

All development on the Subject Property shall be connected to City water and sewer systems. Property Owners shall pay all fees associated with such connections. Development of the Subject Property shall provide for adequate on-site storm drainage, subject to the approval of both the City and County Engineers.

4. Payment of Development Fees

Property Owners shall be required to pay all applicable City and County fees, charges and assessments for the development of the Subject Property.

5. Annexation

Property Owners shall execute a written agreement to **annex** the Subject Property to the City when required by the City. This annexation agreement shall be recorded. Upon executing the annexation agreement, Property Owners shall initiate and diligently pursue to completion the annexation of Subject Property as required by the annexation agreement.

Property Owners expressly agree to pay all fees associated with the annexation proceedings. If, due to Property Owners' action or inaction, the City initiates and/or completes all or a portion of the annexation proceedings, Property Owners shall reimburse City for all its costs expended pursuant to such proceedings. These costs include, but are not limited to, reasonable attorneys' fees.

6. City Services

City services to the development will be limited to requests for mutual aid or other related service agreements in effect between the county and the city. Any additional city services shall only be provided on request by the county, at a price negotiated between the county and city.

7. Recordation of Agreement

Property Owners shall record a copy of this Agreement in the official records of Yolo County. The parties hereto agree to execute such documents as may be needed to effectuate this provision.

ATTACHMENT D

8. Term of Agreement

This Agreement shall expire upon completion of either the proposed development for, or the annexation of, the Subject Property, whichever is later. Notwithstanding such expiration of this Agreement, the City's right to unpaid reimbursement as provided in section 6 shall survive.

9. Additional Matters

Each party will execute, promptly upon request from another party, any further papers or documents not herein specifically mentioned which may be reasonably necessary to carry out the letter and spirit of this Agreement. The parties agree to do all things necessary to carry out and effectuate the terms and intent of this Agreement.

10. Complete Agreement

This Agreement supersedes any and all agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that representations by any party which are not embodied herein or any other agreements, statements or promises not contained in this Agreement shall not be valid and binding.

11. Binding Agreement

This Agreement shall be binding upon the parties hereto. All of the covenants, stipulations, promises, and agreements contained in this Agreement by or on behalf of or for the benefit of either of the parties hereto, shall bind or inure to the benefit of their respective heirs, successors or assigns.

12. Integration

This Agreement supersedes any and all other arguments, either oral or in writing, between the parties with respect to the subject matter of this Agreement.

13. Modification and Waiver

No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of the provisions of this Agreement shall be deemed to constitute a waiver of any other provisions whether or not similar nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the parties making the waiver.

14. Severability

If any provision of this Agreement is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining portions hereof shall not, in any way, be affected or impaired thereby.

ATTACHMENT D

15. Interpretation

a. The parties hereto acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and/or has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of this Agreement.

b. In the event of a controversy or dispute between the parties concerning the provisions herein, this Agreement shall be constructed in accordance with the plain meaning of the provisions used herein and no presumptions shall arise concerning the draftsmanship of such provision.

16. California Law

a. The parties hereto acknowledge and agree that the terms of this Agreement, and the Attachments hereto, have been negotiated and executed within the State of California and shall be governed by, and interpreted under, the laws of the State of California.

b. The parties hereto do expressly agree that in the event of a dispute concerning the terms hereof, venue for any legal action shall be with the appropriate court in the County of Yolo, State of California.

17. Headings

The headings contained herein are for the purpose of convenience only, and shall not be constructed to limit or extend the meaning of this Agreement.

18. Execution in Counterparts

This Agreement may be executed in identical counterparts, each of which shall constitute a duplicate original.

19. Third Party Beneficiaries

The parties agree that this Agreement is by and between the parties named herein, and/or their successors and assigns, and no third party is intended, expressly or by implication, to be benefited by this agreement.

20. Attorneys' Fees

If any legal action is brought for the enforcement, rescission or interpretation of this Agreement because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding in addition to any other relief to which it may be entitled.

ATTACHMENT D

21. Exhibits

All Exhibits attached hereto are incorporated into this Agreement by reference.

22. Effective Date of this Agreement

This Agreement, regardless of when executed, shall be deemed to be dated on and effective as of the 1st day of April, 1998.

23. Authority to Execute

Each signatory to this Agreement warrants that he or she is authorized to enter into this Agreement on behalf of his or her principal.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed, as of the date hereinabove set forth:

PROPERTY OWNER

By: Dr. Marion C. Bairard 5/14/98
Name Date

PROPERTY OWNER

RED STAR STAINING Co, Inc
By: [Signature] 6-22-98
Name PRESIDENT Date

PROPERTY OWNER

By: _____
Name Date

COUNTY OF YOLO Agr # 98-77

By: [Signature] 4/21/98
Name Date

ATTACHMENT D

Approved as to form:

Attorneys for the County

By: *Mariana Jenter*
Date

County Counsel

Attest:

By: *Lacey Cuttander* *4/21/98*
Date
County Clerk
County of *Gold*

CITY OF WOODLAND

By: *Kris Kristensen* *5.1.98*
KRIS KRISTENSEN, City Manager Date

Approved as to form:

Kronick, Moskovitz,
Tiedemann & Girard
Attorneys for the City

By: *Ann M. Siprelle*
ANN M. SIPRELLE, City Attorney

Attest:

By: *Jean Winnop* *5/1/98*
JEAN WINNOP, City Clerk Date
City of Woodland

ATTACHMENT E

FINDINGS FOR APPROVAL OF SUBDIVISION MAP TIME EXTENSION ZONE FILE #2001-112 (Parcel Map #4547)

FINDINGS *(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 #2001-112, the Yolo County Planning Commission finds the following:

California Environmental Quality Act (CEQA) Guidelines:

1. In determining that the proposed Categorical Exemption for the project is the appropriate level of environmental review under CEQA, the Planning Commission finds:

That on the basis of pertinent information in the public record and comments received, the ministerial project is exempt from further environmental review and that a Categorical Exemption has been prepared in accordance with the California Environmental Quality Act (CEQA) Guidelines.

Additional Findings:

2. An extension of time shall be approved only when it is found that circumstances under which the subdivision map was granted have not changed.

The project, as approved, remains consistent with the 98-77 Agreement, the City Development Policy, and the Yolo County General Plan and the zoning of the property. There has been no change in the existing or proposed uses on the surrounding properties. In addition, no other information has been provided during the public hearing process that indicates any change in circumstances.

ATTACHMENT F

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



Project Title: ZF# 2001-112

Swift Development (Ralph Swift)
8850 Auburn -Folsom Road
Granite Bay, CA 95746
(916) 791-0401

Project Location: The project consists of approximately 9.1 acres located in Yolo County, southeast of the intersection of Interstate 5 and County Road 99, north of the City of Woodland.

Project Description: A time extension of one year for Tentative Parcel Map (TPM) #4547 (Swift Development) approved by the Planning Commission on May 11, 2006. The TPM was approved to divide approximately 9.1 acre parcel into four separate commercial parcels of 2.5, 1.0, 4.6 and 1.0 acres (APN: 027-430-031), zoned C-H (Commercial Highway) north of the City of Woodland.

Exempt Status: Ministerial Project

Reasons why project is exempt:

Section 15300.1 of the California Environmental Quality Act Guidelines and Section 21080 of the Public Resources Code (CEQA Statutes) exempt projects over which a local agency exercises only ministerial authority such as time extensions of parcels or subdivision maps.

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

Signature (Public Agency):

Date:



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

JUNE 12, 2008

| | |
|---|--|
| FILE #2006-090: Esparto Downtown Mixed Use Zoning District | |
| APPLICANT: Yolo County | |
| LOCATION: Esparto planning area (APN: numerous) | ZONING: n/a FLOOD ZONE: n/a |
| ENVIRONMENTAL DETERMINATION: Negative Declaration | |
| REPORT PREPARED BY: | REVIEWED BY: |
| _____ Eric Parfrey, Principal Planner | _____ David Morrison, Assistant Director |

RECOMMENDED ACTIONS:

1. **CONDUCT** a public hearing regarding the Esparto Downtown Mixed Use (DMX) zoning district ordinance (**Attachment A**) and receive testimony; and
2. **CONTINUE** the ordinance to a next regularly scheduled meeting for consideration of recommendations to the Board of Supervisors, including recommendation for adoption of the ordinance, together with appropriate CEQA documents (Negative Declaration) and related Findings.

REASONS FOR RECOMMENDED ACTIONS:

The updated 2007 Esparto General Plan calls for the adoption of a new Downtown Mixed Use (DMX) zoning district to be applied to properties in the downtown area of Esparto. Properties along Yolo Avenue and Woodland Avenue (State Route 16) that are currently zoned Community Commercial Planned Development (C-2 PD) would be rezoned to the new DMX district. This public hearing is an opportunity for the Commission and members of the public to review and comment on the final draft of the proposed DMX zoning ordinance. Following the public hearing, staff will prepare and circulate an Initial Study/Negative Declaration for 20 days, and another public hearing will be scheduled before the Planning Commission for the Commission's recommendations to the Board of Supervisors.

BACKGROUND:

The Planning Commission held workshops on earlier drafts of the DMX ordinance on February 8, 2007 and April 10, 2008.

The Esparto Citizens Advisory Committee (ECAC) has discussed the ordinance at several of its regularly scheduled meetings earlier this year and convened an ad hoc subcommittee to review the regulations. In developing the latest DMX ordinance, the ECAC was encouraged by staff to try to reconcile three different documents: the original 2007 DMX draft; the Esparto Design Review Guidelines, adopted as Appendix A of the 2007 Esparto General Plan; and the Development Standards recommended in the 2008 Esparto Revitalization Plan (prepared by Dan Burden).

The most recent revisions to the ordinance that have been recommended by the ECAC and staff since the Planning Commission's last workshop on April 10, 2008 are noted in legislative font (underline and ~~strikeout~~) in **Attachment A**. The new adopted DMX zoning ordinance would be applied to all properties along Yolo Avenue and Woodland Avenue (State Route 16) that are currently zoned Community Commercial Planned Development (C-2 PD) and that are already designated on the 2007 Esparto General Plan as "Downtown Mixed Use" (**Attachment B**).

The most significant changes to the original DMX ordinance that was first considered by the Planning Commission last year include the following:

- a new definition of "mixed use development" that recognizes vertical and horizontal integration of mixed uses;
- a requirement that new major development projects on vacant lands must include a mix of uses, or if the new project is predominantly commercial it must include significant community benefits and be subject to a conditional use permit;
- deletion of the floor area ratio (FAR) as a way to regulate density;
- prohibition of detached single family homes within the DMX zone;
- a prohibition of "predominantly" (more than 85 percent of gross acreage) residential projects on vacant lands unless they are senior or affordable;
- establishment of a minimum height limit of 22 feet and maximum height of four stories or 50 feet;
- inclusion of detailed sign regulations (Section 8-2.1221); and
- inclusion of detailed design guidelines (Section 8-2.1222).

The draft mixed use ordinance has been prepared for Esparto but could be applied in downtown areas of other unincorporated towns in Yolo County, with some modifications. For example, a similar DMX ordinance could be considered for the other downtown communities that have public services, i.e., Knights Landing and Madison.

The draft DMX zone ordinance sets regulations for two different types of situations: redevelopment of existing structures, and construction of new mixed use structures on approximately 25 acres of vacant land located on the north end of the historic Esparto downtown. To address new growth on the vacant lands, Section 8-2.1214 of the draft ordinance proposes separate regulations for development of "Large Projects on Vacant

Lands.”

The draft requires that major development projects on vacant parcels must include a mix of residential and non-residential uses. Section 8-2.1214 allows for a single “predominantly commercial” (over 85 percent of the parcel) use such as a hardware store or motel/hotel, if “significant community benefits,” such as a public plaza, are included as part of the project. Section 8-2.1214 prohibits a single “predominantly residential” use. The list of allowed uses for the DMX (Section 8-2.1213) specifically prohibits detached single family homes.

Two entirely new sections have been added to the most recent draft DMX ordinance in order to incorporate and reconcile portions of the Esparto Design Guidelines (part of the 2007 General Plan) and the 2008 Dan Burden Esparto Revitalization Plan. Section 8-2.1221 includes an extensive list of sign regulations, which is more complicated than the countywide sign regulations (found in Section 8-2.2406 of the County Code) but which allows a greater variety of sign types and uses. For example, temporary signs such as banners and daily menu boards are allowed in the Esparto DMX area, but are not allowed countywide. All of these specific sign regulations were recommended by either the Burden Revitalization Plan or the Esparto Design Guidelines.

Section 8-2.1222 includes lengthy building design guidelines. The section states that “new and renovated buildings should be designed consistent with this section and with the Design Review Guidelines of the Esparto General Plan” and that historical buildings may be exempted from some of the individual guidelines. All of these specific building design guidelines were recommended by the Burden Revitalization Plan.

A key component of the proposed regulations continues to be the combination of setback, building frontage, and window requirements in Sections 8-2.1216, 8-2.1217, and 8-2.1218 that would mandate a continuous, pedestrian friendly, retail frontage within the district. The setbacks require that “the entire building façade must [generally] abut front and street side property lines or be located within [10] feet of such property lines...” Blank frontage walls unbroken by windows or other features would not be allowed. In addition, the regulations require that “A minimum of 40 percent and maximum of 75 percent of the street-facing building façade between two feet and eight feet in height must be comprised of clear windows that allow views of indoor space or product display areas.” The intent of these requirements is to ensure that the zone is developed to be a pedestrian-friendly mixed use and retail environment that encourages “window shopping.”

Finally, the draft ordinance relaxes the typical rigid parking requirements that are applied in most traditional zones, and allows alternative arrangements. Section 8-2.1220 requires no off-street parking for new smaller nonresidential uses of less than 3,000 square feet, which is a significant incentive for new businesses to locate in downtown Esparto. The ordinance also allows off-street parking requirements to be modified based on a parking supply study. The intent is to not require on-site parking if a parking study clearly indicates that there is adequate capacity of existing on-street parking in the district, for example.

On-site parking requirements may also be satisfied by using shared parking for different uses which generate parking demand at different times of the day (such as offices or stores, and movie theaters), or by leasing nearby parking spaces on adjacent parcels.

The regulations require that any off-street parking be located to the rear of the principal building or otherwise screened.

PUBLIC AND AGENCY COMMENTS:

The draft zoning ordinance has been discussed extensively by the Esparto Citizens Advisory Committee. County Counsel has reviewed the ordinance. Following this Planning Commission hearing, staff will prepare and circulate an Initial Study/Negative Declaration for 20 days, and another public hearing will be scheduled before the Planning Commission for additional public comment and the Commission's recommendations to the Board of Supervisors.

ATTACHMENTS:

Attachment A – Draft Downtown Mixed Use Zoning Ordinance

Attachment B – Land Use Map from the 2007 Esparto General Plan

ATTACHMENT A

Note: Most recent edits by the ECAC and staff from the April 10, 2008 Planning Commission draft are shown in **bold underline** and ~~strikeout~~.

ESPARTO DOWNTOWN MIXED USE (DMX) ZONING DISTRICT

ARTICLE 12.1 ESPARTO DOWNTOWN/MIXED USE ZONE (DMX)

8-2.1211 **Applicability and Purpose**

The Esparto Downtown Mixed Use (DMX) zone is to be applied to unincorporated areas that are planned for development or redevelopment of a mixture of primarily commercial, retail, office and residential uses.

The purposes of the DMX District are to:

- (a) Accommodate a physical pattern of development often found along village main streets and in neighborhood commercial areas of older cities;
- (b) Encourage mixed-use buildings with neighborhood and community-serving retail, service, and other uses on the ground floor and residential and live/work units above the nonresidential space;
- (c) Require mixed use for new construction on vacant lands within the district, but do not mandate mixed use for infill or changes of use within existing buildings in the historic downtown;
- (d) Encourage development that exhibits the physical design characteristics of pedestrian-oriented, storefront-style shopping streets;
- (d) Promote the health and well-being of residents by encouraging physical activity, alternative transportation, and greater social interaction; and
- (f) Provide flexibility for the development of live/work units, particularly within existing buildings and ensure that the exterior design of live/work buildings is compatible with the exterior design of commercial, industrial, and residential buildings in the area, while remaining consistent with the predominant workspace character of live/work buildings.

8-2.1212 **Definitions**

As used in this ordinance, the following words and terms shall have the meanings specified herein:

- (a) "Gross floor area" is the sum of the gross horizontal areas of all floors of a building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings. Gross floor area does not include

basements when at least one half the floor-to-ceiling height is below grade, accessory parking (i.e., parking that is available on or off-site that is not part of the use’s minimum parking standard), attic space having a floor-to-ceiling height less than seven feet, exterior balconies, uncovered steps, or inner courts.

- (b) “Mixed use development project” means a development project of one or more buildings that includes a mixture of **uses, i.e.,** residential ~~and non-residential~~ (i.e., retail, office, service, industrial, or public) ~~uses,~~ either vertically integrated (a mixture of uses on separate floors of a single building) or horizontally integrated (a mixture of uses in more than one building spread over a large parcel, e.g., retail, office, and upstairs apartments in a building along a main frontage arterial, with residential uses behind).
- (c) “Live/work unit” or “Live/work space” means a building or spaces within a building used jointly for commercial and residential purposes where the residential use of the space is secondary or accessory to the primary use as a place of work. “Live-work unit” is further defined as a structure or portion of a structure:
 - (1) That combines a commercial or manufacturing activity allowed in the zone with a residential living space for the owner of the commercial or manufacturing business, or the owner's employee, and that person's household;
 - (2) Where the resident owner, **occupant,** or employee of the business is responsible for the commercial or manufacturing activity performed; and
 - (3) Where the commercial or manufacturing activity conducted takes place subject to a valid business license associated with the premises.
- (d) “Predominantly” for the purpose of interpreting this ordinance means a primary use or related accessory use that is proposed for construction on eighty-five percent (85%) or more of the gross acreage of vacant land.
- (e) “Vacant land” means land that is currently undeveloped with urban structures, but may be occupied by a rural residence or structure, and is designated for future urban growth.

8-2.1213 Allowed Uses

Uses are allowed in the DMX zoning district in accordance with the following use table

Specific Use Type

P= Allowed by-right
 C = Conditional use
 N = Not allowed

Household Living

| | |
|---|----------|
| Artist Live/Work Space located above the ground floor | P |
| Artist Live/Work Space, ground floor | <u>P</u> |
| Dwelling Units located above the ground floor | P |

| | |
|---|--|
| Detached Single Family Units | C with commercial use or N |
| Attached Single Family Units (duplex, townhouse, condo) | C or P with commercial use or if senior or affordable |
| Multiple-Family Units (apartments) | C or P if senior or affordable |
| Single-Room Occupancy | P |
| Group Living | |
| Assisted Living | P or C if over 6 beds |
| Group Home | C |
| Nursing Home | C |
| Temporary Overnight Shelter | C |
| Transitional Residences | C |
| Transitional Shelters | C |
| <u>Public/Quasi-Public</u> | |
| Colleges and Universities | P or C |
| Cultural Exhibits and Libraries | P |
| Day Care | P |
| Hospital | N |
| Urgent Care Clinic | C |
| Lodge or Private Club | N or P if on second floor |
| Parks and Recreation | P |
| Postal Service | P |
| Public Safety Services | P |
| Religious Assembly | P if on second floor |
| School | C or N |
| Utilities and Services, Minor | P |
| Utilities and Services, Major | C |
| Adult Use | N |
| Animal Services | |
| Shelter/Boarding Kennel | N |
| Sales and Grooming | P |
| Veterinary | P |
| Artist Work or Sales Space | P |
| Eating and Drinking Establishments | |
| Restaurant | P |
| Sale of alcohol | C |
| Bars/Tavern | C |
| Drive-Through Facility | C |
| Outdoor eating and drinking | P |

Entertainment and Spectator Sports

| | |
|---------------------------|---|
| Small (1–149 seats) | P |
| Medium-Large (150+ seats) | N |

Lodging

| | |
|--------------------------|---|
| Small (1–16 guest rooms) | P |
| Large (17+ guest rooms) | C |

Commercial Services

| | |
|---|-----------------|
| Financial Services | P |
| Food and Beverage Retail Sales | P |
| Gas Stations | N |
| Medical Service | P |
| Office | P |
| Parking, Commercial (Non-accessory) | C |
| Personal Service, including health clubs and gyms | P |
| Repair Service, Consumer, including bicycles | P |
| Residential Storage Warehouse | N |
| Vehicle Sales, Service, and Repair | N C |
| <u>Vehicle Sales</u> | <u>N</u> |

Retail

| | |
|--|---|
| Retail Sales, General, under 5,000 square feet | P |
| Retail Sales, General, over 5,000 square feet | C |

Manufacturing, Production and Industrial Services

| | |
|--|---|
| Artisan (hand-tools only; e.g., jewelry or ceramics) | C |
|--|---|

Wireless Communication Facilities

| | |
|-----------------------|---|
| Co-located | P |
| Freestanding (Towers) | C |

Temporary Uses

| | |
|-------------------------|-----------------------------|
| Seasonal farmers market | P |
| Other temporary uses | (as allowed by County Code) |

8-2.1214 ~~Large Projects on Vacant Lands~~ Large Parcels

For large projects proposed on vacant lands of more than one acre in size, the following regulations apply:

- (a) Projects must include a mix of residential and non-residential uses (a mixed use development project), integrated either vertically or horizontally, except as allowed by (b), below.
- (b) Projects that are predominantly one single commercial use (e.g., a large retail or service establishment such as a hardware store, or a motel/hotel)

must be accompanied by one or more significant community benefits, such as a public plaza, park, or other public use. All predominantly commercial projects, regardless of type of commercial use, will be subject to conditional use permit review.

- (c) Projects that are predominantly residential are prohibited, ~~unless a majority of units are reserved for senior or affordable housing.~~
- (d) All projects must include some public amenities such as public open areas, public art, public meeting rooms, pedestrian walkways, etc.
- (e) All projects must be designed with a grid circulation pattern that connects with the existing community.
- (f) The architecture and design of buildings must be coordinated throughout the site and must be harmonious with the adjacent community.
- (g) All projects shall conform with all other regulations in this section, and should be consistent with the Design Review Guidelines of the Esparto General Plan.

8-2.1215 Residential Uses and Density

- (a) The maximum residential density allowed in new buildings in the DMX zone is ~~20~~ **the maximum number of** dwelling units per net acre **allowed under the Residential High (RH) General Plan designation**, not including density bonuses allowed under Yolo County and State laws.
- (b) The minimum residential density allowed in new buildings in the DMX zone is 10 dwelling units per net acre for new residential structures, and for large projects proposed on vacant lands of more than one acre in size.
- (c) The maximum and minimum residential density standards in (a) and (b), above, shall not be applied to new, converted, or expanded residential uses proposed within existing urban buildings located in the historic downtown along Yolo Avenue and Woodland Avenue.

