Application No. 18528 Agenda Item No. 8 B

#### Meeting of the Central Valley Flood Protection Board April 22, 2011

# Staff Report – Encroachment Permit Gary Hubl Dwelling, Kern County

#### <u>1.0 – ITEM</u>

Consider approval of Resolution No. 11-13 (Attachment A) granting authorization of Permit No. 18528 (Attachment B).

#### 2.0 - APPLICANT

Gary Hubl

#### <u>3.0 – LOCATION</u>

The project is located within the left (south) bank of the Kern River Designated Floodway at 5750 Alfred Harrell Highway in Bakersfield. (Kern River Designated Floodway, Kern County, see Attachment C)

#### 4.0 - DESCRIPTION

The applicant requests authorization of a 5,820-square-foot-residence partially encroached within the left (south) bank of the Kern River Designated Floodway.

#### 5.0 - PROJECT ANALYSIS

The home was inadvertently constructed within the Kern River Designated Floodway due to the incorrect positioning of the Kern River Designated Floodway line on the original site plan that was approved (See Attachment D) and a Grading Permit issued by Kern County (County) on December 14, 2007 (See Attachment E). Subsequently the County issued a Construction Permit for the home on March 25, 2008 (See Attachment F) and the home was constructed shortly thereafter. During review of the final sign-off prior to occupancy of the home the County discovered that the originally

approved site plan had incorrectly showed the proposed home to be outside of the Kern River Designated Floodway. The County allowed temporary occupancy of the home on the condition that the home owners obtain an Encroachment Permit from the Central Valley Flood Protection Board (CVFPB). The newly constructed home is approximately 5,820 square feet including the garage. Approximately 1,909 square-feet of the structure encroaches into the Kern River Designated Floodway.

Meyers Civil Engineering was retained by the home owner to prepare a CVFPB encroachment permit application and to conduct a hydraulic analysis. The County has an ordinance (17.48.330, paragraph A) that stipulates new structures will not increase the flood level of the Kern River. Initial results of the hydraulic analysis showed that the new home increased water surface elevations (wse) about 0.02-feet. Mitigation to eliminate the wse rise was achieved by re-grading and removing approximately 140-cubic yards of material from between the home and the river (See Attachment G). This grading plan was permitted by the County and the re-grading has been completed.

#### 5.1 – Hydraulic Analysis

A HEC-RAS hydraulic model was prepared by Meyer Civil Engineering, Inc. to evaluate the hydraulic impacts from the construction of the new home. The model was calibrated to match the FEMA Base Flood Elevation (100-year event) that was estimated to be 461.75 feet at this location.

Results showed that the home and construction site increased the wse of the Kern River by approximately 0.02-feet for the 100-year flood event. This flood level increase was addressed by re-grading and removing approximately 140-cubic yards of material from the floodway. The hydraulic model was run using new cross section geometry that represented the grading change; results indicated no rise in the wse for the 100-year event.

#### 5.2 - Geotechnical Analysis

There are no levees in this reach of river and no geotechnical analysis is required.

#### 5.3 – Additional Staff Analysis

Due to the unique circumstances of this matter, structures for human habitation may be permitted by the Board in a designated floodway if the structure has a minimum effect upon the flow of water and is firmly anchored to prevent the structure from flotation (Title 23, Section 107 (g)). The applicant has shown that all hydraulic impacts due to the

Application No. 18528 Agenda Item No. 8 B

construction of the new home have been mitigated to a 0.0 water surface elevation rise for the 100-year flood event. Furthermore, the finish floor elevation of 463.10 NAVD is about 1.35-feet higher than the FEMA Base Flood Elevation of 461.75 NAVD (See Attachment H).

#### <u>6.0 – AGENCY COMMENTS AND ENDORSEMENTS</u>

The comments and endorsements associated with this project, from all pertinent agencies are shown below:

- The U.S. Army Corps of Engineers 208.10 comment letter was received on March 18, 2011 for this application and it will be incorporated into the permit as Exhibit A.
- There is no local maintaining agency for the Kern River Designated Floodway.

#### 7.0 - CEQA ANALYSIS

Board staff has prepared the following CEQA determination:

The County of Kern, as lead agency under CEQA, approved the project on June 10, 2009 and determined that the project was categorically exempt under Class 5 (CEQA Guidelines Section 15305) covering minor alterations in land use limitations resulting in issuance of minor encroachment permits.

The Board, acting as a responsible agency under CEQA, has reviewed the County of Kern's determination and has independently determined that the project is exempt from CEQA under Class 5 (CEQA Guidelines Section 15305) covering minor alterations in land use limitations resulting in issuance of minor encroachment permits.

#### 8.0 - SECTION 8610.5 CONSIDERATIONS

 Evidence that the Board admits into its record from any party, State or local public agency, or nongovernmental organization with expertise in flood or flood plain management:

The Board will make its decision based on the evidence in the permit application and attachments, this staff report, and any other evidence presented by any individual or group.

Application No. 18528 Agenda Item No. 8 B

2. The best available science that related to the scientific issues presented by the executive officer, legal counsel, the Department or other parties that raise credible scientific issues.

The accepted industry standards for the work proposed under this permit as regulated by Title 23 have been applied to the review of this permit.

3. Effects of the decision on the entire State Plan of Flood Control:

Negligible, if any.