8-2.1216 Height and Minimum Retail Floor Area Space

- (a) The maximum building height shall be ~~40~~ **50** feet, or ~~three~~ **four** stories, whichever is greater, for all buildings.
- (b) The minimum height for new or renovated mixed-use buildings located in the historic downtown along Yolo Avenue, and Woodland Avenue shall be 22 feet.
- (c) The gross floor area of individual commercial establishments in the DMX district shall not exceed 25,000 square feet.
- (d) The ground floor frontage space of new or renovated mixed-use buildings located along Yolo Avenue, Woodland Avenue, and County Road 87 **shall not include apartments and** shall contain the following minimum ~~commercial~~ **retail** (non-residential) space:
 - (1) At least 800 square feet or 25 percent of the ground floor area (whichever is greater) on lots with street frontage of less than 50 feet; or

- (2) At least 20 percent of the ground floor area on lots with 50 feet of street frontage or more.

8-2.1217 Setbacks

The following setbacks are required:

- (a) The entire building façade of new or renovated buildings located along Yolo Avenue, Woodland Avenue, and County Road 87 shall generally abut front and street side property lines or be located within 10 feet of such property lines. An exception may be made for the “train station” property (APN: 049-240-17). However, a portion of new or renovated buildings may be set back from the maximum setback line in order to provide a specific feature or to reflect the prevailing setbacks of existing buildings along the block or the street. Specific features include an articulated façade, or to accommodate a building entrance feature or an outdoor eating area. ~~In order to preserve the continuity of the streetwall, new or renovated buildings may be set back no more than 12 feet from the front or street side property line or at least 40 percent of the building façade shall be located at the maximum setback line.~~
- (b) Special architectural features such as balconies, bay windows, arcades, and awnings may project into front setbacks and public street right-of-ways (but not extend past the curb line) provided they meet minimum required clearance above the sidewalk and leave a minimum five foot wide unobstructed sidewalk. Prior to new encroachment into the public right-of-way, a permit shall be obtained from the County Planning and Public Works Department, or Caltrans.
- (c) The minimum rear setback is 10 feet.
- (d) No interior side setbacks are required in the DMX district, except when DMX zoned property abuts R-zoned property, in which case the minimum side setback required in the DMX district shall be the same as required for a residential use on the abutting R-zoned lot, **unless a different setback is approved by the Director of Planning and Public Works.**

8-2.1218 Other Building Regulations

- (a) All permitted uses in the DMX district must be conducted within completely enclosed buildings unless otherwise expressly authorized. This requirement does not apply to off-street parking or loading areas, automated teller machines, or outdoor eating or drinking areas.
- (b) **Building frontage of new or renovated buildings shall be eighty percent (80%) to one hundred percent (100%) of the frontage measured from side property line to side property line at front property line.**
- (c) A minimum of forty percent (40%), and a maximum of seventy-five percent (75%), of the street-facing building façade of new or renovated **commercial** buildings ~~along Yolo Avenue~~ shall be comprised of clear windows that allow views of indoor space or product display areas between two feet and eight

feet in height. The bottom of any window or product display window used to satisfy this transparency standard shall not be more than three (3) feet above the adjacent sidewalk, and product display windows used to satisfy this requirement must have a minimum height of four (4) feet and be internally lighted.

(d) No more than thirty (30) feet of horizontal distance of wall shall be provided without architectural relief, such as windows, for building walls and frontage walls facing the street.

(e) **Commercial** buildings shall have a primary entrance door facing a public sidewalk. Entrances at building corners may be used to satisfy this requirement. Building entrances may include doors to individual shops or businesses, lobby entrances, entrances to pedestrian-oriented plazas, or courtyard entrances to a cluster of shops or businesses.

8-2.1221 Sign Regulations

- (a) Signs shall be provided for **commercial** uses and buildings along Yolo Avenue and Woodland Avenue that are appropriate in scale and location, and shall be architecturally integrated with the surroundings.
- (b) Signs shall be clearly integrated and consistent in design and materials with the architecture of the building. Signage in the business district should support the district's character and not detract from the area.
- (c) Monument signs are preferred. Pole signs are prohibited.
- (d) Ground signage shall be limited in height of five (5) feet.
- (e) **Attached** signs shall be flat against the facade, or mounted projection from the facade.
- (f) Window signage shall be limited to twenty (20) percent of ~~one~~ **the total window pane frontage** per storefront.
- (g) The maximum area of any single sign mounted perpendicular to a given facade shall not exceed ten (10) square feet.
- (h) Signs shall maintain a minimum clear height above sidewalks of eight (8) feet.
- (i) Signs shall not extend beyond the curb line.
- (j) Signs located on the interior of a structure, but visible from the exterior of the building, are permitted and are not charged against the maximum allowable signage area if such signs are not physically attached or painted to the window and do not obscure more than 10% of ground floor street side building transparency. The 10% is not to exceed total glass area calculated for both unattached and temporary window signs.
- (k) Temporary signs can take the form of banners, window graphics, or as placards integrated with a window display. Temporary signs are permitted on the interior of the business establishment only and shall be no more than 5 square feet of text and shall not exceed 10 square feet in size and no more than 10% of ground floor street side building transparency. Temporary signs shall not be displayed more than thirty days in a calendar year.
- (l) One menu **or sandwich** board shall be allowed per street address. Menu

boards shall not exceed eight (8) square feet in size (sign and copy area is calculated on one side only) and shall be positioned so as to be adjacent to that restaurant or business listed on the board and information on that board shall advertise exclusively the goods and services of that business and be placed in a manner which is clearly visible to pedestrian traffic. All signs shall be removed at the end of each business day. All signs shall be securely anchored to the ground.

(m) Murals are allowed and shall be reviewed for design by the Esparto Citizens Advisory Committee.

8-2.1222 Building Design Guidelines

- (a) New and renovated buildings should be designed consistent with this section and with the Design Review Guidelines of the Esparto General Plan. Historical buildings may be exempted from some of these individual guidelines, at the discretion of the Director of Planning and Public Works.
- (b) Building surface variation should be incorporated in new buildings through the placement of windows and entries, planar changes (where the building surface recedes or projects), significant color changes, material changes, or other elements that add variation along the length of a building.
- (c) Structures should be designed with articulation at entries, bases, and tops. The organization used shall break up the mass into smaller elements. Buildings shall provide as much visual interest as possible without creating a chaotic image.
- (d) **New and renovated** buildings shall utilize at least three of the following design features to provide architectural relief along all elevations of the building:
 - (1) divisions or breaks in materials and color (materials should be drawn from a common palette)
 - (2) window bays
 - (3) separate entrances and entry treatments
 - (4) variation in roof lines
 - (5) projecting architectural elements (porches, awnings, balconies, etc.)
 - (6) recessed entries (at least three (3) feet from the primary façade)
 - (7) protruding entries (at least three (3) feet from the primary façade)
 - (8) cupolas
- (e) Buildings shall include a clear visual division (e.g., a cornice or awning) between the first and upper floors.
- (f) Variable roof forms shall be incorporated into the building design. Long, uninterrupted horizontal lines of parapet are discouraged. Generally it is preferred to break up the parapet, eaves, or ridge line by vertical or horizontal off-sets or changing the roof forms.
- (g) Commercial and mixed-use buildings shall express a “storefront character,” by including corner building entrances on corner lots, and including regularly spaced and similar-shaped windows with window hoods or trim (all building

stories).

8-2.1223 Outdoor Eating Space

- (a) Outdoor dining is permitted and may occur within the public right-of-way.
- (b) A minimum of five (5) feet of clear sidewalk access for pedestrians shall be maintained.

8-2.1224 Live/Work Uses

- (a) Live/work units are permitted in the DMX zone.
- (b) Any commercial use permitted in the DMX zone is permitted in the live/work unit.
- (c) Live/work units at street level are subject to the development and transparency standards of ground-floor retail or commercial establishments, and the living area shall not exceed one-third of the total floor area of the unit.
- (d) At least one resident in each live/work unit shall maintain a valid business license and other required permits for a business on the premises.

8-2.1225 Off-Street Parking

- (a) For large ~~residential and non-residential~~ mixed use development projects on vacant lands of more than one acre, off-street parking shall be provided for all residential and nonresidential uses, as required by Article 25.
- (b) For all other projects, the following parking requirements apply:
 - (1) No off-street parking is required for new or expanded nonresidential uses in the DMX zone unless such uses exceed 3,000 square feet of gross floor area, in which case off-street parking shall be provided for the floor area in excess of 3,000 square feet, in accordance with Article 25, or as modified by (3), below.
 - (2) Off-street parking for new residential uses of four or more units in the DMX zone shall be provided, in accordance with Article 25, or as modified by (3), below.
 - (3) Off-street parking requirements for nonresidential and residential uses may be modified by the Director of Planning and Public Works based on a parking supply study prepared by a civil engineer which indicates an ample supply of on-street or other nearby public parking, or adequate nearby private parking for shared nonresidential uses. Shared parking is permitted between different categories of uses or uses with different hours of operation. An agreement providing for the shared use of parking, executed by the parties involved, shall be filed with the Planning Director or Zoning Administrator.
- (c) For live/work units of less than 2,500 square feet, one parking space is

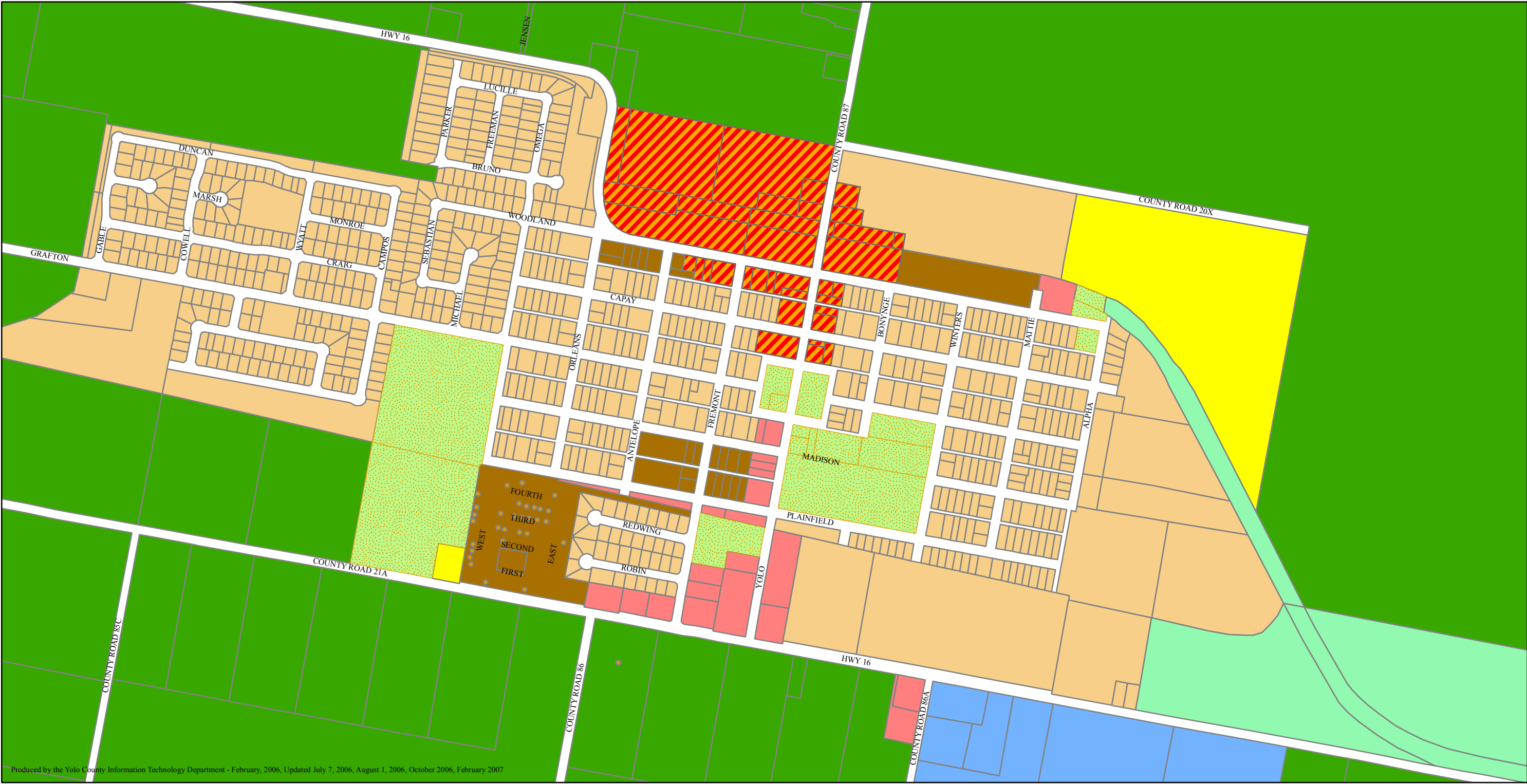
required for each unit. For live/work units greater than 2,500 square feet, required parking will be based on the applicable parking standard for the nonresidential use or the closest similar use as determined by the Planning Director or Zoning Administrator.

- (d) Off-street parking requirements for both nonresidential and residential uses may be satisfied by the leasing of nearby parking spaces on adjacent parcels within 400 feet of the use.
- (e) Off-street parking spaces provided on the site must be located to the rear of the principal building or otherwise screened so as to not be visible from public right-of-way or residential zoning districts.

Attachment B – Land Use Map from the 2007 Esparto General Plan

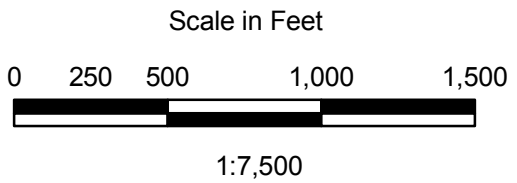
FIGURE 3
GENERAL PLAN LAND USE MAP

General Plan for the Town of Esparto



Produced by the Yolo County Information Technology Department - February, 2006, Updated July 7, 2006, August 1, 2006, October 2006, February 2007

- Proposed General Plan Designations**
- | | | |
|-------------------------------|---------------------------|----------------------|
| Agricultural | Residential, High Density | Light Industrial |
| Residential, Very Low Density | Commercial | Parks and Recreation |
| Residential, Low Density | General Commercial | Public Open Space |
| Residential, Medium Density | Downtown Mixed Use | |





County of Yolo

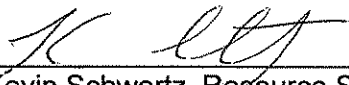
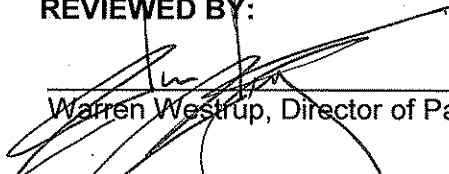
PARKS AND RESOURCES DEPARTMENT

Warren Westrup
DIRECTOR

120 West Main Street, Suite C
Woodland, CA 95695
(530) 406-4880 FAX (530) 668-1801
www.yolocounty.org

PLANNING COMMISSION STAFF REPORT

June 12, 2008

| | |
|--|--|
| FILE: Consideration of the 2007 Annual Compliance Report summaries for Off-Channel Gravel Mining within the Cache Creek Area Plan for the Granite Construction-Capay, Granite Construction-Woodland, Schwarzgruber and Sons, CEMEX, Syar Industries, Teichert Aggregate-Esparto, and Teichert Aggregate-Woodland sites. | |
| APPLICANT: Yolo County Parks & Resources Department 120 West Main Street Suite C Woodland, CA 95695 | |
| LOCATION: Immediately north and south of lower Cache Creek, between County Roads 85 and 96, within the boundaries of the Cache Creek Area Plan (Attachment A) | ZONING: Agricultural Preserve (A-P) and Agricultural General (A-1) with Special Sand and Gravel Combining Zone (S-G) FLOOD ZONE: Various SOIL TYPE: Various |
| ENVIRONMENTAL DETERMINATION: Categorical Exemption | |
| REPORT PREPARED BY:  Kevin Schwartz, Resource Specialist | REVIEWED BY:  Warren Westrup, Director of Parks & Resources |

RECOMMENDED ACTIONS

That the Yolo County Planning Commission take the following actions:

1. **DETERMINE** that Granite Construction (two sites), Schwarzgruber and Sons, Syar Industries, and Teichert Aggregates (two sites) have complied with the Conditions of Approval established under approved mining permits and reclamation plans;
2. **DETERMINE** that CEMEX has not complied with the Conditions of Approval, but that the Parks and Resources Department will determine them to be in compliance once CEMEX completes the requirements as described in the attached annual compliance report;
3. **ADOPT** the Findings (**Attachment C**) in support of determining that the mining operations are in compliance with all Conditions of Approval; and
4. **ADOPT** the Categorical Exempt pursuant to the California Environmental Quality Act and Guidelines (**Attachment D**).

REASONS FOR RECOMMENDED ACTIONS

Pursuant to Article 7 of the County's Off-Channel Surface Mining Ordinance, the aggregate industry is required to provide annual reporting on their operations along lower Cache Creek to the Yolo County Planning Commission. Based on staff's review of the subject aggregate operations in 2007, it has been determined that all of the operations are in compliance with the provisions of the County Surface Mining and Reclamation Ordinances, Mitigation Monitoring Plans, Development Agreements, and the California Surface Mining and Reclamation Act.

BACKGROUND AND ANALYSIS

The Off-Channel Mining Plan and implementing ordinances that provide the regulatory framework for mining and reclamation within the Cache Creek Area Plan were adopted by the County Board of Supervisors on July 30, 1996.

As required by the Surface Mining and Reclamation Act (SMARA), an Annual Compliance Report documenting the status of mining and reclamation activities at each of the approved mining operation sites has been prepared by the County for submittal to the State Department of Conservation, Office of Mine Reclamation. All of the operations located along lower Cache Creek have been found to be in compliance with the approved permits.

Each report is based on staff's independent analysis of aerial photographs, field inspections, and information submitted by the mining operators in order to establish whether the mining is being conducted in a manner that is in conformance with the requirements of the Yolo County Surface Mining and Reclamation Ordinance, permit conditions of approval, California SMARA, mitigation monitoring plans, and the approved Development Agreements. The reports, which contain a detailed description of the compliance status of each operation, are on file and available for public review at the Parks and Resources Department office. A summary of each of the detailed compliance reports is attached to this staff report (**Attachment B**).

Production figures for individual operators are proprietary information and may not be included in this staff report. However, a review of the production data provided to staff indicates that the volume of sold material mined in 2007 was 3.53 million tons, compared to 4.69 million tons in 2006 as compared to 4.7 million tons in 2005, 4.9 million tons in 2004, and 5.7 million tons in 2001.

PUBLIC AND AGENCY COMMENTS

The Annual Compliance Report has not been circulated for public review prior to this public hearing at the Planning Commission.

The requirements of the Department of Conservation, Office of Mine Reclamation have been taken into consideration in the preparation of the Annual Compliance Report.

Pursuant to the requirements of the California Environmental Quality Act, the Annual Report to the Planning Commission is Categorically Exempt under Section 15307, Class 7 of the CEQA Guidelines as an action taken by a regulatory agency to assure the restoration, maintenance, and enhancement of natural resources.

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 that Board within **fifteen** days from the date of the action. A written notice of the appeal specifying the grounds 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

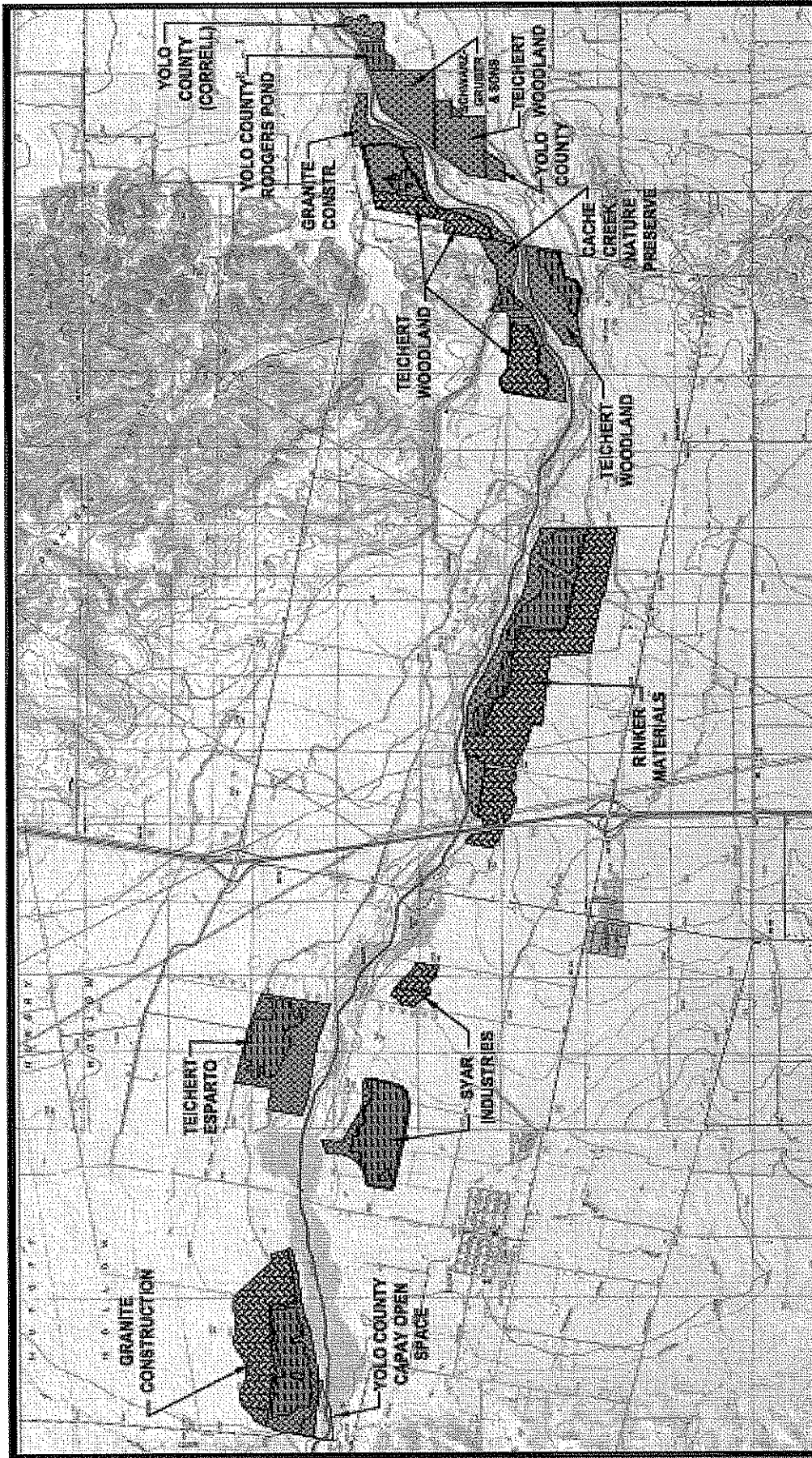
Attachment A: Map of Aggregate Mines along Lower Cache Creek

Attachment B: Gravel Mine Compliance Report Summaries

Attachment C: Findings

Attachment D: Notice of Exemption

ATTACHMENT A MAP OF GRAVEL MINES LOCATED ALONG CACHE CREEK



CACHE CREEK
CONCEPTUAL RECLAMATION
AND RESTORATION VISION
(APPROX. 2032)

2940 SPAFFORD ST.
DUBLIN, CA 94568
530.758.2026
Fax: 530.758.2066
cscdrva.com

HABITAT
AGRICULTURE
OPEN WATER

JANUARY 31, 2005

APPROXIMATE SCALE IN FEET

ATTACHMENT B
GRANITE CONSTRUCTION
CAPAY FACILITY

2007 OFF CHANNEL ANNUAL MINING PERMIT COMPLIANCE SUMMARY

INTRODUCTION

Granite's 400-acre Capay facility is located approximately 2 miles north of the town of Esparto (accessed off CR 87). Yolo County Parks & Resources Department Staff performed a field inspection of the operation in December 2007, and found the operation to be in compliance with the Development Agreement.

DEVELOPMENT AGREEMENT IN PLACE

As required by County Ordinance 1190, Article 7 and under Section 7.1. Development Agreement No. 96-289 and Permit # ZF95-078 are active and cover the gravel mining operation currently in production.

PRODUCTION, FEES, AND GENERAL OPERATIONS

The operator did not exceed the allowed 1 million tons (sold weight) in the last production year. The maximum ten-year average has also not been exceeded. The operator paid all fees on a quarterly basis as required by the development agreement. Staff found the operator to be in compliance with the general operations such as stockpile management, setback requirements, and plant operations.

BONDS

The operator has a current bond of \$843,723 on file with Yolo County, and is in compliance with the Surface Mining Reclamation Ordinance and the State Surface Mining and Reclamation Act (SMARA). The county is listed as the certificate holder on the bonds.

PROCESSING OF MATERIALS

Staff found the operator to be in compliance with the requirements of the development agreement for general operations such as stockpile management, setback requirements, fencing, and plant operations.

LEVEE STABILITY AND EROSION CONTROL

The operator submitted a comprehensive levee report prepared by Cunningham Engineering. The report evaluated the condition, slope, stability, and the erosion potential of the existing levees and banks. Staff inspected the site in December 2007 and concurs with the findings of the report. The report recommends remedial actions be taken as soon as practical: "The creek meander pattern abuts the stabilization slope located south of the plant site. There is evidence that the stabilization slope has been partially submerged in previous storms causing portions of the keyway to be exposed and incised." Granite Construction Company submitted an application to the County for a Flood Hazard Development Permit in August 2007 in order to repair and reface exposed keyways, but has not made such repairs yet due to delays and new standards by the Army Corps of Engineers.

WATER QUALITY AND GROUNDWATER

The operator performs ongoing semi annual groundwater monitoring of the (non-potable) monitoring well network throughout the site. A groundwater study was prepared by Wallace-Kuhl & Associates for the operator, and the following were notable aspects of the report:

- None of the petroleum hydrocarbon compounds, organophosphorous pesticides, or chlorinated herbicides were found to be above laboratory detection limits.
- The pH was below the maximum allowed containment level of 8.5.
- Nitrate levels were slightly elevated in two wells.

- Coliform values in one of the monitoring wells and the open water pond were elevated (probably attributed to the proximity with the West Adams canal), but do not exceed the fecal coliform levels in the creek (2007 data collected by Yolo County – Foothill Associates).
- Elevated levels of Ba, Mn, Ca, Mg, Na, and, in turn water hardness and electrical conductivity, are expected given historical conditions in the area and the area's natural geology and soils.

RECLAMATION AND HABITAT

The reclamation plans and operations are in compliance with the original development agreement and all subsequent amendments approved by the Board of Supervisors. Overburden and topsoil has been stockpiled for future reclamation activities. The open water ponds provide good habitat for waterfowl throughout the year, and the creek edges near the plant are vegetated to an acceptable level. Berms, levees, and un-mined areas are covered with a mix of native and non-native vegetation. Revegetation efforts have been hindered because of low rainfall conditions.

ROADS AND TRAFFIC

The operator continues to participate in the joint management/maintenance requirements for CR 87 (northbound from the plant entrance), CR 19 (east to the Teichert Esparto plant), and joint maintenance of CR 19 with Teichert to the intersection with I-505. Pursuant to Yolo County Encroachment Permit No. 2007-153, Granite performed the following maintenance of county roads (CR) per the gravel mining agreement for their Esparto plant:

- CR19: Installed a chip seal between CR87 and the Teichert mine entrance.
- CR87: Performed dig-outs between the Granite entrance and CR19. Patched areas of CR 87.

The Public Works Division has recommended that Granite's portion of CR87 (mine entrance to CR19) be reconstructed due to the poor pavement conditions caused by Granite's truck traffic. The work completed by Granite per the above encroachment permit was deemed acceptable by the Public Works Superintendent for the Winter 2007-2008 preparations. The Public Works Division recommends that Granite be required to reconstruct their portion of CR87 and submit an annual evaluation of the structural integrity of the road per the mining agreement in order to be compliant for the 2008 Annual Compliance Review. Before a complete review and determination about maintenance can be made, a report from the analysis of the dig-outs must first be evaluated.

AIR QUALITY & NOISE

The operator submitted documentation verifying that they achieved a 20% reduction in emissions as of 2005. The electric dredge and associated conveyor system has helped to improved the efficiency of the operations reduce emissions, and the re-location of the plant closer to the entrance has reduced truck traffic. The Yolo-Solano Air Quality Control Board (YSAQCB) reported no complaint actions or notice of violations for Granite Construction. Berms, stockpiles, and vegetated buffers are being maintained to help reduce the impacts of noise on the surrounding areas. Hourly noise standards were in compliance during the noise standard compliance testing period.

CONCLUSION

The operator has complied with the requirements of the development agreement and SMARA.

GRANITE CONSTRUCTION

WOODLAND FACILITY (IDLE)

2007 OFF CHANNEL ANNUAL MINING PERMIT COMPLIANCE SUMMARY

INTRODUCTION

Granite's 110 acre IDLE Woodland facility is located approximately four miles northwest of Woodland (accessed off CR 18A). The Yolo County Parks & Resources Department staff performed a field inspection of the operation in December 2007, and found the operation to be in compliance with the permit.

DEVELOPMENT AGREEMENT IN PLACE

As required by County Ordinance 1190, Article 7 and under Section 7.1. Permit #ZF 2001-096 relates to this idle gravel mine.

PRODUCTION, FEES, AND GENERAL OPERATIONS

The operator designated the mine as Idle in 1999. Section § 2727.1 of the State Surface Mining and Reclamation Act (SMARA) describes an idle mine as:

“Idle means to curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date”.

No mining and/or production has been performed at the site since 1999.

BONDS

The operator has a current bond of \$20,775 on file with Yolo County. The county is listed as the certificate holder on the bond.

PROCESSING OF MATERIALS

Does not apply. Mine is idle.

LEVEE STABILITY AND EROSION CONTROL

The 1996 storms created a 30-foot wide breach in the streambank separating the mining area from a side-channel of Cache Creek. As a result, the mine area was flooded and silt was deposited throughout the excavation. A portion of the interior streambank side sloughed off as well. The operator received approval of a Flood Hazard Development Permit (Zone File No. 97-045) on October 15, 1997 to repair the streambank damage. Storms in the 1997-98-winter season exacerbated the situation, widening the breach and resulting in additional damage to the streambank. Although meandering is not creating any damage to on-site structures, reclaimed areas, adjoining properties, or other critical features, streamflows are being partially diverted into the mine area.

With regards to the issue of bank erosion, during their review of Zone File No. 97-045 to repair the levee for the project site, the Cache Creek Technical Advisory Committee recommended that the following statement be included as a part of the Flood Hazard Development Permit:

“The Cache Creek Resources Management Plan (CCRMP) has recommended that the long-term goal for the project site is to breach or remove the existing channel bank, so that the creek is allowed to expand into the mined basin, once the applicant completes reclamation operations. Until such time as reclamation is completed, however, the applicant is required under the conditions of approval for Mining Permit No. G-7 to minimize meandering directs flow away from critical features, and to minimize bank erosion. The TAC approved the proposed project, but

only as a short-term solution. Considering the flood elevations calculated for this reach, it is likely that the channel bank will continue to breach at this location. As such, the TAC supports the eventual conversion of the subject property to riparian habitat, hydrologically connected to Cache Creek, as adopted in the CCRMP”.

The heavy run-off and storms of late December 2005 and early January 2006 did not increase the erosion on the banks of the creek. Since the operator does not currently mine within the active channel, riparian habitat has been naturally reestablished in this reach of the creek. As the future use of the site is uncertain, there was no work on the long-term CCRMP goals for the site in 2007. Little native riparian vegetation has established within the mining site, although within the active channel there has been good natural reestablishment of native riparian vegetation.

WATER QUALITY AND GROUNDWATER

Does not apply. Mine is idle.

RECLAMATION AND HABITAT

Does not apply. Mine is idle.

ROADS AND TRAFFIC

Does not apply. Mine is idle.

AIR QUALITY & NOISE

Does not apply. Mine is idle.

CONCLUSION

Mine is idle.

ATTACHMENT B

SCHWARZGRUBER & SONS

2007 OFF CHANNEL ANNUAL MINING PERMIT COMPLIANCE SUMMARY

INTRODUCTION

Schwarzgruber's 99-acre facility is located approximately 4.3 miles northwest of Woodland (accessed off CR 96). Yolo County Parks & Resources Department staff performed a field inspection of the operation and found the operation to be in compliance with the conditions of the zone file.

DEVELOPMENT AGREEMENT IN PLACE

As required by County Ordinance 1190, Article 7 and under Section 7.1. Zone File No. G-6 (October 29, 1980) covers the gravel mining operation currently in production.

PRODUCTION, FEES, AND GENERAL OPERATIONS

The operator did not exceed the allowed 114,000 tons per year in the last production year. The maximum ten-year average has also not been exceeded. The operator is not required to pay quarterly fees. The operator has complied with the conditions of approval regarding the moving, processing, and stockpiling of material throughout the site.

BONDS

The operator has a current bond of \$200,000 on file with Yolo County, and complies with the Surface Mining Reclamation Ordinance and the State Surface Mining and Reclamation Act (SMARA). The county is listed as the certificate holder on the bond.

PROCESSING OF MATERIALS

Staff found the operator to be in compliance with the requirements for general operations such as stockpile management, setback requirements, and plant operations.

LEVEE STABILITY AND EROSION CONTROL

The operator is not required to submit a levee report. Staff inspected the site and found no visual evidence of instability, erosion, or other hazardous conditions along the creek levees or embankments within the mine.

WATER QUALITY AND GROUNDWATER

The operator is not required to perform groundwater monitoring.

RECLAMATION AND HABITAT

The operator is not required to submit reclamation plans until their mining operation closes.

ROADS AND TRAFFIC

The operator is not required to maintain the roads leading into the facility.

AIR QUALITY & NOISE

The operator is not required to submit any reports regarding air quality or noise. No noise complaints were filed with the county in 2007 by any of the surrounding residents. The Yolo-Solano Air Quality Control Board (YSAQCB) noted that in November of 2007 the operator exceeded air quality limits of particles/dry cubic feet (g/ft³) and paid a penalty of \$2400.

CONCLUSION

The operator has complied with the requirements of the zone file and SMARA.

ATTACHMENT B

CEMEX

Previously known as:

(SOLANO CONCRETE CO., INC. and RINKER MATERIALS)

2007 OFF CHANNEL ANNUAL MINING PERMIT COMPLIANCE SUMMARY

INTRODUCTION

CEMEX's 586-acre facility (previously Rinker Materials and Solano Concrete Co., Inc.) is located approximately 10 miles west of Woodland (accessed off State HWY 16). Yolo County Parks & Resources Department staff performed a field inspection of the operation in December 2007. At the September 10, 2007 Technical Advisory Committee (TAC) meeting for the CCRMP area, Rinker Materials had a Flood Hazard Development Agreement (FHDA) approved by Kevin Schwartz on the condition that it also complete a Spill Prevention, Control, and Countermeasure Plan (SPCCP) needed during the construction of the bank stabilization. An SPCCP has still not been prepared by the operator. Once the SPCCP is submitted, the FHDA will be submitted to the Army Corps of Engineers (ACE) pending their approval. It is uncertain whether the operation will be able to complete the bank stabilization in 2008 before November 1, 2008 as required given the amount of time the ACE has stated it takes to review a project currently. In addition to needed streambank stabilization, rill erosion and loose fine soil eroding into the creek at the second conveyor belt transfer point needs to be fixed. In March of 2007, Rinker was given a notice of violation by the Yolo-Solano Air Quality Control Board for exceeding particulate matter grams/dry cubic feet and paid a \$5400 fine for the violation. Besides those items mentioned above, CEMEX (previously Rinker Materials) was found to be in compliance with its Development Agreement.

DEVELOPMENT AGREEMENT IN PLACE

As required by County Ordinance 1190, Article 7 and under Section 7.1. Development agreement # 96-287 and Zone File No. 95-093 covers the gravel mining operation currently in production.

PRODUCTION, FEES, AND GENERAL OPERATIONS

The operator did not exceed the allowed 1 million tons (sold weight) in the last production year. The maximum ten-year average has also not been exceeded. The operator paid all fees on a quarterly basis as required by the development agreement. The operator has complied with the conditions of approval regarding the moving, processing, and stockpiling of material throughout the site.

BONDS

The operator has a number of bonds that total \$2,180,861 on file with Yolo County, and they comply with the Surface Mining Reclamation Ordinance and the State Surface Mining and Reclamation Act (SMARA). The county is listed as the certificate holder on the bonds.

PROCESSING OF MATERIALS

Staff found the operator to be in compliance with the requirements of the development agreement requirements for general operations such as stockpile management, setback requirements, fencing, and plant operations.

LEVEE STABILITY AND EROSION CONTROL

The operator submitted a comprehensive levee report prepared by Cunningham Engineering Corporation in January 2007. The report evaluated the condition, slope, stability, and the erosion potential of the existing levees and banks of Cache Creek. The Resource Specialist at the time, Dimitrios Georges, made comments to Rinker regarding the report with recommendations discussed by the TAC at that time. The comments needed to be addressed before the FHDA was approved for the proposed Streambank Bank Stabilization Project. The plan was reviewed again by the TAC and the Parks and Resources Department in July and again in September 2007. At

the September 10, 2007 TAC meeting Cunningham Engineer and Rinker presented a plan that addressed all the comments made from the January and July TAC meetings. At that time, Rinker Materials had a FHDA approved on the condition that it also completes a Spill Prevention, Control, and Countermeasure Plan needed during the construction of the bank stabilization. The bank stabilization plans to stabilize two sections of bank along Cache Creek: site 'D' begins at river station 52+50.49 and extends downstream 600 feet through to station 46+50.71. The second stabilization area, Site 'E' begins at river station 25+51.13 and extends downstream approximately 500 feet to station 20+47.19. An SPCCP has still not been prepared by the operator. Once the SPCCP is submitted, the FHDA will be submitted to the Army Corps of Engineers (ACE) pending their approval. It is uncertain whether the operation will be able to complete the bank stabilization in 2008 before November 1, 2008 as required given the amount of time the ACE has stated it takes to review a project currently. In addition to needed streambank stabilization, there is rill erosion and loose fine soil eroding into the creek at the second conveyor belt transfer point that need to be fixed.

WATER QUALITY AND GROUNDWATER

The operator performs on going semi annual groundwater monitoring of the monitoring (non-potable) well network throughout the site. A groundwater study was prepared by Luhdorff & Scalmanini Consulting Engineers for the operator, and the following were notable aspects of the report:

- The site has experienced stable water level conditions since monitoring began in 1973 with temporary declines during drought periods. Historical groundwater level data, starting in 1951, from a nearby shallow irrigation well exhibit the long-term groundwater level conditions near the Madison properties.
- Groundwater quality at the site is consistent with conditions reported for the Cache Creek area between Capay and Yolo. Groundwater is generally of magnesium-bicarbonate quality with calcium being the second most abundant cation.
- Pesticides, herbicides, TPH, and BTEX were not detected in any of the groundwater or pond samples.
- Coliform organisms were detected in three different wells in 2007. None of the wells where coliform was detected are used for potable water nor was the construction of the wells done for the production of potable water. The presence of coliform organisms in monitoring wells at the CEMEX plant is believed to be indicative of conditions within the well structure and not the aquifer conditions.
- Coliform bacteria were present in the pond samples, a condition that can be expected in open water ponds.
- Nitrate has been found present in monitoring wells adjacent to areas actively farmed since monitoring began. In contrast, the lowest nitrate concentrations have been found in samples retrieved from the well located closest to Cache Creek.

RECLAMATION AND HABITAT

In CEMEX's compliance review, the tenth annual monitoring report on the progress of restoration of natural habitats on CEMEX's Madison site was done by Zentner and Zentner. This report included the final monitoring of 4 restored habitats. The reclamation plans and habitat restoration activities are in compliance with the original development agreement and all subsequent amendments approved by the Board of Supervisors. Overburden and topsoil has been stockpiled for future reclamation activities (which includes farming) and/or the soil has been effectively re-deposited as topsoil at reclamation sites. The open water ponds provide good habitat for waterfowl throughout the year, and the creek edges near the plant are vegetated to an acceptable level. Berms and embankments not associated with the levee along the creek are covered with native vegetation. The operator continues to perform ongoing maintenance of the planted areas.

ROADS AND TRAFFIC

The operator continues to maintain their access road from HWY 16 into the plant. The roadway is considered a private road and is not inspected by the county.

AIR QUALITY & NOISE

According to the operator's compliance review, the operator continues to use the conveyor system, to keep all internal combustion engines in good working order, and use an electric powered dredge. No noise complaints were filed with the county in 2007 by any of the surrounding residents. The Yolo-Solano Air Quality Control Board (YSAQCB) noted that in March of 2007 the operator exceeded air quality limits of particles/dry cubic feet (g/ft³) and paid a penalty of \$5400.

CONCLUSION

The operator needs to complete the streambank stabilization project, fix the rills found in the levee, and move or plant loose fine soil at the conveyor belt transfer point and then will be in compliance with the requirements of the development agreement and SMARA.

SYAR INDUSTRIES

2007 OFF CHANNEL ANNUAL MINING PERMIT COMPLIANCE SUMMARY

INTRODUCTION

Syar's 734-acre facility is located approximately 1.7 miles north of the town of Madison (accessed off CR 89). Yolo County Parks & Resources Department staff performed a field inspection of the operation in December 2007, and found the operation to be in compliance with the Development Agreement.

DEVELOPMENT AGREEMENT IN PLACE

As required by County Ordinance 1190, Article 7 and under Section 7.1. Development agreement # 96-287 and Zone File No. 98-010 covers the gravel mining operation currently in production.

PRODUCTION, FEES, AND GENERAL OPERATIONS

The operator did not exceed the allowed 1 million tons (sold weight) in the last production year. The maximum ten-year average has also not been exceeded. The operator paid all fees on a quarterly basis as required by the development agreement. Staff found the operator to comply with general requirements of the development agreement for operations such as stockpile management, setback requirements, and plant operations.

BONDS

The operator has current bonds totaling \$536,412 on file with Yolo County, and complies with the Surface Mining Reclamation Ordinance and the State Surface Mining and Reclamation Act (SMARA). The county is listed as the certificate holder on the bonds. Syar is currently in the process of working with the County to revise the financial assurances estimate and the bonds.

PROCESSING OF MATERIALS

The operator has complied with the conditions of approval regarding the moving, processing, and stockpiling of material throughout the site and during trucking operations on site. The newly mined site known as phase C1 is ongoing and is progressing as anticipated.

LEVEE STABILITY AND EROSION CONTROL

Field inspection by county staff in December 2007 revealed no noticeable difference in the condition of the levees since the last inspection in 2005. Yolano Engineers, Inc. submitted an inspection report from an inspection which took place October 8, 2007. The operator has maintained the levees as required in the Development Agreement. Yolano Engineers states in their report that topsoil and overburden stockpile slopes have been seeded in order to prevent erosion of these soils and that the Mining areas are in compliance with their updated Storm Water Pollution Prevention Plan.

WATER QUALITY AND GROUNDWATER

The operator performs on going semi annual groundwater monitoring of the monitoring (non-potable) well network throughout the site. A groundwater study was prepared by Lohdorff & Scalmanini Consulting Engineers for the operator, and the following were notable aspects of the report:

- The site has experienced stable water level conditions over the last fifty years with a temporary decline during drought periods.
- Organophosphorus pesticides and herbicides, total petroleum hydrocarbons (as diesel and as motor oil), and BTEX constituents have never been detected in any of the groundwater or pond samples.
- Nitrate has been found in monitoring wells on the site in varying concentrations, but fluctuations in nitrate is normal and is particularly inherent when the overlying and adjacent parcels have had historical and continuing farming operations.

- The pH in the ponds has been generally higher than in the groundwater, but this is attributed to the chemical processes associated with the exposure of bicarbonate-rich groundwater to the atmosphere.
- Groundwater quality at the site is consistent with the historical data record and reflects spatial and temporal variability in the area that existed prior to the commencement of wet-pit mining operations. There is no evidence or indication that mining operations or aggregate wash discharge to ponds have caused any changes in groundwater quality to date.

RECLAMATION AND HABITAT

The reclamation plans are in compliance with the original development agreement and all subsequent amendments approved by the Board of Supervisors. Overburden and topsoil has been stockpiled for future reclamation activities and/or the soil has been effectively re-deposited as topsoil at reclamation sites. The open water ponds provide good habitat for waterfowl throughout the year, and the creek edges near the plant are vegetated to an acceptable level. Berms and embankments not associated with active gravel mining operations are covered with native and non-native vegetation. The operator continues to perform ongoing maintenance of planted areas.

ROADS AND TRAFFIC

The operator continues to participate in the management/maintenance of CR 89 and the intersection of CR 89 & HWY 16. Yolano Engineers, Inc. did an inspection of the structural integrity of CR 89 October 8, 2007; a detailed inspection report can be found in Syar's submitted compliance review. All of the recent repairs in the last couple years are holding up well. Overall CR 89 is holding up very well with some exceptions. There were some sections with potholes, longitudinal cracks, transverse cracks, and gouges noted. Where noted it was recommended that some cracks be sealed and potholes and gouges be patched. Others it was suggested just needed to be monitored. The report states that Ted Pearson (Plant Manager for Syar Industries, Inc.) applied for an encroachment permit in 2006 with the County to seal some longitudinal cracks, but that the County thought the cracks weren't significant enough to require sealing at that time. All the cracks and other road damage should continue to be monitored and repaired as necessary. An inspection in 2008 should reconsider what maintenance is needed after the 2007-2008 rainy season. The report raised some concern that no drainage ditch exists at the new CR 89 Bridge along the northbound lane north of the new bridge over Willow Slough. Drainage from farmers fields could cause flooding and Yolano Engineers would like the County to determine where the right of way is in this area and whether the bridge contractor or the farmer should construct a drainage ditch to Willow Slough. Staff did not receive any complaints from residents along CR 89 regarding truck traffic.

AIR QUALITY & NOISE

The operator has continuously made progress in updating their fleet of vehicles in order to meet emissions goals established in 2000. A new overland conveyor was constructed in 2001 and haul truck usage was reduced. Emissions per ton of production dropped significantly in 2006 as compared to 2005. Syar advised staff that they will continue to update their equipment pool in order to reduce emissions next year. Syar also instituted a trip reduction and car share program that should reduce emissions further. Staff did not receive any noise complaints from the landowners and residents surrounding the facility. The Yolo-Solano Air Quality Control Board (YSAQCB) noted that Syar in 2007 had no air quality notices of violation.

CONCLUSION

The operator has complied with the requirements of the development agreement and SMARA.

TEICHERT AGGREGATES

ESPARTO FACILITY

2007 OFF CHANNEL ANNUAL MINING PERMIT COMPLIANCE SUMMARY

INTRODUCTION

Teichert's 279 acre Esparto Facility is located approximately 2.2 miles northeast of the town of Esparto (accessed off CR 19). Yolo County Parks & Resources Department staff performed a field inspection of the operation in December 2007, and found the operation to be in compliance with the Development Agreement.

DEVELOPMENT AGREEMENT IN PLACE

As required by County Ordinance 1190, Article 7 and under Section 7.1. Development agreement # 96-290 and Zone File No. 95-094 covers the gravel mining operation currently in production.

PRODUCTION, FEES, AND GENERAL OPERATIONS

The operator did not exceed the allowed 1 million tons (sold weight) in the last production year. The maximum ten-year average has also not been exceeded. The operator paid all fees on a quarterly basis as required by the development agreement. Staff found the operator to be in compliance with the requirements of the development agreement for general operations such as stockpile management, setback requirements, fencing, and plant operations.

BONDS

The operator has a current bond of \$308,801 on file with Yolo County, and is in compliance with the Surface Mining Reclamation Ordinance and the State Surface Mining and Reclamation Act (SMARA). The county is listed as the certificate holder on the bonds. Teichert proposes and the County concurs to increase the Financial Assurance amounts currently held by Yolo County and the Department of Conservation, Office of Mine Reclamation. The adjusted dollar figures were determined by using the financial assurance cost estimate worksheets developed by the Office of Mine Reclamation. The bond amount which presently covers the Esparto Plant Facilities and Phase 1 Mining (the Reiff Property) is \$135,249. Teichert proposes an increase to \$853,630.42. A separate financial assurance in the amount of \$148,779 is for the Mast Property. The adjusted assurance cost for Mast is calculated to be \$423,354.87.

PROCESSING OF MATERIALS

The operator has complied with the conditions of approval regarding the moving, processing, and stockpiling of material throughout the site and during trucking operations.

LEVEE STABILITY AND EROSION CONTROL

In 2006, the operator submitted a comprehensive levee report prepared by MBK Engineering for the levees along Cache Creek. The investigation concluded that the majority of the levees are stable, except for the 300-foot section near their stockpile area that was eroded by the creek. The remaining portions of the levees were visually inspected by county staff, and staff concurred with the MBK findings of the existing levee condition. A flood hazard development was issued by the County in early October 2006 to the operator to enter the stream zone to rebuild a new levee at the damaged location. A notification was sent to the US Army corps of Engineers by the applicant's consultant on 10-3-06. County staff was not involved in the submittal of the USACOE notification, in the inspection of the levee, and was not advised by the operator when the work was finished. The emergency reconstruction of the levee was planned and executed in late 2006. In the fall of 2007, the County staff inspected the reconstructed levee. An independent consultant, Wood Rodgers, conducted an inspection and stated that "all of the sites are in compliance with the conditions of approval."

WATER QUALITY AND GROUNDWATER

The operator performs on going semi annual groundwater monitoring of the monitoring (non-

potable) well network throughout the site. A groundwater study was prepared by Luhdorff & Scalmanini Consulting engineers for the operator, and the following were notable aspects of the report:

- Groundwater quality remained consistent with those reported in the literature for the vicinity of Cache Creek.
- Background shallow groundwater quality beneath the plant site had high to moderate hardness and moderate TDS values with a magnesium/calcium bicarbonate quality.
- Groundwater in the mined area fluctuates seasonally.
- Pumping causes fluctuations in the groundwater monitoring well levels.
- General mineral, nitrate, and metal concentrations remained consistent with the historical water quality record.
- Coliform was detected in one groundwater monitoring wells, but as described by the consultant, the presence of coliform bacteria is common in monitoring wells that have not undergone sanitary disinfection and is more indicative of well structure and not the aquifer.
- Water quality in the existing open Reiff pond is of similar quality to the groundwater at the Plant Site with a slightly higher pH because of the exposure of bicarbonate to the atmosphere. As would be expected in any surface water body freely accessible to wildlife, coliform bacteria appeared in the pond water samples.
- Organic chemicals in the form of petroleum constituents (TPH-diesel/motor oil, BTEX) and pesticides (organophosphorus pesticides and organochlorine herbicide) were neither found in groundwater or pond water.

RECLAMATION AND HABITAT

The reclamation plans are in compliance with the original development agreement and all subsequent amendments approved by the Board of Supervisors. Overburden and topsoil has been stockpiled for future reclamation activities. The open water ponds provide good habitat for waterfowl throughout the year, and the creek edges near the plant are vegetated to an acceptable level. Berms, levees, and an acceptable number of the un-mined areas are covered with native and non-native vegetation.

ROADS AND TRAFFIC

The operator continues to participate in the management/maintenance of CR 19. The county roads superintendent conducted an inspection of the roads in the fall of 2007, and the road was found by the superintendent to be in fair condition requiring some crack sealing. In 2008, it was recommended that the road needed some minor repairs and that after the repairs are made there should be micro surfacing to seal and preserve the pavement. Staff did not receive any complaints from residents along CR 19, CR 20, CR 96, or CR 94B regarding truck traffic.

AIR QUALITY & NOISE

The operator submitted documentation in 2006 claiming a 50%'s reduction in emissions as compared to the base year of 2000. Continued use of the conveyor system has helped to improved the efficiency of the operations and reduce emissions. The Yolo-Solano Air Quality Control Board (YSAQCB) noted that Teichert had no notices of violations for air quality for 2007 for the Esparto Plant. No noise complaints were filed with the county in 2007 by any surrounding residents, including Mast, who resides adjacent to and northwest of the mine. On March 15, 2005, the Board of Supervisors approved an action that provides an indemnity agreement in lieu of implementing noise impact mitigations. The Mast family agreed to provide an indemnity and waived any and all claims, causes of actions and damages arising from or relating to the elimination of noise permit conditions. Thus, the noise study as required by permit condition No. 47 was waived as a condition of the permit and was in compliance with CEQA and Mitigation Measure 4.9-3c as detailed in the original Permit.

CONCLUSION

The operator has complied with the requirements of the development agreement and SMARA.

TEICHERT AGGREGATES

WOODLAND FACILITY

2007 OFF CHANNEL ANNUAL MINING PERMIT COMPLIANCE SUMMARY

INTRODUCTION

Teichert's 609 acre Woodland Facility is located approximately 5 miles northwest of Woodland (accessed off CR 20). Yolo County Parks & Resources Department staff performed a field inspection of the operation in December 2007, and found the operation to be in compliance with the Development Agreement.

DEVELOPMENT AGREEMENT IN PLACE

As required by County Ordinance 1190, Article 7 and under Section 7.1. Development agreement # 96-286 and Zone File No. 95-095 covers the gravel mining operation currently in production.

PRODUCTION, FEES, AND GENERAL OPERATIONS

The operator did not exceed the allowed 1 million tons (sold weight) in the last production year at this facility. The maximum ten-year average was not exceeded. The operator paid all fees on a quarterly basis as required by the development agreement. Staff found the operator to be in compliance with the requirements of the development agreement for general operations such as stockpile management, setback requirements, fencing, and plant operations.

BONDS

The current coverages through bond financial assurances are \$87,221 for Phase I (Muller Property), \$85,000 for the Woodland Plant Facilities, and \$346,638.80 for Coors, Phase II. The county is listed as the certificate holder on the bonds and they comply with the Surface Mining Reclamation Ordinance and the State Surface Mining and Reclamation Act (SMARA). Teichert proposes to increase the Financial Assurance amounts currently held by Yolo County and the Department of Conservation, Office of Mine Reclamation. The adjusted dollar figures were determined by using the financial assurance cost estimate worksheets developed by the Office of Mine Reclamation. There is an estimated cost of \$699,283.25 for the reclamation of the Muller Property, an estimated cost of \$910,507.20 for the reclamation of the Coors Property, and an estimated cost of \$483,119.78 for the reclamation of the Plant Site. Teichert will initiate an increase rider.

PROCESSING OF MATERIALS

The operator has complied with the conditions of approval regarding the moving, processing, and stockpiling of material throughout the site and during trucking operations on site. Mining operations at the newly mined area west of CR 94B (Coors) are progressing as anticipated, and the conveyor belt system over the creek and to the plant is operating as expected.

LEVEE STABILITY AND EROSION CONTROL

In 2006, the operator submitted a comprehensive levee report prepared by MBK Engineering for the levee along Muller site, but not the overall mining area. The investigation for the Muller area concluded that the levees at Muller are stable. In the fall of 2007, the County staff inspected the Woodland Facility. An independent consultant, Wood Rodgers, conducted an inspection and stated that "all of the sites are in compliance with the conditions of approval."

WATER QUALITY AND GROUNDWATER

The operator performs on going semi annual groundwater monitoring of the (non-potable) monitoring well network throughout the site. A groundwater study was prepared by Luhdorff & Scalmanini Consulting Engineers for the operator, and the following were notable aspects of the report:

- Shallow groundwater levels beneath the Coors property have remained relatively constant. Groundwater levels have fluctuated more on the Muller and Storz property. The differences

in static depths and seasonal fluctuations between properties appear to be related to the properties' location relative to the Plainfield Ridge (Storz and Muller property are east of the Plainfield Ridge and the Coors property is west of the Plainfield Ridge and the Dunnigan Hills).

- Deep aquifer levels varied independently of the shallow aquifer conditions.
- Groundwater quality at the site is consistent with conditions reported in the literature and elsewhere in the vicinity of Cache Creek.
- Planned setback distances between the wells and the planned wet pits appear to be sufficient for water quality protection based on modeling.
- Fecal coliform was not detected in the groundwater monitoring wells at the site, but was detected from the Coors and Muller Ponds as would be expected of open bodies of water.
- Organic chemicals included in the analyses for TPH-diesel & motor oil, BTEX, organophosphorus pesticides, and organochlorine herbicides were not detected for the properties, except Fensulfothion (an organophosphorus pesticide) and TPH-motor oil were detected upgradient from the Muller Pond in September 2007. The cause of the detection is unclear, but the detections were not considered representative of the aquifer and didn't have a causal link to the mining operations as the samples were upgradient.
- Water quality in the existing open ponds is of similar quality to the groundwater.

RECLAMATION AND HABITAT

The reclamation plans are in compliance with the original development agreement and all subsequent amendments approved by the Board of Supervisors. Overburden and topsoil has been stockpiled for future reclamation activities and/or the soil has been effectively re-deposited as topsoil at reclamation sites. The 30-acre Muller and 60-acre Coors Reclamation "return to agriculture" sites were in their first year of agricultural production and first year of agricultural reclamation, respectively. The 2006-2007 cropping season winter wheat produced a better than average county wide yield for dry land winter wheat. In 2007, the final 2 foot layer of topsoil was placed on the Muller site. This completed 5 years of placing 2 foot increments of subsoil/year on the Muller site and ripping and planing to prevent compaction and provide proper drainage. The Coors Reclamation site has been backfilled and planted in each subsequent year. Both sites when fully reclaimed will be ready for any row, tree, or vegetable crop per the report by Joe Muller, Agricultural Manager. The open water ponds provide good habitat for waterfowl throughout the year, and the creek edges near the plant are vegetated to an acceptable level. Berms and embankments not associated with active gravel mining operations are covered with native and non-native vegetation. The operator continues to perform ongoing maintenance of planted areas.

ROADS AND TRAFFIC

The operator continues to participate in the management/maintenance of CR 20 and CR 96. The county roads superintendent conducted an inspection of the roads in the fall of 2007, and the roads were found by the superintendent to be in fair condition requiring some crack sealing. In 2008, it was recommended that both roads needed some minor repairs and that after the repairs are made there should be micro surfacing to seal and preserve the pavement. Staff did not receive any complaints from residents along CR 19, CR 20, CR 96, or CR 94B regarding truck traffic.

AIR QUALITY & NOISE

The operator submitted documentation in 2006 claiming an overall reduction of 50% in emissions as compared to the base year of 2000. Continued use of the conveyor system has helped to improve the efficiency of the operations and reduce emissions. No noise complaints were filed with the county in 2007 by any surrounding residents or the air quality control district. No night time mining has occurred and mining on the Storz property has not commenced that requires mitigation measures. The Yolo-Solano Air Quality Control Board (YSAQCB) noted that Teichert had no notices of violations for air quality for 2007.

CONCLUSION

The operator has complied with the requirements of the development agreement and SMARA.

ATTACHMENT C

FINDINGS 2007 ANNUAL MINING COMPLIANCE SUMMARY REPORTS

(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, the Yolo County Planning Commission finds the following:

California Environmental Quality Act (CEQA) and Guidelines

That the recommended Class 7 Categorical Exemption is the appropriate level of environmental review in accordance with the California Environmental Quality Act (CEQA) and Guidelines.

Pursuant to the requirements of the California Environmental Quality Act, the Annual Report to the Planning Commission is Categorically Exempt under Section 15307, Class 7 of the CEQA Guidelines as an action taken by a regulatory agency to assure the restoration, maintenance, and enhancement of natural resources.

Surface Mining and Reclamation Ordinances and Associated Approvals

That the individual mining operations are being operated in substantial compliance with the Yolo County Surface Mining and Reclamation Ordinances, individual mitigation monitoring plans, Development Agreements, the State Surface Mining and Reclamation Act, and Conditions of Approval of the mining permits issued to the producers.

Following review by staff, which was based upon on-site inspections, documentation provided by the operators, and aerial topographic maps, it is determined that the continuing mining and reclamation activities of Granite Construction (2 sites), Schwarzgruber and Sons, Syar Industries, and Teichert Aggregates (2 sites) are in substantial compliance with the County Surface Mining and Reclamation Ordinances, individual mitigation monitoring plans, Development Agreements, the State Surface Mining and Reclamation Act, and Conditions of Approval of the mining permits issued to the producers. It has also been determined that should CEMEX in 2008 complete the requirements as outlined in their 2007 Annual Compliance Review as well as comply with all the other Conditions of Approval, they will also be determined as compliant.

That the 2007 Annual Review complies with all applicable laws.

The review performed by staff, and public hearing before the Planning Commission, fulfill the requirements of Section 10-4.703 of the County Surface Mining Ordinance and 2774.b of the Surface Mining and Reclamation Act regarding the annual review of mining and reclamation compliance; Section 10-5.708 of the County Surface Mining Reclamation Ordinance and Section 2773.1 of the Surface Mining and Reclamation Act regarding annual review of financial assurances; Section 7.1 of Development Agreements 96-286 through 96-290 inclusive; and the California Environmental Quality Act regarding mitigation monitoring program implementation.

ATTACHMENT D

COUNTY RECORDER

Filing Requested by:

Yolo County Parks and Resources Department

Name

120 West Main Street Suite C

Address

Woodland, CA 95695

City, State, Zip

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: 2007 Annual Mining Compliance Report State Clearinghouse Number: N/A

Applicant: Yolo Parks and Resources Department
Attn: Kent Reeves, Principal Natural Resource Planner
120 West Main Street Suite C
Woodland, CA. 95695

Project Location: Immediately north and south of lower Cache Creek, between County Roads 85 and 96, within the boundaries of the Cache Creek Area Plan.

Project Description: Annual monitoring review and inspection for the Granite Construction-Capay, Granite Construction-Woodland, Schwarzgruber and Sons, Rinker Materials, Syar Industries, Teichert Aggregates-Esparto, and Teichert Aggregates-Woodland gravel mining operations.

Exempt Status: Categorical Exemption, Article 19, Section 15307, Class 7 under the California Environmental Quality Act (CEQA) Guidelines.

Reasons why project is exempt: The project consists of inspections and other monitoring activities to ensure the performance of gravel mining operations in accordance with applicable County Ordinances, Use Permit Conditions of Approval, Mitigation Monitoring Plans; Development Agreements, and State Regulations. Class 7 of the CEQA Guidelines allows an exemption for actions taken by regulatory agencies to assure the maintenance, restoration and enhancement of natural resources where the regulatory process involves procedures for protection of the environment.

Lead Agency Contact Person: Kent Reeves, Principal Natural Resource Planner
Telephone Number: (530) 406-4888

Signature (Public Agency): *Kent A. Reeves* Date: 6/5/08

Date received for filing at OPR: _____

FILE # _____ FILE NAME _____ RECEIPT # _____

AUTHORIZED SIGNATURE _____ FEE STATUS _____

STATE OF CALIFORNIA

Tribal Consultation Guidelines

SUPPLEMENT TO GENERAL PLAN GUIDELINES

November 14, 2005

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH



State of California

Arnold Schwarzenegger, Governor

Governor's Office of Planning and Research

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Cuauhtemoc Gonzalez, Staff Assistant

November 2005

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Director's Message

November 14, 2005

The Governor's Office of Planning and Research (OPR) is proud to announce the publication of this November 2005 Supplement to the *General Plan Guidelines*. The 2005 Supplement (also known as Tribal Consultation Guidelines) provides advisory guidance to cities and counties on the process for consulting with Native American Indian tribes during the adoption or amendment of local general plans or specific plans, in accordance with the statutory requirements of Senate Bill 18 (Chapter 905, Statutes of 2004). It reflects recent changes to the California Public Records Act which will facilitate this consultation process.

It is our hope that this 2005 Supplement will be useful not only to city and county planning staffs for implementing the provisions of SB 18, but also to local elected officials, planning consultants, landowners, and tribal members who are involved in the general plan process.

In all of its work, OPR attempts to encourage more collaborative and comprehensive land use planning at the local, regional, and statewide levels. These goals are consistent with the goals of Senate Bill 18, which for the first time in the nation, requires cities and counties to consult with Native American tribes when adopting and amending their general plans or specific plans.

The development of this 2005 Supplement would not have been possible without the advice and assistance of many organizations and individuals, whose support OPR acknowledges and appreciates. These organizations and individuals include the Native American Heritage Commission and its staff, the members and representatives of numerous California Native American tribes, many city and county governments, state agency representatives, professional associations and academic institutions. We appreciate their assistance in preparing this 2005 Supplement, including participation at several meetings and public workshops.

OPR met the statutory deadline of March 1, 2005, to publish these guidelines by issuing interim guidelines on March 1. In developing the interim guidelines, OPR consulted with a wide range of stakeholders and experts. We consulted with city and county representatives (planners, legislative staff and legal counsels); tribal representatives and associations; staff of the Native American Heritage Commission (NAHC), including attendance at two NAHC commission meetings; federal agencies with experience in tribal consultation; academic institutions; and professional associations that deal with archaeological and cultural resource protection. In addition, we consulted with numerous tribal liaisons within state government and sought the input of the League of California Cities and the California State Association of Counties.

Based upon this consultation, OPR issued Draft Tribal Consultation Guidelines on February 22, 2005 for public review and comment. OPR conducted a public workshop on February 25, 2005, which was well attended and resulted in a productive discussion of the process envisioned by SB 18, as well as many specific recommendations for improvements to the 2005 Supplement.

In response to requests from many parties for additional time to consult with OPR regarding the 2005 Supplement, OPR continued to reach out to stakeholders for an additional 45 days to ensure that their interests were heard. Between March 1 and April 15, OPR held four meetings throughout the State to receive additional comments. The meetings were held in Klamath, Corning, Sonora, and Temecula. On April 15, OPR published the guidelines reflecting the comments and concerns expressed at those four meetings, as well as written comments received by OPR.

This November edition of the guidelines reflects recent changes to the Public Records Act that exempt from public disclosure certain documents pertaining to Native American cultural places.

We hope that you will find this 2005 Supplement to be an informative guide and a useful tool in the practice of local planning. I invite your suggestions on ways to improve OPR's *General Plan Guidelines* and this 2005 Supplement, as OPR continues to refine and update all of its guidance to city and county planning agencies.

Sean Walsh
Director, OPR

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Part A

SB 18 Context and Basic Requirements

Sections I through III of the 2005 Supplement provide background information to familiarize local government agencies with the intent of Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) and the importance of protecting California Native American traditional tribal cultural places. Local governments will be better prepared to enter into consultations with tribes if they have a basic knowledge of tribal concerns and the value of cultural places to tribes. The key provisions of SB 18 are also outlined in table and text form.

I. Introduction

This 2005 Supplement to the *2003 General Plan Guidelines* addresses the requirements of SB 18, authored by Senator John Burton and signed into law by Governor Arnold Schwarzenegger in September 2004. SB 18 requires local (city and county) governments to consult with California Native American tribes to aid in the protection of traditional tribal cultural places (“cultural places”) through local land use planning. SB 18 also requires the Governor’s Office of Planning and Research (OPR) to include in the *General Plan Guidelines* advice to local governments for how to conduct these consultations.

The intent of SB 18 is to provide California Native American tribes an opportunity to participate in local land use decisions at an early planning stage, for the purpose of protecting, or mitigating impacts to, cultural places. The purpose of involving tribes at these early planning stages is to allow consideration of cultural places in the context of broad local land use policy, before individual site-specific, project-level land use decisions are made by a local government.

SB 18 requires local governments to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process. These consultation and notice requirements apply to adoption and amendment of both general plans (defined in Government Code §65300 et seq.) and specific plans (defined in Government Code §65450 et seq.). Although SB 18 does not specifically mention consultation or notice requirements for adoption or amendment of specific plans, existing state planning law requires local governments to use the same processes for adoption and amendment of specific plans as for general plans (see Government Code §65453). Therefore, where SB 18 requires consultation and/or notice for a general plan adoption or amendment, the requirement extends also to a specific plan adoption or amendment. Although the new law took effect on January 1, 2005, several of its provisions regarding tribal consultation and notice did not take effect until March 1, 2005.

The *General Plan Guidelines* is an advisory document that explains California legal requirements for general plans.¹ The *General Plan Guidelines* closely adheres to statute and case law. It also relies upon commonly accepted principles of contemporary planning practice.

¹ California Government Code §65040.2

When the words “shall” or “must” are used, they represent a statutory or other legal requirement. “May” and “should” are used when there is no such requirement. The 2005 Supplement:

- Provides background information regarding California Native American cultural places and tribes.
- Outlines the basic requirements of SB 18.
- Provides step-by-step guidance to local governments on how and when to consult with tribes.
- Offers advice to help local governments effectively engage in consultation with tribes.
- Provides information about preserving, or mitigating impacts to, cultural places.
- Discusses methods to protect confidentiality of information regarding cultural places.
- Presents ways of encouraging voluntary landowner involvement in the preservation of cultural places.

II. Background Information

The principal objective of SB 18 is to preserve and protect cultural places of California Native Americans. SB 18 is unique in that it requires local governments to involve California Native Americans in early stages of land use planning, extends to both public and private lands, and includes both federally recognized and non-federally recognized tribes. This section provides an overview of California Native American cultural places and California Native Americans.

California Native American Cultural Places

SB 18 refers to Public Resources Code §5097.9 and 5097.995 to define cultural places:²

- Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine (Public Resources Code §5097.9).
- Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site (Public Resources Code §5097.995).³

These definitions can be inclusive of a variety of places. Archaeological or historic sites may include places of tribal habitation and activity, in addition to burial grounds or cemeteries. Some examples are village sites and sites with evidence (artifacts) of economic, artistic, or other cultural activity. Religious or ceremonial sites and sacred shrines may include places associated with creation stories or other significant spiritual history, as well as modern day places of worship. Collection or gathering sites are specific places where California Native Americans access certain plants for food, medicine, clothing, ceremonial objects, basket making, and other

² Due to a drafting error, SB 18 contains multiple references to Public Resources Code (PRC) §5097.995 which is no longer in existence. In 2004, PRC §5097.995 was amended and renumbered to PRC §5097.993 by Senate Bill 1264 (Chapter 286). Local governments should refer to PRC §5097.993 when looking for PRC §5097.995.

³ *Ibid.*

crafts and uses important to on-going cultural traditions and identities; these places may qualify as religious or ceremonial sites as well as sites that are listed or eligible for listing in the California Register of Historic Resources.

Native American cultural places are located throughout California because California Native American people from hundreds of different tribes made these lands their home for thousands of years. Due to the forced relocation of tribes by the Spanish, Mexicans, and Americans, most tribes do not currently control or occupy the lands on which many of their cultural places are located. As a result, California Native Americans have limited ability to maintain, protect, and access many of their cultural places.

A number of federal and state laws have been enacted to preserve cultural resources and have enabled some Native American tribes to promote the preservation and protection of their cultural places. The National Historic Preservation Act (NHPA), which established historic preservation as a national policy in 1966, includes a Section 106 review process that requires consultation to mitigate damage to "historic properties" (defined per 36 CFR 800.16(1) as places that qualify for the National Register of Historic Places), including Native American traditional cultural places (TCPs, as described in National Register Bulletin 38) whenever any agency directs a project, activity or program using any federal funds or requiring a federal permit, license or approval (36CFR800.16). The National Environmental Policy Act (NEPA) requires every federal project to include in an Environmental Impact Statement documentation of environmental concerns, including effects on important historic, cultural, and natural aspects of our national heritage. Presidential Executive Order 13007, "Indian Sacred Sites," ensures that federal agencies are as responsive as possible to the concerns of Native American tribes regarding their cultural places. The Archaeological Resources Protection Act (ARPA) makes desecration of Native American cultural places on federal lands a felony.

California state law includes a variety of provisions that promote the protection and preservation of Native American cultural places. A number of these provisions address intentional desecration or destruction of cultural places and define certain of such acts as misdemeanors or felonies punishable by both fines and imprisonment. These include the Native American Historic Resource Protection Act (PRC §5097.995-5097.996⁴), Public Resources Code §5097.99, Penal Code §622.5 and Health and Safety Code §7050.5, §7052. Other provisions require consideration of potential impacts of planned projects on cultural resources, which may include Native American cultural places. Public Resources Code 5097.2 requires archaeological surveys to determine the potential impact that any major public works project on state land may have on archaeological resources. The California Environmental Quality Act (CEQA) requires project lead agencies to consider impacts, and potential mitigation of impacts, to unique archaeological and historical resources.⁵ California Executive Order W-26-92 affirms that all state agencies shall recognize and, to the extent possible, preserve and maintain the significant heritage resources of the State. Public Resources Code §5097.9, which mandates noninterference of free expression or exercise of Native American religion on public lands, promotes preservation of certain Native American cultural places by ensuring tribal access to these places.

⁴ *Ibid.*

⁵ CEQA Statutes at Public Resources Code §21083.2-21084.1; CEQA Guidelines at 14 CCR 15064.5-15360.

While these and other laws permit Native Americans to have some say in how impacts to cultural places could be avoided or mitigated, the laws rarely result in Native American input at early stages of land use planning. Generally, these laws provide protection only to those sites located on public or Native American trust lands and address only the concerns of Native Americans who belong to federally recognized tribes, with no official responsibility to non-federally recognized tribes. The intent of SB 18 is to provide all California Native American tribes, as identified by the NAHC, an opportunity to consult with local governments for the purpose of preserving and protecting their cultural places.

California Native American Tribes

SB 18 uses the term, California Native American tribe, and defines this term as “a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission” (NAHC). “Federal recognition” is a legal distinction that applies to a tribe’s rights to a government-to-government relationship with the federal government and eligibility for federal programs. All California Native American tribes, whether officially recognized by the federal government or not, represent distinct and independent governmental entities with specific cultural beliefs and traditions and unique connections to areas of California that are their ancestral homelands. SB 18 recognizes that protection of traditional tribal cultural places is important to all tribes, whether federally recognized or not, and it provides all California Native American tribes with the opportunity to participate in consultation with city and county governments for this purpose. As used in this document, the term “tribe(s)” refers to a California Native American tribe(s).

California has the largest number of tribes and the largest Native American population of any state in the contiguous United States. California is home to 109 federally recognized tribes and several dozen non-federally recognized tribes. According to a 2004 California Department of Finance estimate, the Native American population in California is 383,197.

Tribal governments throughout California vary in organizational forms and size. Some tribes use the government form established under the Indian Reorganization Act of 1934 (25CFR81) with an adopted constitution and bylaws. Other tribes have adopted constitutions and bylaws that incorporate traditional values in governing tribal affairs. Many tribal governments are comprised of a decision making body of elected officials (tribal governing body) with an elected or designated tribal leader. Some tribes use lineal descent as the means of identifying the tribe’s leader. In general, tribal governing bodies and leaders serve for limited terms and are elected or designated by members of the tribe. Tribal governments control tribal assets, laws/regulations, membership, and land management decisions that affect the tribe.

III. Basic Requirements of SB 18

This section provides a brief summary of the statutory requirements of SB 18. Later sections of the Supplement provide additional detail regarding these requirements and offer advice to local governments on how to fulfill the notification and consultation requirements of SB 18. (Please refer to Section IV and Section V of these guidelines for additional information regarding the responsibilities outlined below.)

Responsibilities of OPR

Government Code §65040.2(g) requires the Governor's Office of Planning and Research (OPR) to amend the *General Plan Guidelines* to contain advice to local governments on the following:

- Consulting with tribes on the preservation of, or the mitigation of impacts to, cultural places.
- Procedures for identifying through the Native American Heritage Commission (NAHC) the appropriate California Native American tribes with whom to consult.
- Procedures for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of cultural places.
- Procedures to facilitate voluntary landowner participation to preserve and protect the specific identity, location, character, and use of cultural places.

Responsibilities of Local Governments

SB 18 established responsibilities for local governments to contact, provide notice to, refer plans to, and consult with tribes. The provisions of SB 18 apply only to city and county governments and not to other public agencies. The following list briefly identifies the contact and notification responsibilities of local governments, in sequential order of their occurrence.

- Prior to the adoption or any amendment of a general plan or specific plan, a local government must notify the appropriate tribes (on the contact list maintained by the NAHC) of the opportunity to conduct consultations for the purpose of preserving, or mitigating impacts to, cultural places located on land within the local government's jurisdiction that is affected by the proposed plan adoption or amendment. Tribes have 90 days from the date on which they receive notification to request consultation, unless a shorter timeframe has been agreed to by the tribe (Government Code §65352.3).⁶
- Prior to the adoption or substantial amendment of a general plan or specific plan, a local government must refer the proposed action to those tribes that are on the NAHC contact list and have traditional lands located within the city or county's jurisdiction. The referral must allow a 45 day comment period (Government Code §65352). Notice must be sent

⁶ SB 18 added this new provision to state planning law. It applies to any amendment or adoption of a general plan or specific plan, regardless of the type or nature of the amendment. Adoption or amendment of a local coastal program by a city or county constitutes a general plan amendment.

regardless of whether prior consultation has taken place. Such notice does not initiate a new consultation process.⁷

- Local governments must send notice of a public hearing, at least 10 days prior to the hearing, to tribes who have filed a written request for such notice (Government Code §65092).⁸

Under SB 18, local governments must consult with tribes under two circumstances:

- On or after March 1, 2005, local governments must consult with tribes that have requested consultation in accordance with Government Code §65352.3. The purpose of this consultation is to preserve, or mitigate impacts to, cultural places that may be affected by a general plan or specific plan amendment or adoption.
- On or after March 1, 2005, local governments must consult with tribes before designating open space, if the affected land contains a cultural place and if the affected tribe has requested public notice under Government Code §65092. The purpose of this consultation is to protect the identity of the cultural place and to develop treatment with appropriate dignity of the cultural place in any corresponding management plan (Government Code §65562.5).

Responsibilities of NAHC

The NAHC is charged with the responsibility to maintain a list of California Native American tribes with whom local governments must consult or provide notices (as required in Government Code §65352.3, §65352, and §65092). The criteria for defining “tribe” for the purpose of inclusion on this list are the responsibility of the NAHC. The list of tribes, for the purposes of notice and consultation, is distinct from the Most Likely Descendent (MLD) list that the NAHC maintains.

Upon request, the NAHC will provide local governments with a written contact list of tribes with traditional lands or cultural places located within a city’s or county’s jurisdiction. These are the tribes that a local government must contact, for purposes of consultation, prior to adoption or amendment of a general plan or specific plan. The NAHC will identify the tribes that must be contacted, based on NAHC’s understanding of where traditional lands are located within the State.

For more information on the NAHC’s roles and responsibilities, contact the NAHC. (See also Part F: Additional Resources)

⁷ Government Code §65352 was amended by SB 18 to include tribes among the entities to whom the proposed action must be referred. The term “substantial amendment” has been in the statute for many years and was not modified by SB 18.

⁸ Government Code §65092 was modified by SB 18 to include certain tribes as “persons” that are eligible to request and receive notices of public hearing. “Person” now includes a California Native American tribe that is on the contact list maintained by the NAHC.

Other Elements of SB 18

In addition to the notice and consultation requirements outlined above, SB 18 amended Government Code §65560 to allow the protection of cultural places in the open space element of the general plan. (*See Section X.*) Open space is land designated in the city or county open space element of the general plan for one or more of a variety of potential purposes, including protection of cultural places.

SB 18 also amended Civil Code §815.3 and adds California Native American tribes to the list of entities that can acquire and hold conservation easements. Tribes on the contact list maintained by the NAHC now have the ability to acquire, on terms mutually satisfactory to the tribe and the landowner, conservation easements for the purpose of protecting their cultural places. (*See Section IX.*)

Process Overview: General Plan or Specific Plan Adoption or Amendment

As discussed above, SB 18 establishes responsibilities for local government to contact, refer plans to, and consult with tribes. The following table provides an overview of SB 18 requirements related to the adoption or amendment of a general plan or specific plan. All statutory references are to the Government Code (GC).

Overview of SB 18 Consultation and Notice Requirements

| <i>Step</i> | <i>OPR Guidelines (GDL) Section and Statutory Reference</i> |
|--|---|
| Adoption or amendment of any general plan (GP) or specific plan (SP) is proposed on or after March 1, 2005. | GDL Section IV GC §65352.3(a)(1) |
| Local government sends proposal information to NAHC and requests contact information for tribes with traditional lands or places located within the geographical areas affected by the proposed changes. | GDL Section IV GC §65352.3(a)(2) |
| NAHC provides tribal contact information. | GDL Section IV |
| <ul style="list-style-type: none"> - OPR recommends that NAHC provide written information as soon as possible but no later than 30 days after receiving a local government's request | |
| Local government contacts tribe(s) identified by NAHC and notifies them of the opportunity to consult. | GDL Section IV |
| <ul style="list-style-type: none"> - Pursuant to Government Code §65352.3, local government must consult with tribes on the NAHC contact list. | |
| Tribe(s) responds to a local government notice within 90 days, indicating whether or not they want to consult with the local government. | GDL Section IV GC §65352.3(a)(2) |
| <ul style="list-style-type: none"> - Consultation does not begin until/unless a tribe requests it within 90 days of receiving a notice of the opportunity to consult. - Tribes can agree to a shorter timeframe (less than 90 days) to request consultation. | |

| <i>Step</i> | <i>OPR Guidelines (GDL) Section and Statutory Reference</i> |
|--|---|
| <p>Consultation begins, if requested by tribe. No statutory limit on the duration of the consultation.</p> <ul style="list-style-type: none"> - Consultation may continue through planning commission or board of supervisors/city council deliberation on plan proposal. | <p>GDL Section IV</p> |
| <p>Local government continues normal processing of GP/SP adoption or amendment. (CEQA review, preparation of staff reports, consultation, etc., may be ongoing.)</p> | |
| <p>At least 45 days before local government adopts or substantially amends GP/SP, local government refers proposed action to agencies, including tribe(s).</p> <ul style="list-style-type: none"> - Referral required regardless of whether or not there has been prior consultation. - This does not initiate a new consultation process. - This opens 45 day comment period before approval by board of supervisors/city council. - Referral required on or after March 1, 2005. | <p>GDL Section III GC §65352(a)(8)</p> |
| <p>At least 10 days before public hearing, local government provides notice of hearing to tribes and any other persons who have requested such notice.</p> | <p>GDL Section III GC §65092</p> |
| <p>Public hearing of board of supervisors/city council to take final action on the GP/SP.</p> | |
| <p><i>Note: The Permit Streamlining Act (PSA) (GC §65920 et seq.) establishes time limits for public agencies to take action on privately initiated development projects. Some general plan amendments may involve a private applicant for a development project. The PSA does not apply to a project that requires approval by a legislative act, such as a general plan amendment or rezone, even if there is a quasi-judicial approval involved (such as a use permit or subdivision map). Therefore, time limits for project approval under the PSA should not interfere with a local government's process for consultation.</i></p> | |

Part B

When and How to Consult with California Native American Tribes

Sections IV and V of the 2005 Supplement provide step-by-step guidance to local government agencies on how and when to consult with tribes, including when to provide certain types of notices during the planning process. It is very important to review the information in Part C (Pre-Consultation) before undertaking consultation on a general plan or specific plan proposal.

IV. Consultation: General Plan and Specific Plan Adoption or Amendment

Each time a local government considers a proposal to adopt or amend the general plan or specific plan, they are required to contact the appropriate tribes identified by the NAHC. If requested by tribes, local governments must consult for the purpose of preserving or mitigating impacts to cultural places. The following section provides basic guidance to local governments on the notification and consultation requirements in Government Code §65352.3.

What Triggers Consultation?

Government Code §65352.3 requires local governments to consult with tribes prior to the adoption or amendment of a general plan or specific plan proposed on or after March 1, 2005. Local governments should consider the following when determining whether a general plan or specific plan adoption or amendment is subject to notice and consultation requirements:

- In the case of an applicant-initiated plan proposal, if the local government accepts a complete application (as defined in Government Code §65943) on or after March 1, 2005, the proposal is subject to Government Code §65352.3.
- In the case of a general plan or specific plan amendment initiated by the local government, any proposal introduced for study in a public forum on or after March 1, 2005 is subject to Government Code §65352.3. A legislative body must take certain actions to initiate, or propose, a general plan or general plan amendment. These actions must be taken in a duly noticed public meeting, and may include, but are not limited to, any of the following: appropriation of funds, adoption of a work program, engaging the services of a consultant, or directing the planning staff to begin research on the activity.

Under Government Code §65352.3, only if a tribe is identified by the NAHC, and that tribe requests consultation after being contacted by a local government, must a local government consult with the tribe on the plan proposal.

Local governments are encouraged to consult with tribes as early as possible and may, if appropriate, begin consultation even before a formal proposal is submitted by an applicant or initiated by the local government.

Identifying Tribes through the NAHC

Once a local government or private applicant initiates a proposal to adopt or amend a general plan or specific plan, the local government must send a written request to the NAHC asking for a list of tribes with whom to consult. OPR recommends that the written request be sent to the NAHC as soon as possible. Local governments should consider the following points when submitting a request to the NAHC:

- All written requests should be sent to the NAHC via certified mail or by fax.
- Requests to the NAHC should include the specific location of the area that is subject to the proposed action, preferably with a map clearly showing the area of land involved.
- Requests should clearly state that the local government is seeking information about tribes that are on the “SB 18 Consultation List.”
- Contact information for the NAHC:

Native American Heritage Commission
915 Capitol Mall, Room 364
Sacramento, CA 95814
Phone: 916-653-4082
Fax: 916-657-5390
<http://www.nahc.ca.gov>

A sample form for submitting a request to the NAHC is provided in Exhibit A. The tribal consultation list request form is also available on the NAHC website.

The NAHC will provide local governments with a written contact list of tribes with traditional lands or cultural places located within the local government’s jurisdiction. For each listed tribe, the NAHC will provide the tribal representative’s name, name of tribe, address, and phone number (if available, fax and email address). Although there is no statutory deadline for NAHC to respond to the local government, OPR recommends that the NAHC provide written contact information as soon as possible but no later than 30 days after receiving a written request from the local government.

Contacting Tribes Pursuant to Government Code §65352.3

Once a tribal contact list is received from the NAHC, local governments must contact the appropriate tribe(s) and invite them to participate in consultation. OPR suggests that local governments contact tribes as soon as possible upon receiving the tribal contact list. While the statute does not specify by what means tribe(s) should be contacted, OPR suggests that local governments send a written notice by certified mail with return receipt requested. Sending a written notice does not preclude a local government from also contacting the tribe by telephone, FAX, or e-mail.

Notices should be concise, clear, and informative so that tribes understand what they are receiving. Try to avoid using a standard public notice format to invite a tribe to consult, as most public notices do not contain sufficient information about the proposed action to enable a tribe to

respond. Keep in mind that the purpose of this notice is to invite a tribe to request consultation. Notices sent from a local government to a tribe, inquiring whether consultation is desired, should contain the following information:

- A clear statement of purpose, inviting the tribe to consult and declaring the importance of the tribe's participation in the local planning process.
- A description of the proposed general plan or specific plan being considered, the reason for the proposal, and the specific geographic area(s) that will be affected by the proposal. Relevant technical documents should be provided with a concise explanation that clearly describes the proposed general plan or specific plan amendment and its potential impacts on cultural resources, if known.
- Maps that clearly detail the geographic areas described in the explanation. Maps should be in a reasonable scale with sufficient references for easy identification of the affected areas.
- The deadline (date) by which the tribe must request a consultation with the local government. By law, tribes have 90 days from the date of receipt of the notice to request consultation (Government Code §65352.3(a)(2)).
- Contact information for representatives of the local government to whom the tribe should respond.
- Contact information for the project proponent/applicant and landowner(s), if applicable.
- Technical reports, including summaries of cultural resource reports and archaeological reports applicable to that tribe's cultural place(s), if available.
- Information on proposed grading or other ground-disturbing activities, if applicable. (This may be included in the project description.)

Subject to confidentiality procedures, both parties should maintain clear records of communications, including letters, telephone calls, and faxes. Both parties may send notices by certified mail and keep logs of telephone calls and faxes. Any returned or unanswered correspondence should be retained in order to verify efforts to communicate. Documentation of notification and consultation requests should be included in the local government's public record.

In addition to the above recommendations, local governments may, in cooperation with tribes, develop notification procedures as a part of consultation protocols established in cooperation with a tribal government. Local governments should be aware that some tribes already have consultation protocols. In addition, local governments may adopt policies regarding consultation with a tribal government. (*See Section VI.*)

After Notification is Sent to the Tribe

Once local governments have sent notification, tribes are responsible for requesting consultation. Pursuant to Government Code §65352.3(a)(2), each tribe has 90 days from the date on which they receive notification to respond and request consultation. Some key points to consider include:

- The time period for consultation (undefined) is independent of the time period for tribes to request consultation (90 days).
- Local governments should be aware that tribes may require the entire 90-day period allowed by law to respond to a consultation request. Tribal governing bodies may need to meet to take a formal position on consultation.
- Local governments and tribal governments may consider addressing the method and timing of a tribe's response to a consultation request in a jointly-developed consultation protocol. *(See Section VI.)*
- At their discretion, tribes can agree to a shorter timeframe (less than 90 days) to respond and request consultation.
- After the information about a proposed plan or plan amendment is received by the tribe, local governments should cooperate to provide any additional pertinent information about the proposed plan or plan amendment that the tribe may request. Local governments may consider extending the 90 day timeframe for the tribe to review the new information and respond accordingly.
- If the tribe does not respond within 90 days or declines consultation, consultation is not required under Government Code §65352.3.

Conducting Consultation on General Plan or Specific Plan Adoption or Amendment

Once a tribe requests consultation, consultation for the purpose of preserving or mitigating impacts to cultural places should begin within a reasonable time. Consultation should focus on how the proposed general plan or specific plan amendment or adoption might impact cultural places located on land affected by the plan proposal. The objectives of consultation, according to the legislative intent of SB 18, include:

- Recognizing that cultural places are essential elements in tribal culture, traditions, heritages and identities.
- Establishing meaningful dialogue between local and tribal governments in order to identify cultural places and consider cultural places in local land use planning.
- Avoiding potential conflicts over the preservation of Native American cultural places by ensuring local and tribal governments have information available early in the land use planning process.
- Encouraging the preservation and protection of Native American cultural places in the land use process by placing them in open space.
- Developing proper treatment and management plans in order to preserve cultural places.
- Enabling tribes to manage and act as caretakers of their cultural places.

Consultation is a process in which both the tribe and local government invest time and effort into seeking a mutually agreeable resolution for the purpose of preserving or mitigating impacts to a cultural place, where feasible. Government Code §65352.4 provides a definition of consultation for use by local governments and tribes:

Consultation means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

Effective consultation is an ongoing process, not a single event. The process should focus on identifying issues of concern to tribes pertinent to the cultural place(s) at issue – including cultural values, religious beliefs, traditional practices, and laws protecting California Native American cultural sites – and on defining the full range of acceptable ways in which a local government can accommodate tribal concerns.

Items to Consider When Conducting Consultation

The following list identifies recommendations for how local governments and tribes may approach consultation on general plan and specific plan proposals.

- As defined in Government Code §65352.4, consultation is to be conducted between two parties: the local government and the tribe. Both parties to the consultation are required to carefully consider the views of the other.
- Consultation does not necessarily predetermine the outcome of the plan or amendment. In some instances, local governments may be unable to reach agreement due to other state laws or competing public policy objectives.
- Local governments must consult with each tribe who is identified by the NAHC and requests consultation. The NAHC will identify whether there are, in fact, any tribes with whom the local government must consult. One or more tribes may have traditional cultural ties to land within the local government's jurisdiction and have an interest in preserving cultural places on those lands. Therefore, local governments may have to consult with more than one tribe on any particular plan proposal.
- OPR recommends that local governments consult with tribes one at a time (individually). If multiple tribes are involved and willing to jointly consult, local governments may consult with more than one tribe at a time.
- When a local government first contacts a tribe, its initial inquiry should be made to the tribal representative identified by the NAHC. OPR recommends that a local government department head or other official of similar or higher rank make the initial contact.
- Government leaders of the two consulting parties may consider delegating consultation responsibilities (such as attending meetings, sharing information, and negotiating the needs and concerns of both parties) to staff. Designated representatives should maintain direct relationships with and have ready access to their respective government leaders. These individuals may, but are not required to, be identified in a jointly-developed consultation protocol. (*See Section VI.*) In addition, the services of other professionals (attorneys,

contractors, or consultants) may be utilized to develop legal, factual, or technical information necessary to facilitate consultation.

- Simply notifying a tribe of a plan proposal is not the same as consultation.⁹
- Local governments should be aware of the potential for vast differences in tribal governments' level of staffing and other resources necessary to participate in the manner required by Government Code §65352.3 and §65352.4. Some may be able to respond more promptly and efficiently than others. Local governments should keep this in mind if and when developing a consultation protocol with a tribe. (*See Section VI.*)
- As a part of consultation, local governments may conduct record searches through the NAHC and California Historic Resources Information System (CHRIS) to determine if any cultural places are located within the area(s) affected by the proposed action. Local governments should be aware, however, that records maintained by the NAHC and CHRIS are not exhaustive, and a negative response to these searches does not preclude the existence of a cultural place. A tribe may be the only source of information regarding the existence of a cultural place.
- Local governments should be aware that the confidentiality of cultural places is critical to tribal culture and that many tribes may seek confidentiality assurances prior to divulging information about those sites. (*See Section VIII.*)
- Tribal consultation should be done face-to-face. If acceptable to both parties, local and tribal governments may wish to define circumstances under which parts of the consultation process can be carried out via conference calls, e-mails, or letters. (*See Section VIII.*)
- Tribal consultations should be conducted in a setting that promotes confidential treatment of any sensitive information that is shared about cultural places. Consultation should not take place in public meetings or public hearings.
- The time and location of consultation meetings should be flexible to accommodate the needs of both the local government and tribe. Local governments should recognize that travel required for in-person consultation may be time-consuming, due to the rural location of a tribe. Local governments should also take into account time zone changes when setting meeting times. Local governments should offer a meeting location at the city hall, county administrative building, or other appropriate location. Local governments should also be open to a tribe's invitation to meet at tribal facilities.
- The local government and tribe can agree to mutually invite private landowners to participate in consultation, if both parties feel that landowner involvement would be appropriate.
- Local governments are encouraged to establish a collaborative relationship with tribes as early as possible, prior to the need to consult on a particular general plan or specific plan

⁹ In *Pueblo of Sandia v. United States*, 50 F.3d 856 (10th Cir. 1995), the court held that the U.S. Forest Service had not fulfilled its consultation responsibilities under the National Historic Preservation Act by merely sending letters to request information from tribes. The court ruling held that written correspondence requesting consultation with a tribe was not sufficient for the purpose of conducting consultation as required by law, and that telephone calls or more direct forms of contact may be required.

amendment or adoption. Local governments may consider conducting pre-consultation meetings and developing consultation protocols in cooperation with tribes. (*See Section VI.*)

- Both parties should attempt to document the progress of consultation, including letters, telephone calls, and direct meetings, without disclosing sensitive information about a cultural place. Local governments may also want to document how the local government representative(s) fulfilled their obligations under Government Code §65352.3 and §65352.4.

When is Consultation Over?

Alan Downer, of the Advisory Council on Historic Preservation, described consultation as “conferring between two or more parties to identify issues and make a good faith attempt to find a mutually acceptable resolution of any differences identified.”¹⁰ Differences of opinion and of priorities will arise in consultation between local and tribal governments. Whenever feasible, both local and tribal governments should strive to find mutually acceptable resolutions to differences identified through consultation.

When engaging in consultation, local government and tribal representatives should consider leaving the process open-ended to allow every opportunity for mutual agreement to be reached. Some consultations may involve highly sensitive and complex issues that cannot be resolved in just one discussion. Consultation may require a series of meetings before a mutually acceptable agreement may be achieved. Consultation must be concluded prior to the formal adoption or amendment of a general plan or specific plan.

Consultation, pursuant to Government Code §65352.3 and §65352.4, should be considered concluded at the point in which:

- the parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
- either the local government or tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning appropriate measures of preservation or mitigation.

V. Consultation: Cultural Places Located in Open Space

On and after March 1, 2005, if land designated, or proposed to be designated as open space contains a cultural place, and if an affected tribe has requested notice of public hearing under Government Code §65092, then local governments must consult with the tribe. The purpose of this consultation is to determine the level of confidentiality required to protect the specific identity, location, or use of the cultural place, and to develop treatment with appropriate dignity of the cultural place in any corresponding management plan (Government Code §65562.5). This consultation provision does not apply to lands that were designated as open space before March 1, 2005.

¹⁰ From “The Navajo Nation Model: Tribal Consultation Under the National Historic Preservation Act” (2000).

What Triggers Consultation?

Government Code §65562.5 applies to land that is designated, or proposed to be designated, as open space, on or after March 1, 2005. Local governments must consider several criteria when determining whether consultation is required, prior to designating open space on or after March 1, 2005.

Local governments must first learn whether the land designated, or proposed to be designated, as open space contains a cultural place. The following are methods by which local governments may be informed if a cultural place is located on designated or proposed open space:

- Conduct a record search through the NAHC to learn whether any listed cultural places are located on land proposed to be designated as open space. The local government should provide maps of lands proposed as open space to the NAHC with a request to identify whether there are any cultural places on the property. Because the NAHC's sacred lands file is confidential, the commission will only divulge the presence or absence of a listed site and will direct the local government to the appropriate tribe(s) for more information.
- Conduct a record search through CHRIS to learn whether any listed cultural places are located on land proposed to be designated as open space. Local governments should enter into agreements with CHRIS information centers to establish procedures and protocols for requesting searches of historical resource records.
- Request that tribes identify the existence of any cultural places on the proposed open space land. Local governments should send a written request to the NAHC asking for a written list of tribes that have traditional cultural ties to the proposed open space. The NAHC will provide tribal contact information. Local governments should contact each tribe on the list provided by the NAHC to learn whether any cultural places are located on the land proposed as open space. Local government should provide the tribe with a sufficiently detailed map of the open space together with a concise notice as to why the tribe is being contacted. (Note: This contact is strictly for the purpose of identifying whether a cultural place is or may be located on the proposed open space land. It does not start consultation with a tribe.)

Local governments should be aware that records maintained by the NAHC and CHRIS are not exhaustive, and a negative response to searches does not preclude the existence of a cultural place. In most instances, and especially because of associated confidentiality issues, it is likely that tribes will be the only source of information regarding certain cultural places.

After a local government learns that a cultural place is or may be located on land designated or proposed to be designated as open space, the local government must notify the appropriate tribes of the opportunity to participate in consultation. The appropriate tribes are those which have: (1) been identified by the NAHC, and (2) requested notice of public hearing from the local government pursuant to Government Code §65092.

Conducting Consultation Regarding Open Space

The purpose of this consultation is to determine the level of confidentiality required to protect the specific identity, location, character, or use of the cultural place and to develop treatment with appropriate dignity of the cultural place in any corresponding open space management plan. The reference to “any corresponding management plan” is not meant to imply that there is such a plan or that the local government must develop such a management plan. This language is intended to encourage consideration of management policies and practices which may be discussed between the local government and tribe and incorporated into a new or existing management plan for the cultural place.

The following are examples of appropriate items to consider and discuss during consultation:

- Encourage tribal involvement in the treatment and management of the cultural place through contracting, monitoring, co-management, and other forms of joint local-tribal participation.
- Tribes may only wish to disclose a sufficient amount of information to protect the site and to allow for the proper treatment and management of the cultural place. (*See Section VIII.*)
- Tribes may wish to have access to cultural places located on open space for gathering, performing ceremonies and/or helping maintain the site.
- Tribes may want to recommend management practices that avoid disturbing or impacting the cultural place.
- Tribes may wish to discourage certain land uses (e.g. recreation) within the open space that could adversely impact the cultural place. Local governments may be asked to consider appropriate land uses in the open space designation that would avoid direct impacts to the cultural place.

The designation of open space, as provided in Government Code §65562.5, may but does not always, involve amending the general plan. In some jurisdictions, designation of open space may occur through rezoning of land from one zone designation to an open space zone designation, without the need for a general plan amendment. However, for proposals to designate open space that require a general plan or specific amendment, the local government should consider the above recommendations as well as the recommendations outlined in Section IV of these guidelines.

When is Consultation Over?

Please refer to Section IV for additional information regarding the meaning of consultation.

Part C

Pre-Consultation

Section VI provides advice to local governments that is intended to help them more effectively engage in consultation with tribes. This part of the 2005 Supplement provides information that may help local governments establish working relationships with tribes prior to entering into the required consultation pursuant to Government Code §65352.3 and §65562.5.

VI. Preparing for Consultation

As discussed above, Government Code §65352.3 requires consultation during the process of amending or adopting general plans or specific plans. In addition, Government Code §65562.5 requires consultation to determine the proper level of confidentiality to protect and treat a cultural place with appropriate dignity, where such places are located on lands to be designated as open space. Before engaging in consultation in either of these cases, local governments may want to consider developing relationships with tribes that have traditional lands within their jurisdiction. Although not required by law, these pre-consultation efforts may develop a foundation for a mutually respectful and cooperative relationship that helps to ensure more smooth and effective communication in future consultations.

Local governments may wish to consider the following when undertaking pre-consultation meetings:

- Contact the NAHC to obtain a list of all appropriate tribes with whom to pre-consult. Because this list may be revised over time by the NAHC, local governments should periodically request updated contact lists.
- Contact the NAHC and CHRIS to learn if any historical or cultural places are located within the city's or county's jurisdiction. (Note that the NAHC and CHRIS have different procedures for searching information about cultural sites. See Part F for more information about each organization and how to contact them. As previously noted, NAHC and CHRIS records pertaining to cultural places are not exhaustive, and a negative response to these searches does not preclude the existence of a cultural place.)
- Invite each tribal government's leaders to meet with local government leaders for the purpose of establishing working relationships and exchanging information about respective governmental structures, practices, and processes. Pre-consultation meetings may include discussion about community goals, planning priorities, and how cultural places play a role in the tribal culture.
- Hold informational workshops or meetings with the tribe(s) to discuss the general plan process, the existing general plan, and any contemplated amendments. Local governments should not expect or ask a tribe to share confidential information in a meeting with other tribes or the general public.
- Ask tribes whether they have existing consultation protocols.

- Develop a consultation protocol that addresses how a cooperative relationship can be maintained and how future consultations should be conducted. Some tribes may already have established protocols through working with other agencies, such as state and federal entities, that can be used as models.

If a tribe and local government decide to develop a consultation protocol, both parties should suggest topics that they believe will facilitate consultation. The following are examples of items that may be appropriate to discuss and include in a jointly-developed consultation protocol:

- Representative(s) from each consulting party who will be designated to participate in consultations and manage the information resulting from the consultations.
- Key points in the consultation process when elected government leaders may need to be directly involved in consultation.
- Method(s) of contact preferred by the tribal government and additional tribal representatives that the local government should contact regarding a proposed action.
- Procedures for giving and receiving notice, including method and timing.
- Preferred method(s) of consultation. While in-person consultation is recommended, it may be acceptable to both parties that certain aspects of consultation occur through conference calls, e-mails, or letters.
- Preferred locations of consultation meetings.
- The tribe's willingness to participate in joint consultation, should a specific site be of interest to more than one tribe.
- Procedures to allow tribal access to the local government's consultation records.
- Procedures for maintaining accurate, up-to-date contact information.

Over time, the initial approach to consultation may need to be updated. Both parties should be open to identifying and agreeing on changes to their consultation protocol.

Part D

Preservation, Mitigation, Confidentiality, and Landowner Participation

Sections VII through IX provide advice to local governments for considering issues such as appropriate means to preserve, or mitigate impacts to, cultural places; methods to protect the confidentiality of cultural places; and ways to encourage the participation of landowners in voluntary preservation efforts.

VII. Preservation of, or Mitigation of Impacts to, Cultural Places

Government Code §65352.3 requires local governments to conduct consultations with tribes (when requested) for the purpose of “preserving or mitigating impacts” to California Native American cultural places. In the course of adopting or amending a general plan or specific plan, local governments may be informed of the existence of a cultural place within the affected area. Should a tribe request consultation to discuss any impacts to the cultural place, local governments should consider a variety of factors when participating in the consultations, including: the history and importance of the cultural place, the adverse impact the local government action may have on the cultural place, options for preserving the cultural place, and options for mitigating impacts of the proposal to the cultural place.

When participating in consultations, it is important that local governments consider that, because of philosophical differences, mitigation will not always be viewed as an appropriate option to protect cultural, and often irreplaceable, places. Many tribes may determine that impacts to a cultural place cannot be mitigated; that the only appropriate treatment may be to preserve the cultural place without impact to its physical or spiritual integrity. Of course, this is not to say that tribes will not engage in discussions regarding mitigation of impacts to their cultural places, but local governments should consider the vastly different perspectives that tribes may have. What a local government may consider to be acceptable treatment under current environmental, land use, and cultural resource protection laws, may not be considered by a tribe to be acceptable treatment for a sacred or religious place.

The following is a discussion of preservation and mitigation, as mentioned in Government Code §65352.3. Local governments should check with their legal counsels to identify any other legal obligations to preserve or mitigate impacts to Native American cultural resources.

What are Preservation and Mitigation?

Preservation is the conscious act of avoiding or protecting a cultural place from adverse impacts including loss or harm. Mitigation, on the other hand, is the act of moderating the adverse impacts that general plan or specific plan adoption or amendment may have on a cultural place.

While local governments should strive to help preserve the integrity of, access to, and use of cultural places¹¹, mitigation may often be achieved through a broad range of measures:

- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the impacted cultural place.
- Reducing or eliminating the impact over time through monitoring and management of the cultural place.

Other methods of mitigation may include:

- Designation of open space land in accordance with Government Code §65560(b).
- Enhancement of habitat or open space properties for protection of cultural place.
- Development of an alternate site suitable for tribal purposes and acceptable to the tribe.
- Other alternative means of preserving California Native American cultural features, where feasible.

It is important that local governments consider that mitigation measures may largely differ depending on customs of a particular tribe, the characteristics and uses of a site or object, the cultural place's location, and the importance of the site to the tribe's cultural heritage. Where a cultural place is affected by a proposed general or specific plan adoption or amendment, consultations with tribes should focus on preserving, or mitigating the impacts to, that specific cultural place.

Seeking Agreement Where Feasible

Although Government Code §65352.3(a) requires consultation for the purpose of preserving or mitigating against the adverse impacts that a general plan or specific plan adoption or amendment may have on a cultural place, there is no requirement to preserve a cultural place or adopt mitigation measures, if agreement cannot be reached. Under the definition of "consultation" within Government Code §65352.4, local governments and tribes are required to carefully consider each other's views and are required to seek an agreement, "where feasible." For the purposes of Government Code §65352.4, agreements should be considered "feasible" when capable of being accomplished in a successful manner within a reasonable time taking into account economic, environmental, social and technological factors.¹² If, after conducting consultations in good faith and within the spirit of the definition, the tribe or local government cannot reach agreement on preservation or mitigation of any impact to a California Native American cultural place, neither party is required to take any action under Government Code §65352.3(a).

¹¹ Cultural Places referring to places, features, and objects under Government Code §65352.3(a) and described in Government Code §§5097.9 and 5097.995.

¹² See *State of California General Plan Guidelines*, Governor's Office of Planning & Research, Glossary, page 261.

Monitoring and Management

During consultations, local governments should consider the involvement of tribes in the ongoing treatment and management of cultural places, objects, or cultural features through a specific monitoring program, co-management, or other forms of participation.

Where a cemetery, burial ground, or village site may be present, the planning of treatment and management activities should address the possibility that California Native American human remains may be involved when protecting cultural features. Local governments should consider working with tribes to develop an appropriate plan for the identification and treatment of such discoveries in accordance with Public Resources Code §5097.98.

Private Landowner Involvement

During consideration of a proposed general plan adoption or amendment, a local government may discover or be informed of a cultural place that exists on privately owned land within an affected area. In such an instance, local governments should first contact the appropriate tribe or tribes to offer consultations and determine an acceptable level of landowner involvement. Local governments should be aware that there may be some occasions where a tribe may prefer to maintain strict confidentiality without the inclusion of a private, third party landowner.

If a tribe is interested in involving the landowner in preservation or mitigation activities, the local government should consider facilitating such involvement. It is important that local governments and tribes understand that there is no statutory requirement to include private landowners under the government-to-government consultations requirements of Government Code §65352.3(a). However, because landowner participation is encouraged, local governments may consider suggesting the following methods to facilitate landowner involvement:

- Suggesting that the tribe contact the private landowner directly to facilitate discussions between the tribe and landowner.
- Offering to contact the private landowner directly on behalf of the tribe.
- Suggesting that the private landowner be included as a party to the consultations.

VIII. Confidentiality of Information

Protecting the confidentiality of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places is one of the most important objectives of SB 18. This is clearly evidenced by SB 18's legislative intent as well as its statutory additions and amendments which address the issue of confidentiality and requires "each city and county to protect the confidentiality of information concerning" cultural places.¹³ By maintaining the confidentiality of a cultural place, including its location, traditional uses, and characteristics, local governments can help assure tribes of continued access and use of these cultural places, in addition to aiding in the preservation of a cultural place's integrity. However, local governments should take into consideration other state and federal laws which may impose conflicting public policy priorities or requirements.

¹³ See SB 18 §1(b)(3), (Burton, Ch. 905, Stat. 2004); Govt. Code §§ 65040.2(g)(3), 65352.3, 65352.4, and 65562.5.

Public Disclosure Laws

The California Public Records Act (Government Code §6250 et. seq.) and California's open meeting laws applying to local governments (The Brown Act, Government Code §54950 et. seq.) both have implications with regard to maintaining confidentiality of California Native American cultural place information. Local governments are encouraged to carefully consider these laws in greater detail, and adopt or incorporate these recommendations into their own confidentiality procedures in order to avoid the unintended disclosure of confidential cultural place information.

The California Public Records Act (CPRA)

Subject to specified exemptions, the CPRA provides that all written records maintained by local or state government are public documents and are to be made available to the public, upon request. Written records include all forms of recorded information (including electronic) that currently exist or that may exist in the future. The CPRA requires government agencies to make records promptly available to any citizen who asks, unless an exemption applies.

The CPRA contains two exemptions which aid in the protection of records relating to Native American cultural places. Amended in October of 2005 for broad application, these exemptions now permit any state or local agency to deny a CPRA request and withhold from public disclosure:

- 1) "records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Section 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency" (GC § 6254(r)); and
- 2) "records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American tribe and a state or local agency" (GC § 6254.10).

With these two CPRA exemptions in place, information related to Native American cultural places is specifically protected from mandatory public disclosure. Such protections are intended to facilitate the free exchange of information between Native American tribes and California local governments when conducting tribal consultations. Even with this protection, however, it is important for local governments to understand that some tribes may withhold information during consultations due to conflicts with their cultural beliefs and practices. Local governments and Native American tribes should discuss such issues early in consultations, or during pre-consultation, so that each has an understanding of what information can and cannot be divulged. Additionally, it is important for all parties to recognize that a legislative body of a city or county must have access to certain information in order to make an informed decision regarding the given plan adoption or amendment.

The Brown Act

The Brown Act governs the legislative bodies of all local agencies within California. It requires that meetings held by these bodies be “open and public.” Under this Act, no local legislative body may take an action in secret, nor will the body’s action be upheld if it is in violation of California’s open meeting laws. The Brown Act defines a “meeting” as a gathering of a majority of the members of a applicable body to hear, discuss, or deliberate on matters within the agency’s or board’s jurisdiction.

While the Brown Act does contain some exceptions for “closed meetings,” none of these exceptions would allow the quorum of a local legislative body to participate in tribal consultations within a closed meeting. Should a local legislative body participate in confidential tribal consultations, it is important that they do so as an advisory committee with *less than* a quorum, so as to not invoke the Brown Act’s requirements of public participation (see Government Code §54952(b)). Otherwise, the Brown Act will require that the consultations be held in public, thereby defeating the purpose of confidentiality, or, alternatively, any decisions made by the quorum of the body within a closed meeting would be rendered invalid.

In order to efficiently conduct tribal consultation meetings, in addition to maintaining confidentiality at all times, local governments are encouraged to develop procedures in advance that would designate a committee or agency in charge. In doing so, local governments should consider the problems associated with elected official participation within tribal consultations, and should tailor their procedures accordingly.

Public Hearings

General plan amendments, specific plan amendments, and the adoption of a general or specific plan each require both a planning commission and a city council or board of supervisors to conduct public hearings. The decision to approve or deny these proposals must be based in reason and upon evidence in the record of the public hearing. When addressing an adoption or amendment involving a cultural place, elected officials will need to be apprised of the cultural site implications in order to make informed decision. However, to maintain the confidentiality of this cultural place information, local governments and tribes, during consultations, should agree on what non-specific information may be disclosed during the course of a public hearing. Additionally, local governments should avoid including any specific cultural place information within CEQA documents (such as Environmental Impact Reports, Negative Declaration, and Mitigated Negative Declarations) or staff reports which are required to be available at a public hearing. In such cases, confidential cultural resource inventories or reports generated for environmental documents should be maintained under separate cover and shall not be available to the public.

Additional Confidentiality Procedures

Additionally, local governments should consider the following items when considering steps to be taken in order to maintain confidentiality:

- Local governments should develop “in-house” confidentiality procedures.

- Procedures should be established to allow for tribes to share information with local government officials in a confidential setting.
- Only those tribal designees, planning officials, qualified professional archaeologists, and landowners involved in the particular planning activity should obtain information about a specific site.
- Participating landowners should be asked to sign a non-disclosure agreement with the appropriate tribe prior to gaining access to any specific site information.
- Local governments should not include detailed (confidential) information about cultural places in any of its public documents.
- Possible procedures to require local government to notify participating tribes and landowners whenever records containing specific site information have been requested for public disclosure.

Local governments should also keep in mind that the terms for confidentiality may differ depending upon the nature of the site, the tribe, the local government, the landowner, or who proposes to protect the site. Local governments should collaborate with tribes to develop informational materials to educate landowners regarding the cultural sensitivity of divulging site information, explaining the tribe's interest in maintaining the confidentiality and preservation of a site. Landowners should be informed of criminal penalties within the law for the unlawful and intentional destruction, degradation or removal of California Native American cultural or spiritual places located on public or private lands (Public Resources Code §5097.995).¹⁴

Confidentiality Procedures for Private Landowner Involvement

In order to successfully preserve or mitigate impacts to a California Native American cultural place, local governments and tribes may find it necessary or advantageous to involve private landowners early in the consultation process. Often, landowners may not be aware that a cultural place exists on their property, or alternatively, may not realize that the site has become subject to a general plan adoption or amendment. Due to the confidential nature of certain information involved, local governments should consider working with tribes to adopt procedures that would balance the value of landowner involvement with the need for cultural place confidentiality. Local governments and California Native American tribes may wish to consider the following procedures that would inform and potentially involve landowners in the consultation process, without compromising the confidentiality of a cultural place:

- Local governments, at the request of a tribe, may consider contacting a landowner directly and, without disclosing the exact location or characteristics of the site, inform the landowner of the existence of a culturally significant place on their property. A local government may consider inquiring as to whether the landowner would be willing to further discuss the matter directly with the appropriate tribal representative under a non-disclosure agreement.

¹⁴ Due to a drafting error, SB 18 contains multiple references to Public Resources Code (PRC) §5097.995 which is no longer in existence. In 2004, PRC §5097.995 was amended and renumbered to PRC §5097.993 by Senate Bill 1264 (Chapter 286). Local governments should refer to PRC §5097.993 when looking for PRC §5097.995.

- Local governments may consider giving the landowner's contact information to a tribe so that the tribe may contact the landowner directly. Discussion about conservation easements is an example of a case in which a tribe and landowner may wish to meet without the direct participation of the local government.
- Local governments may also consider informing a landowner of the ability of landowners to access CHRIS for cultural resource information specific to their land. Local governments should keep in mind that the CHRIS system does not contain a catalog of every cultural place within California.

IX. Procedures to Facilitate Voluntary Landowner Protection Efforts

In addition to their own consultation with tribes, local governments may help facilitate landowner participation in preserving and protecting cultural places. While each city and county should develop its own policies on landowner participation, general strategies for encouraging landowner awareness of and participation in cultural place protection may include:

- Collaborating with local tribes to offer cultural awareness and other educational events for landowners.
- Encouraging landowner participation in discussions about appropriate preservation and mitigation measures.
- Promoting the use of conservation easements and other private conservation efforts.

It should be noted that SB 18 does not require landowners to dedicate or sell conservation easements for the purpose of cultural place preservation. Neither are local governments required to play a direct role in any private conservation activity. Government Code §65040.2(g), however, does require OPR to recommend procedures to facilitate voluntary landowner participation in the preservation and protection of cultural places.

Landowner Education and Participation

Public workshops, seminars, and other educational sessions may provide forums for tribal representatives to share tribal and cultural information and discuss general protection concerns with landowners. These sessions may build cultural awareness, develop landowner understanding of the importance of cultural places, and also encourage further dialogue between tribes and landowners. These sessions should generally inform landowners of the importance of cultural places and should not compromise the confidentiality of a specific cultural place.

Local governments may also encourage landowner participation in discussions about preserving or mitigating impacts to a cultural place located on a landowner's private property. (*See Section VII and Section VIII for further information.*)

Private Conservation Efforts

Although local governments are not required to play a direct role in any private conservation activity, they can promote the use of conservation easements and other conservation programs to protect cultural places. Local governments may consider adoption of a policy to encourage voluntary landowner participation in protection programs. Local governments may also develop and distribute informational materials about potential incentives for private conservation efforts, such as Mills Act tax credits or the tax benefits of donating or selling conservation easements.

A conservation easement is a voluntary agreement between a landowner and an authorized party (including a tribe pursuant to Civil Code 815.3(c)) that allows the easement holder to limit the type or amount of development on the property while the landowner retains title to the land. The landowner is compensated for voluntarily giving up some development opportunities. The easement is binding upon successive owners of the land. It is common for a conservation

easement to be recorded against the property as a way to inform future purchasers of the existence of an easement. Granting of a conservation easement may qualify as a charitable contribution for tax purposes.

Should a landowner choose to sell a conservation easement, the landowner should first consult with all tribes affiliated with the land on which the easement is proposed. It is also recommended that tribes hold conservation easements only within their areas of cultural affiliation.

As an alternative to conservation easements, local governments may also promote private preservation of cultural places through the use of Memoranda of Understanding (MOU). As a direct agreement between a landowner and tribe, a MOU allows a tribe and landowner to agree on appropriate treatment of cultural places located on the landowner's private property and may give certain privileges to tribes, such as access to perform ceremonial rituals. MOUs may also be used to facilitate co-management by tribes, landowners, and conservation organizations. For example, if a conservation easement established for wildlife protection also contains a cultural place, the landowner, conservation entity, and tribe could agree on co-management (in the MOU) that protects both the habitat and cultural place.

Part E

Open Space

Section X provides information for incorporating the protection of cultural places into the open space element of the general plan.

X. Open Space for the Protection of Cultural Places

SB 18 amended Government Code §66560 to include open space for the protection of cultural places as an allowable purpose of the open space element. Local governments may, but are not required to, consider adopting open space policies regarding the protection of cultural places. Local governments may wish to consider the following when and if they develop such policies:

- Limiting the types of land uses allowed in an open space designation in order to protect the cultural place from potentially harmful uses.
- Facilitating access to tribes for maintenance and traditional use of cultural places.
- Protecting the confidentiality of cultural places by not disclosing specific information about their identity, location, character, or use.
- Giving developers incentives to protect cultural places through voluntary measures.
- Incorporating goals for protection of cultural places in open space that is also part of a regional habitat conservation and protection program, for example, a local or regional Habitat Conservation Plan (HCP) or Natural Community Conservation Program (NCCP).
- Reviewing and conforming other elements of the general plan that deal with conservation of natural and cultural resources to the open space element.

The development of open space policies for the protection of cultural places should be done in consultation with culturally-affiliated tribes. It is important to note that the importance of cultural places is not solely rooted in the land or other physical features or objects related to the land on which the cultural place is located. The sense of “place” is often as important as any physical or tangible characteristic. It may be important to a tribe to preserve a certain non-material aspect of a cultural place, such as views or vantage points from or to the cultural place. Cultural interpretation and importance of the place to the tribe should be taken into consideration, in addition to any potential archaeological importance of the place. With this in mind, local governments should be prepared to consider creative solutions for preservation and protection of cultural places.

Neither Government Code §65560(b)(5) nor Government Code §65562.5 mandate local review or revision of the existing open space element of the general plan to inventory and/or protect cultural places. However, local governments should consider doing so in future updates of or comprehensive revisions to the open space element.

Part F

Additional Resources

XI. Additional Resources

In addition to the information provided in the 2005 Supplement to the *General Plan Guidelines*, local governments may wish to investigate additional resources that can provide more detailed information about Native American people, cultural places, tribal governments, consultation, confidentiality, conservation easements, and other issues related to SB 18. Sources of additional information include federal and state government agencies that have previous experience with tribal consultations, colleges and universities, private organizations and foundations, and the literature and web sites associated with these groups. Although it is not intended to be a comprehensive list, some potentially useful resources are included below.

It is important that local governments keep in mind that Native American tribes are often the best source of information concerning a cultural place's location and characteristics. Local governments are encouraged to seek this information, if available, directly from the tribes themselves.

State Agencies

California Native American Heritage Commission (NAHC)

The NAHC is the state commission responsible for advocating preservation and protection of Native American human remains and cultural resources. NAHC maintains confidential records concerning places of special religious or social significance to Native Americans, including graves and cemeteries and other cultural places. The NAHC reviews CEQA documents to provide recommendations to lead agencies about consulting with tribes to mitigate potential project impacts to these sites.

The NAHC maintains a list of California tribes and the corresponding contacts that local governments should use for the purpose of meeting SB 18 consultation requirements.

The NAHC web site also provides a number of links to information about federal and state laws, local ordinances and codes, and cultural resources in relation to Native Americans.

Native American Heritage Commission
915 Capitol Mall, Room 364
Sacramento, CA 95814
Phone: (916) 653-4082
Fax: (916) 657-5390
<http://www.nahc.ca.gov>

California Office of Historic Preservation (OHP)

California Historical Resources Information System (CHRIS)

Pursuant to state and federal law, the California Office of Historic Preservation (OHP) administers the California Historical Resources Information system (CHRIS). The CHRIS is organized by county and managed by regional information centers (posted on the OHP website). These CHRIS centers house records, reports, and other documents relating to cultural and archaeological resources, and provide information and recommendations regarding such resources on a fee-for-service basis. Local governments may enter into agreements with CHRIS information centers to establish procedures and protocols for requesting searches of historical resource records.

The OHP also provides assistance to local governments to encourage direct participation in historic preservation. OHP provides technical assistance to local governments including training for local commissions and review boards, drafting of preservation plans and ordinances, and developing archaeological and historical surveys.

Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296-0001
Phone: (916) 653-6624
Fax: (916) 653-9824
<http://www.ohp.parks.ca.gov>

California Department of Conservation

Division of Land Resource Protection (DLRP)

The DLRP works with landowners, local governments, and researchers to conserve productive farmland and open spaces.

California Department of Conservation
Division of Land Resource Protection
801 K Street, MS 18-01
Sacramento, CA 95814-3528
Phone: (916) 324-0850
<http://www.consrv.ca.gov/DLRP/index.htm>

California Department of Housing and Community Development

California Indian Assistance Program (CIAP)

The California Indian Assistance Program's primary role is to assist tribal governments with obtaining and managing funds for community development and government enhancement. CIAP's *2004 Field Directory of the California Indian Community* is a good reference for California Native American tribes, including location of Indian lands, federal recognition status of tribes, history of laws affecting tribes, and other programs and agencies involved in tribal relationships.

California Indian Assistance Program
1800 Third Street, Room 365
Sacramento, CA 95814
Phone: (916) 445-4727
<http://www.hcd.ca.gov/ca/ciap/>

**California Department of Transportation (DOT)
Native American Liaison Branch**

The California DOT administers most of its projects with some federal funding and is therefore subject to Section 106 consultation requirements under NHPA. The department has a Native American Liaison Branch (NALB), with headquarters in Sacramento and Native American Liaisons in each of its twelve districts. The NALB web site contains policy statements and links to other useful resources.

Office of Regional and Interagency Planning
Native American Liaison Branch
1120 N Street, MS 32
Sacramento, CA 95814
Phone: (916) 651-8195
Phone: (916) 654-2389
Fax: (916) 653-0001
http://www.dot.ca.gov/hq/tpp/offices/orip/na/native_american.htm

Federal Agencies

Federal Highway Administration – AASHTO (American Association of State Highway and Transportation Officials) Center for Environmental Excellence

The AASHTO Center for Environmental Excellence provides a web site designed to provide tools for Section 106 of the National Historical Preservation Act (NHPA) tribal consultation. This site contains documents and links to web sites that address key aspects of tribal consultation relevant to SB 18. Information also includes federal, tribal, and state policies and protocols, case law, and best practices as implemented by federal and state agencies and tribes.
http://environment.transportation.org/environmental_issues/tribal_consultation/overview.htm

U.S. Army Corps of Engineers

The U.S. Army Corps of Engineers has lasting and positive relations with many tribal governments. The “Tribal Affairs and Initiatives” section of their web site provides information regarding the U.S. Army Corps of Engineers’ approach to tribal consultation and preservation of cultural resources.
<http://www.usace.army.mil/inet/functions/cw/cecwp/tribal/index.htm>

USDA Forest Service

The Forest Service has extensive experience in consulting with Native American tribes. The Forest Service's *Forest Service National Resource Book on American Indian and Alaska Native Relations* is an excellent resource book on tribal beliefs and practices, tribal consultation, and laws affecting Native Americans. The Forest Service's *Report of the National Tribal Relations Program Implementation Team* (June 2003) reviews relationships between the Forest Service and tribes, identifying pervasive problems and concerns and making recommendations to improve the effectiveness of the program at maintaining long-term collaborative relationships with tribal governments.

USDA Forest Service
Regional Office of Tribal Relations
Sonia Tamez
1323 Club Drive
Vallejo, CA 95492
Phone: (707) 562-8919
www.r5.fs.fed.us

USDA National Sustainable Agriculture Information Service (ATTRA)

The ATTRA provides information and other technical assistance to farmers, ranchers, Extension agents, educators, and others involved in sustainable agriculture in the United States. The ATTRA publication, *Conservation Easements, Resource Series (2003)*, provides an overview of what holding and selling conservation easements entail.

ATTRA - National Sustainable Agriculture Information Service
PO Box 3657
Fayetteville, AR 72702
Phone: (800) 346-9140
Fax: (479) 442-9842
<http://attra.ncat.org/>

USDA Natural Resources Conservation Service (NRCS)

The mission of the NRCS is to address natural resource conservation on private lands. The web site contains links to various conservation technical resources and to additional contact information for area offices and service centers.

California NRCS State Office
430 G Street #4164
Davis, CA 95616-4164
Phone: (530) 792-5600
Fax: (530) 792-5610
<http://www.ca.nrcs.usda.gov/>

U.S. Department of Interior – Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) is responsible for the administration and management of 55.7 million acres of land held in trust by the United States for American Indians, Indian tribes, and Alaska Natives. Developing forestlands, leasing assets on these lands, directing agricultural

programs, protecting water and land rights, developing and maintaining infrastructure, and economic development are all agency responsibilities. The BIA web site includes links to other federal agencies, inter-tribal organizations, environmental organizations, and cultural resources.

Bureau of Indian Affairs
Phone: (202) 208-3710
<http://www.doi.gov/bureau-indian-affairs.html>

U.S. Department of Interior – Bureau of Land Management

The Bureau of Land Management manages 261 million acres of land and has staff whose duties include coordination and consultation with Native Americans. The Bureau publishes *Native American Coordination and Consultation, Manual Section 8160 with Handbook H-8160-1*. The handbook is devoted to providing general guidance for tribal consultation, and can be found online at: <http://www.blm.gov/nhp/efoia/wo/handbook/h8160-1.html>.

Bureau of Land Management
California State Office
2800 Cottage Way, Suite W-1834
Sacramento, CA 95825-1886
Phone: (916) 978-4400
Phone: (916) 978-4416
TDD: (916) 978-4419
<http://www.ca.blm.gov/>

U.S. Department of Interior- National Park Service

The following National Park Service web site specifically focuses on cultural resource preservation. The site includes links to tools for cultural resource preservation, different areas of cultural resource protection and different offices of the National Park Service that handle cultural preservation issues. Included among these offices is the American Indian Liaison Office, the web site of which contains a number of information resources that are potentially useful to local governments learning how to consult with Native American tribes on land use policy.
<http://www.cr.nps.gov>

U.S. Department of Interior – Office of Collaborative Action and Dispute Resolution

This web site provides links to federal agencies' policies on tribal consultation:
<http://mits.doi.gov/cadr/main/G2GAgencyPolicies.cfm>

Colleges and Universities

Humboldt State University

The Center for Indian Community Development (CICD)

The CICD primarily focuses on Indian language education, but also acts in the capacity of a liaison between Native American tribes and the community. The CICD includes a cultural resource facility where information about Native American burial grounds and cultural resource monitoring can be found. The CICD offers useful publications on tribal governments and cultural approaches to environmental protection of Native American lands on its web site.

Humboldt State University
Center for Indian Community Development
#1 Harpst Street
Arcata, CA 95521
Phone: (707) 826-3711
<http://www.humboldt.edu/~cicd/>

**University of California, Los Angeles
American Indian Studies Center (AISC)**

The AISC has spent a number of years conducting research on issues affecting Native American Indian communities. The center has sponsored conferences on issues including California tribes, repatriation, federal recognition, and Indian gaming. The AISC offers a number of publications on issues ranging from Contemporary Native American Issues and Native American Politics to Native American Theater and Native American Literature.

UCLA American Indian Studies Center
3220 Campbell Hall
Los Angeles, CA 90095-1548
Phone: (310) 825-7315
Fax: (310) 206-7060
<http://www.aisc.ucla.edu/>

**University of California, Los Angeles School of Law
Native Nations Law and Policy Center (NNLPC)**

The mission of NNLPC at UCLA Law is to support Native nations throughout the United States, with a special focus on California tribes, in developing their systems of governance and in addressing critical public policy issues and to apply the resources of state-supported education together with tribal expertise to address contemporary educational needs for California Tribes. The Research and Publications division secures grants, carries out research, and sponsors conferences and roundtables drawing together scholars, tribal leaders, and federal/state policy-makers.

UCLA School of Law
P.O. Box 951476
Los Angeles, CA 90095-1476
Phone: (310) 825-4841
<http://www.law.ucla.edu/students/academicprograms/nativenations/nnlapc.htm>

Private Organizations and Foundations

American Farmland Trust (AFT)

Since its founding in 1980, the AFT has helped to achieve permanent protection for over a million acres of American farmland. The AFT focuses its strategies on protecting land through publicly funded agricultural conservation easement programs and encouraging conservation practices in community planning and growth management.

American Farmland Trust
1200 18th Street NW
Washington, D.C. 20036
Phone: (202) 331-7300
Fax: (202) 659-8339
<http://www.farmland.org/>

Inter-Tribal Council of California, Inc. (ITCC)

The key role of the Inter-Tribal Council of California (ITCC) is to assist in bridging relationships between California tribal governments and other organizations, including local government agencies. The ITCC offers workshops on Native American cultural proficiency and tribal governments for the purpose of educating non-Native Americans on how to effectively communicate with tribal governments, in addition to other training and technical assistance. The ITCC is experienced in assisting the development of Memoranda of Understanding and Agreement, protocols, and educational outreach materials.

Inter-Tribal Council of California, Inc.
2755 Cottage Way, Suite 14
Sacramento, CA 95825
Phone: (916) 973-9581
Fax: (916) 973-0117

Land Trust Alliance (LTA)

The Land Trust Alliance promotes voluntary land conservation by offering training, conferences, literature, reports, and other information on land conservation. The LTA has several publications discussing conservation techniques. Their web site addresses different conservation options for landowners and includes questions and answers about conservation easements, land donation, and bargain sale of land.

Land Trust Alliance
1331 H Street NW, Suite 400
Washington D.C. 20005-4734
Phone: (202) 638-4725
Fax: (202) 638-4730
<http://www.lta.org/consERVE/options.htm>

Native American Land Conservancy

The Native American Land Conservancy is a nonprofit corporation formed for the conservation and preservation of Native American sacred lands.

Native American Land Conservancy
Kurt Russo, Executive Director
PO Box 1829
Indio, CA 92202
Phone: (800) 6770-6252

The Nature Conservancy (TNC)

The Nature Conservancy is a non-profit organization that works with communities, businesses, and individuals to preserve lands with natural and cultural resources.

The Nature Conservancy
4245 North Fairfax Drive, Suite 100
Arlington, VA 22203-1606
<http://nature.org/>

Southern California Tribal Chairmen's Association (SCTCA)

The Southern California Tribal Chairmen's Association (SCTCA) is a multi-service non-profit corporation established in 1972 for a consortium of 19 Federally recognized Indian tribes in Southern California. The Primary goals and objectives of SCTCA are the health, welfare, safety, education, culture, economic and employment opportunities for its tribal members. A board of directors comprised of tribal chairpersons from each of its member tribes governs SCTCA.

Southern California Tribal Chairmen's Association
Denis Turner
Executive Director
Phone: (760) 742-8600 x100
<http://www.sctca.net/>

Trust for Public Land (TPL)

The Trust for Public Land (TPL) is a national, nonprofit, land conservation organization that conserves land for people to enjoy as parks, community gardens, historic sites, rural lands, and other natural places, ensuring livable communities for generations to come. Since 1972, TPL has worked with willing landowners, community groups, and national, state, and local agencies to complete more than 2,700 land conservation projects in 46 states, protecting nearly 2 million acres.

Trust for Public Land National Office
116 New Montgomery St., 4th Floor
San Francisco, CA 94105
Phone: (415) 495-4014
Fax: (415) 495-4103
<http://www.tpl.org>

Exhibit A: Sample Request to the NAHC for Tribal Contact Information

| | | |
|---|---|---|
|  | <p style="text-align: center;">LOCAL GOVERNMENT TRIBAL CONSULTATION LIST REQUEST NATIVE AMERICAN HERITAGE COMMISSION 915 CAPITOL MALL, ROOM 364 SACRAMENTO, CA 95814 (916) 653-4082 (916) 657-5390 - Fax</p> |  |
|---|---|---|

Project Title: _____

Local Government/Lead Agency: _____ **Contact Person:** _____

_____ **Phone:** _____

Street Address: _____ **Fax:** _____

City: _____ **Zip:** _____

Project Location:

County: _____ **City/Community:** _____

Local Action Type:

- General Plan General Plan Element Specific Plan
 General Plan Amendment Specific Plan Amendment
 Pre-planning Outreach Activity

Project Description:

| |
|---|
| <p>NAHC Use Only</p> <p>Date Received: _____</p> <p>Date Completed _____</p> |
|---|

Native American Tribal Consultation lists are only applicable for consulting with California Native American tribes per Government Code Section 65352.3.

BILL NUMBER: SB 18 CHAPTERED
 BILL TEXT

CHAPTER 905

FILED WITH SECRETARY OF STATE SEPTEMBER 30, 2004
 APPROVED BY GOVERNOR SEPTEMBER 29, 2004
 PASSED THE SENATE AUGUST 19, 2004
 PASSED THE ASSEMBLY AUGUST 9, 2004
 AMENDED IN ASSEMBLY JULY 1, 2004
 AMENDED IN ASSEMBLY JUNE 28, 2004
 AMENDED IN ASSEMBLY JUNE 14, 2004
 AMENDED IN ASSEMBLY JUNE 10, 2004
 AMENDED IN ASSEMBLY SEPTEMBER 12, 2003
 AMENDED IN ASSEMBLY SEPTEMBER 5, 2003
 AMENDED IN ASSEMBLY AUGUST 25, 2003
 AMENDED IN ASSEMBLY AUGUST 18, 2003
 AMENDED IN ASSEMBLY JULY 9, 2003

INTRODUCED BY Senators Burton, Chesbro, and Ducheny

DECEMBER 2, 2002

An act to amend Section 815.3 of the Civil Code, to amend Sections 65040.2, 65092, 65351, 65352, and 65560 of, and to add Sections 65352.3, 65352.4, and 65562.5 to the Government Code, relating to traditional tribal cultural places.

LEGISLATIVE COUNSEL'S DIGEST

SB 18, Burton. Traditional tribal cultural places.

(1) Existing law establishes the Native American Heritage Commission and authorizes the commission to bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine/located on public property.

Existing law authorizes only specified entities or organizations, including certain tax-exempt nonprofit organizations, and local government entities to acquire and hold conservation easements, if those entities and organizations meet certain conditions.

This bill would include a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission, among those entities and organizations that may acquire and hold conservation easements, as specified.

(2) Existing law requires the Office of Planning and Research to implement various long range planning and research policies and goals that are intended to shape statewide development patterns and significantly influence the quality of the state's environment and, in connection with those responsibilities, to adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans.

This bill would require that, by March 1, 2005, the guidelines contain advice, developed in consultation with the Native American Heritage Commission, for consulting with California Native American tribes for the preservation of, or the mitigation of impacts to, specified Native American places, features, and objects. The bill

would also require those guidelines to address procedures for identifying the appropriate California Native American tribes, for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects, and for facilitating voluntary landowner participation to preserve and protect the specific identity, location, character, and use of those places, features, and objects. The bill would define a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission as a "person" for purposes of provisions relating to public notice of hearings relating to local planning issues.

(3) Existing law requires a planning agency during the preparation or amendment of the general plan, to provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate.

This bill would require the planning agency on and after March 1, 2005, to refer the proposed action to California Native American tribes, as specified, and also provide opportunities for involvement of California Native American tribes. The bill would require that, prior to the adoption or amendment of a city or county's general plan, the city or county conduct consultations with California Native American tribes for the purpose of preserving specified places, features, and objects that are located within the city or county's jurisdiction. The bill would define the term "consultation" for purposes of those provisions. By imposing new duties on local governments with respect to consultations regarding the protection and preservation of California Native American historical, cultural, and sacred sites, the bill would impose a state-mandated local program.

On and after March 1, 2005, this bill would include open space for the protection of California Native American historical, cultural, and sacred sites within the definition of "local open-space plan" for purposes of provisions governing the preparation of the open-space element of a city and county general plan.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Current state law provides a limited measure of protection for California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places.

(2) Existing law provides limited protection for Native American sanctified cemeteries, places of worship, religious, ceremonial

sites, sacred shrines, historic or prehistoric ruins, burial grounds, archaeological or historic sites, inscriptions made by Native Americans at those sites, archaeological or historic Native American rock art, and archaeological or historic features of Native American historic, cultural, and sacred sites.

(3) Native American places of prehistoric, archaeological, cultural, spiritual, and ceremonial importance reflect the tribes' continuing cultural ties to the land and to their traditional heritages.

(4) Many of these historical, cultural, and religious sites are not located within the current boundaries of California Native American reservations and rancherias, and therefore are not covered by the protectionist policies of tribal governments.

(b) In recognition of California Native American tribal sovereignty and the unique relationship between California local governments and California tribal governments, it is the intent of the Legislature, in enacting this act, to accomplish all of the following:

(1) Recognize that California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places are essential elements in tribal cultural traditions, heritages, and identities.

(2) Establish meaningful consultations between California Native American tribal governments and California local governments at the earliest possible point in the local government land use planning process so that these places can be identified and considered.

(3) Establish government-to-government consultations regarding potential means to preserve those places, determine the level of necessary confidentiality of their specific location, and develop proper treatment and management plans.

(4) Ensure that local and tribal governments have information available early in the land use planning process to avoid potential conflicts over the preservation of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places.

(5) Enable California Native American tribes to manage and act as caretakers of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places.

(6) Encourage local governments to consider preservation of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places in their land use planning processes by placing them in open space.

(7) Encourage local governments to consider the cultural aspects of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places early in land use planning processes.

SEC. 2. Section 815.3 of the Civil Code is amended to read:

815.3. Only the following entities or organizations may acquire and hold conservation easements:

(a) A tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in this state which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

(b) The state or any city, county, city and county, district, or other state or local governmental entity, if otherwise authorized to acquire and hold title to real property and if the conservation easement is voluntarily conveyed. No local governmental entity may condition the issuance of an entitlement for use on the applicant's granting of a conservation easement pursuant to this chapter.

(c) A federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place, if the conservation easement is voluntarily conveyed.

SEC. 3. Section 65040.2 of the Government Code is amended to read:

65040.2. (a) In connection with its responsibilities under subdivision (1) of Section 65040, the office shall develop and adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3. For purposes of this section, the guidelines prepared pursuant to Section 50459 of the Health and Safety Code shall be the guidelines for the housing element required by Section 65302. In the event that additional elements are hereafter required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3, the office shall adopt guidelines for those elements within six months of the effective date of the legislation requiring those additional elements.

(b) The office may request from each state department and agency, as it deems appropriate, and the department or agency shall provide, technical assistance in readopting, amending, or repealing the guidelines.

(c) The guidelines shall be advisory to each city and county in order to provide assistance in preparing and maintaining their respective general plans.

(d) The guidelines shall contain the guidelines for addressing environmental justice matters developed pursuant to Section 65040.12.

(e) The guidelines shall contain advice including recommendations for best practices to allow for collaborative land use planning of adjacent civilian and military lands and facilities. The guidelines shall encourage enhanced land use compatibility between civilian lands and any adjacent or nearby military facilities through the examination of potential impacts upon one another.

(f) The guidelines shall contain advice for addressing the effects of civilian development on military readiness activities carried out on all of the following:

- (1) Military installations.
- (2) Military operating areas.
- (3) Military training areas.
- (4) Military training routes.
- (5) Military airspace.
- (6) Other territory adjacent to those installations and areas.

(g) By March 1, 2005, the guidelines shall contain advice, developed in consultation with the Native American Heritage Commission, for consulting with California Native American tribes for all of the following:

(1) The preservation of, or the mitigation of impacts to, places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code.

(2) Procedures for identifying through the Native American Heritage Commission the appropriate California Native American tribes.

(3) Procedures for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects.

(4) Procedures to facilitate voluntary landowner participation to preserve and protect the specific identity, location, character, and

use of those places, features, and objects.

(h) The office shall provide for regular review and revision of the guidelines established pursuant to this section.

SEC. 4. Section 65092 of the Government Code is amended to read:

65092. (a) When a provision of this title requires notice of a public hearing to be given pursuant to Section 65090 or 65091, the notice shall also be mailed or delivered at least 10 days prior to the hearing to any person who has filed a written request for notice with either the clerk of the governing body or with any other person designated by the governing body to receive these requests. The local agency may charge a fee which is reasonably related to the costs of providing this service and the local agency may require each request to be annually renewed.

(b) As used in this chapter, "person" includes a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission.

SEC. 5. Section 65351 of the Government Code is amended to read:

65351. During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens California Native American Indian tribes, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate.

SEC. 6. Section 65352 of the Government Code is amended to read:

65352. (a) Prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all of the following entities:

- (1) A city or county, within or abutting the area covered by the proposal, and a special district that may be significantly affected by the proposed action, as determined by the planning agency.
- (2) An elementary, high school, or unified school district within the area covered by the proposed action.
- (3) The local agency formation commission.
- (4) An areawide planning agency whose operations may be significantly affected by the proposed action, as determined by the planning agency.
- (5) A federal agency if its operations or lands within its jurisdiction may be significantly affected by the proposed action, as determined by the planning agency.

(6) A public water system, as defined in Section 116275 of the Health and Safety Code, with 3,000 or more service connections, that serves water to customers within the area covered by the proposal. The public water system shall have at least 45 days to comment on the proposed plan, in accordance with subdivision (b), and to provide the planning agency with the information set forth in Section 65352.5.

(7) The Bay Area Air Quality Management District for a proposed action within the boundaries of the district.

(8) On and after March 1, 2005, a California Native American tribe, that is on the contact list maintained by the Native American Heritage Commission, with traditional lands located within the city or county's jurisdiction.

(b) Each entity receiving a proposed general plan or amendment of a general plan pursuant to this section shall have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified by the planning agency.

(c) (1) This section is directory, not mandatory, and the failure to refer a proposed action to the other entities specified in this section does not affect the validity of the action, if adopted.

(2) To the extent that the requirements of this section conflict

with the requirements of Chapter 4.4 (commencing with Section 65919), the requirements of Chapter 4.4 shall prevail.

SEC. 7. Section 65352.3 is added to the Government Code, to read:

65352.3. (a) (1) Prior to the adoption or any amendment of a city or county's general plan, proposed on or after March 1, 2005, the city or county shall conduct consultations with California Native American tribes that are on the contact list maintained by the Native American Heritage Commission for the purpose of preserving or mitigating impacts to places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code that are located within the city or county's jurisdiction.

(2) From the date on which a California Native American tribe is contacted by a city or county pursuant to this subdivision, the tribe has 90 days in which to request a consultation, unless a shorter timeframe has been agreed to by that tribe.

(b) Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Section 65040.2, the city or county shall protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects.

SEC. 8. Section 65352.4 is added to the Government Code, to read:

65352.4. For purposes of Section 65351, 65352.3, and 65562.5, "consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

SEC. 9. Section 65560 of the Government Code is amended to read:

65560. (a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; areas adjacent to military installations, military training routes, and restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of ground water basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including, but not limited

to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

(5) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code.

SEC. 10. Section 65562.5 is added to the Government Code, to read:

65562.5. On and after March 1, 2005, if land designated, or proposed to be designated as open space, contains a place, feature, or object described in Sections 5097.9 and 5097.995 of the Public Resources Code, the city or county in which the place, feature, or object is located shall conduct consultations with the California Native American tribe, if any, that has given notice pursuant to Section 65092 for the purpose of determining the level of confidentiality required to protect the specific identity, location, character, or use of the place, feature, or object and for the purpose of developing treatment with appropriate dignity of the place, feature, or object in any corresponding management plan.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Local and Tribal Intergovernmental Consultation Senate Bill 18: Law, Definitions, Process

Protection of Traditional Tribal
Cultural Places

SB 18 requires cities and counties to contact and consult with "California Native American Tribes" before adopting or amending a General Plan or when designating land as Open-Space for the purpose of protecting Native American *Cultural Places*.

SB 18 Intent Language

The Legislature finds and declares all of the following (paraphrased)

- *Cultural places* have limited measure of protection
- Tribes have continuing cultural ties to the land and to their traditional heritages
- Places are not located on tribal land, not covered by protectionist policies of tribal governments
- These places are essential elements in tribal cultural traditions, heritages and identities

Intent Language

- Establish meaningful consultation between tribal governments and local governments at the earliest possible point in the **planning process**
- Information available early in the **planning process** to avoid potential conflicts
- Enable tribes to manage and act as caretakers of *cultural places*

SB 18 Does Not, Is NOT

- Does not include consultation with state or federal agencies
- Does not cover activities on state or federally owned property
- Does not include Special Districts, School Districts, Water Districts
- Is not part of CEQA statute
- Does not directly involve inadvertent discoveries, MLDs, monitors

Terms Used in SB 18(GC Sections) and OPR's Consultation Guidelines

California Native American Tribe

Cultural Places

California Native American Tribe

SB 18 requires contact and consultation with "California Native American Tribes that are on the contact list maintained by the California Native American Heritage Commission".

NAHC created a new list specific for SB 18

What is a "California Native American Tribe" for the purposes of SB 18 Consultation?

Intent Language

- California Native American tribal governments.
- Government to Government.
- Tribal Governments.

Civil Code 315.3 A federally recognized California Native American tribe or a non-federally recognized California Native American tribe.

GC 35352 California Native American tribe, with traditional lands within the city or county's jurisdiction.

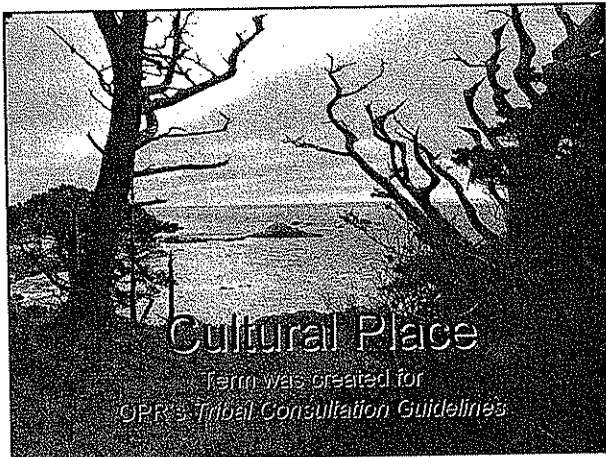
NAHC's SB 18 Tribal Consultation Contact List

Made up of entities that can be considered "Tribal Governments" which include:

- All Federally Recognized Tribes
- Non-Federally Recognized Tribes that meet minimum criteria (not complete list of criteria):
 - function as a governmental body
 - completed petition for recognition by the federal government
 - documentation that they were formerly recognized.
 - tribes that are recognized as a Native American tribe by the surrounding community, including other tribes and local governments
 - tribes who are members of continuously operating historical tribes that were signatories to an unratified treaty
 - a non-profit organization dedicated to general governance and tribal community well-being and for which the majority of the non-profit's membership is not represented by any other tribal group.

NAHC's SB 18 Tribal Consultation Contact List

- The NAHC has developed a form for local governments to use when requesting a list of tribes to contact.
 - Available in the OPR Guidelines on the OPR and NAHC web sites.
- Tribes should contact NAHC if they have questions about their status on the SB 18 Tribal Consultation Contact List.



Cultural Place

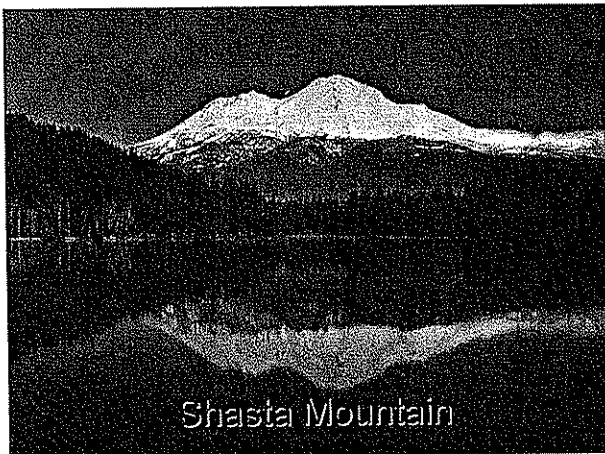
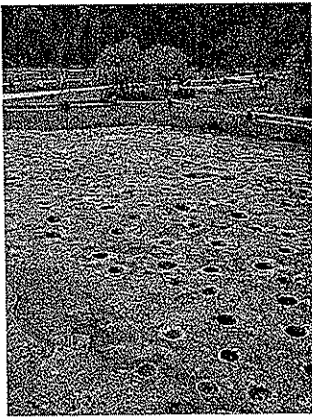
SB 18 (GC Sections) refers to "places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code."

PRC 5097.9 Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine. (Private Lands)

Cultural Places

PRC 5097.993 Native American historic, cultural, or sacred site that is listed or may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site. (public lands)

(Talk to the Tribes)



Shasta Mountain

Overview of SB 18

Senate Bill 18 was signed into law in September of 2004 with the main provisions taking effect on March 1, 2005.

- Added 3 Sections to the State Planning Law/GC (Consultation)
- Amended 5 Sections of State Planning Law/GC (Notice)
- Amended One Section of the Civil Code (Conservation Easements)

New Government Code Sections State Planning Law

- GC 65352.3 Consultation: General Plan or Specific Plan adoption or amendment.
- GC 65562.5 Consultation: Designation of Open Space.
- GC65352.4 Definition of Consultation.

Consultation: General Plan Adoption/Amendment

GC 65352.3 Prior to the adoption or any amendment to a General Plan, proposed on or after March 1, 2005, the city or county shall conduct consultations with California Native American tribes for the purpose of preserving or mitigating impacts to *Cultural Places*.
Once contacted, Tribes have 90 days to request consultation.

Consultation: Open Space

GC 65562.5 On or after March 1, if land designated, or proposed to be designated as open space, contains a *cultural place*, the city or county in which the *cultural place* is located shall conduct consultations with the Tribe, if any, that has given notice pursuant to Section 65092 for the purpose of determining the level of confidentiality required to protect the *cultural place* and for the purpose of developing treatment with appropriate dignity of the *cultural place* in any corresponding management plan.

Consultation: Open Space Designations

- Land being Designated as Open Space
- Open Space contains a Cultural Place
- Tribe has Given Notice pursuant to 65092
- Purpose of protecting the Confidentiality and treatment of the site in any management plans for the open space.

Definition of Consultation

- GC 65352.4 For the purposes of Section 65351, 65352.3, and 65562.5, "consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement.

Definition of Consultation, con't

Consultation between government agencies and Native American Tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

Amended Government Code Sections, Civil Code Section

- GC 65040.2 OPR's General Plan Guidelines shall contain advice for consulting with tribes.
- GC 65092 10 day notice of public hearing.
- GC 65351 Provide opportunities during GP preparation/amendment.
- GC 65352 45 day referral of action.
- GC 65560 Open Space for Cultural Places
- Civil Code 815.3 Conservation Easements

OPR's General Plan Guidelines

GC 65040.2(g) By March 1, 2005, the guidelines shall contain advice for consulting with Native American Tribes for all of the following:

- (1)The preservation of, or the mitigation of impacts to, places, futures, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code. (*cultural places*)

OPR's GP Guidelines, con't

- (2)Procedures for identifying through the Native American Heritage Commission the appropriate Native American Tribes.
- (3)Procedures for continuing to protect the **confidentiality** of information concerning the specific identity, location, character, and use of those *cultural places*. (SB 922)

OPR's GP Guidelines, con't

- (4)Procedures to facilitate voluntary landowner participation to preserve and protect the specific identity, location, character, and use of those *cultural places*.

Guidelines are available on OPR's Website:
www.opr.ca.gov

SB 922, 2005 Confidentiality and Public Disclosure

Amended the Public Records Act (CPRA) to aid in the protection of information regarding cultural places.

Added language to existing exemptions to the CPRA that keeps certain records free from public disclosure.

SB 922, 2005

GC 6254(r) "records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Section 5097.9 and 5097.993 of the Public Records Code maintained by, or in the possession of, the Native American Heritage Commission, **another state agency, or a local agency.**"

SB 922, 2005

GC 6254.10 "records that relate to archaeological site information and records maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, another state agency, **or a local agency, including the records that the agency obtains through a consultation process between a California Native American Tribe and a state or local agency.**"

10 Day Notice of Public Hearing

GC 65092 (a) When a provision of this title requires notice of a public hearing to be given pursuant to Section 65090 or 65091, the notice shall be mailed or delivered at least 10 days prior to the hearing to any person who has filed a written request for notice.....

10 Day Notice of Public Hearing

GC 65092(b) As used in this chapter, "person" includes a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission.

(Tribes must request this notice to be eligible for Open Space consultation specific to GC65562.5)

Provide Opportunities

GC 65351 During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens, **California Native American tribes**, public agencies, and other community groups, through public hearings and any other means the city or county deems appropriate.

45 Day Referral of Action

GC 65352 (a) Prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all of the following entities:

(1-7 other entities)

(8) On or after March 1, 2005, a California Native American tribe, that is on the contact list maintained by the Native American Heritage Commission, with traditional lands located within the city or county's jurisdiction.

45 Day Referral of Action, con't

GC 65352(b) Each entity receiving a proposed general plan or amendment of a general plan pursuant to this section shall have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified by the planning agency.

Open Space for the Protection of Cultural Places

GC 65560 (b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional, or state open-space plan as any of the following:

Open Space & Cultural Places, con't

GC 65560(b)(5) Open space for the protection of places, features, and objects described in Section 5097.9 and 5097.995 of the Public Resources Code.

Civil Code Amendment: Conservation Easements

Civil Code Section 815.3 Only the following entities or organizations may acquire and hold conservation easements:

- (c) A federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place, if the conservation easement is voluntarily conveyed.

Overview of SB 18 Process

- Local Government or applicant makes proposal that involves a general plan/specific plan amendment, update or adoption.
- Local Government contacts the NAHC for list of Tribal contacts.
- Local Government contacts Tribes regarding the GP/SP amendment or adoption and offers consultation. (GC 65352.3)

Process

- Tribe has 90 days to respond and to request consultation. (GC 65352.3) Local governments and tribes can agree upon shorter time frames.
- If a Tribe requests consultation, local government and Tribe engage in consultation for the purpose of preserving a cultural place.
- Local government sends notice 45 days prior to taking action on the GP/SP adoption or amendment (GC 65352)

Process

- Local government sends notice 10 days prior to public hearing on the GP/SP adoption or amendment. (GC65092) Tribes must request this notice.
- Local government makes decision to approve or deny GP/SP adoption, update or amendment.

Building Working Relationships

- Guidelines discuss Pre-Consultation
- Consultation with tribes should be on-going
- Local Governments and Tribal Governments may want to meet on a regular basis to discuss common issues/concerns outside of the consultation requirements of SB 18.

Building Working Relationships

- Local Governments should consider incorporating policies into the General Plan regarding SB 18 and consultation with Tribal Governments for the purpose of protecting Cultural Places
- Local Governments may want to work with tribes to develop protocols to be used for the notice and consultation requirements of SB 18.

On-Line Information & Phone #'s

- Office of Planning and Research
www.opr.ca.gov
(916)-445-0613
- Native American Heritage Commission
www.nahc.ca.gov
(916)-653-1082