4. Effects of reasonable projected future events, including, but not limited to, changes in hydrology, climate, and development within the applicable watershed:

The existing dwelling might get flooded in case of a higher flood increasing the flow and passing over the designated floodway lines.

#### 9.0 - STAFF RECOMMENDATION

Staff recommends that the Board adopt Resolution No. 11-13, determine the project to be exempt from CEQA, and approve Permit No. 18528.

#### <u>10.0 – LIST OF ATTACHMENTS</u>

- A. Resolution No. 11-13
- B. Draft Permit No. 18528
- C. Location Maps and Photos
- D. County Approved Site Plan Drawing
- E. Grading Permit
- F. Construction Permit
- G. Grading Drawing
- H. Topography Map

Design Review: Sam Brandon Environmental Review: James Herota

Document Review: Mitra Emami P.E., Len Marino P.E.

## STATE OF CALIFORNIA THE RESOURCES AGENCY CENTRAL VALLEY FLOOD PROTECTION BOARD

#### RESOLUTION NO. 11-13

#### FINDINGS AND DECISION AUTHORIZING ISSUANCE OF ENCROACHMENT PERMIT NO. 18528 GARY HUBL DWELLING, KERN COUNTY

**WHEREAS**, Mr. Gary Hubl is requesting the authorization of an existing 5,820-square-foot residence that partially (approximately 34 horizontal feet; 1909-square-feet) encroaches into the Kern River Designated Floodway; and

**WHEREAS**, Mr. Gary Hubl submitted Encroachment Permit Application No. 18528 to the Central Valley Flood Protection Board on June 12, 2009. The project is located within the left (south) bank of the Kern River Designated Floodway at 5750 Alfred Harrell Highway in Bakersfield in Kern County; and

**WHEREAS**, on March 18, 2011 the Corps Sacramento District approved Encroachment Permit Application No.18528; and

**WHEREAS**, Kern County, as lead agency under CEQA, approved the project on June 10, 2009 and determined that the project was categorically exempt under Class 5 (CEQA Guidelines Section 15305) covering minor alterations in land use limitations resulting in the issuance of minor encroachment permits; and

**WHEREAS**, Kern County issued Grading Permit No. K200701287 on December 14, 2007 to Gary Hubl and Judy Andrea for the proposed project at 5750 Alfred Harrel Highway, Bakersfield California, 93308; and

**WHEREAS**, Kern County issued Construction Permit No. K200701288 on March 25, 2008 to Gary Hubl and Judy Andrea for the proposed project at 5750 Alfred Harrel Highway, Bakersfield California, 93308; and

**WHEREAS**, Kern County, discovered during the review for final sign-off of the Construction Permit that a portion of the newly constructed home at 5750 Alfred Harrel Highway, Bakersfield California, 93308; was inside the Kern River Designated Floodway and there had been an error in the submitted site plan that was reviewed and approved for the Grading Permit; and

**WHEREAS**, Kern County allowed temporary occupancy of the home conditioned on the home owner securing an Encroachment Permit from the Central Valley Flood Protection Board; and

**WHEREAS**, under unique circumstances, structures for human habitation may be permitted by the Board in a designated floodway if the structure has a minimum effect upon the flow of water and is firmly anchored to prevent the structure from flotation (Title 23, Section 107 (g)), and

**WHEREAS**, hydraulic impacts caused by the construction of the home were mitigated for so there is no increase to the water surface elevation of the Kern River for the 100-year flood event; and

**WHEREAS**, the finish floor of the existing home is at an elevation of 463.10 NAVD or about 1.35-feet higher than the FEMA Base Flood Elevation of 461.75 NAVD; and

**WHEREAS**, the Central Valley Flood Protection Board has conducted a hearing on Encroachment Permit Application No. 18528 and has reviewed the application, the Staff Report of its staff, the documents and correspondence in its file, and the environmental documents prepared by Mr. Gary Hubl and Kern County;

NOW, THEREFORE, BE IT RESOLVED THAT,

#### **Findings of Fact**

- 1. The Central Valley Flood Protection Board hereby adopts as findings the facts set forth in the Staff Report.
- 2. The Board has reviewed all Attachments listed in the Staff Report.

#### **CEQA Findings**

- 3. The Central Valley Flood Protection Board, as a responsible agency under CEQA, has reviewed the Kern County's determination and has independently determined that the project is exempt from CEQA under Class 5 (CEQA Guidelines Section 15305) covering minor alterations in land use limitations resulting in the issuance of minor encroachment permits.
- 4. **Custodian of Record**. The custodian of the CEQA record for the Board is its Executive Officer, Jay Punia, at the Central Valley Flood Protection Board Offices at 3310 El Camino Avenue, Room 151, Sacramento, California 95821.

#### Findings pursuant to Water Code section 8610.5

5. **Evidence Admitted into the Record**. The Board has considered all the evidence presented in this matter, including the original and updated applications, past and

present Staff Reports and attachments. The Board has also considered all letters and other correspondence received by the Board and in the Board's files related to this matter.

- 6. **Best Available Science**. In making its findings, the Board has used the best available science relating to the issues presented by all parties.
- 7. **Effects on State Plan of Flood Control**. This project has no effects on the State Plan of Flood Control.

#### Other Findings/Conclusions regarding Issuance of the Permit

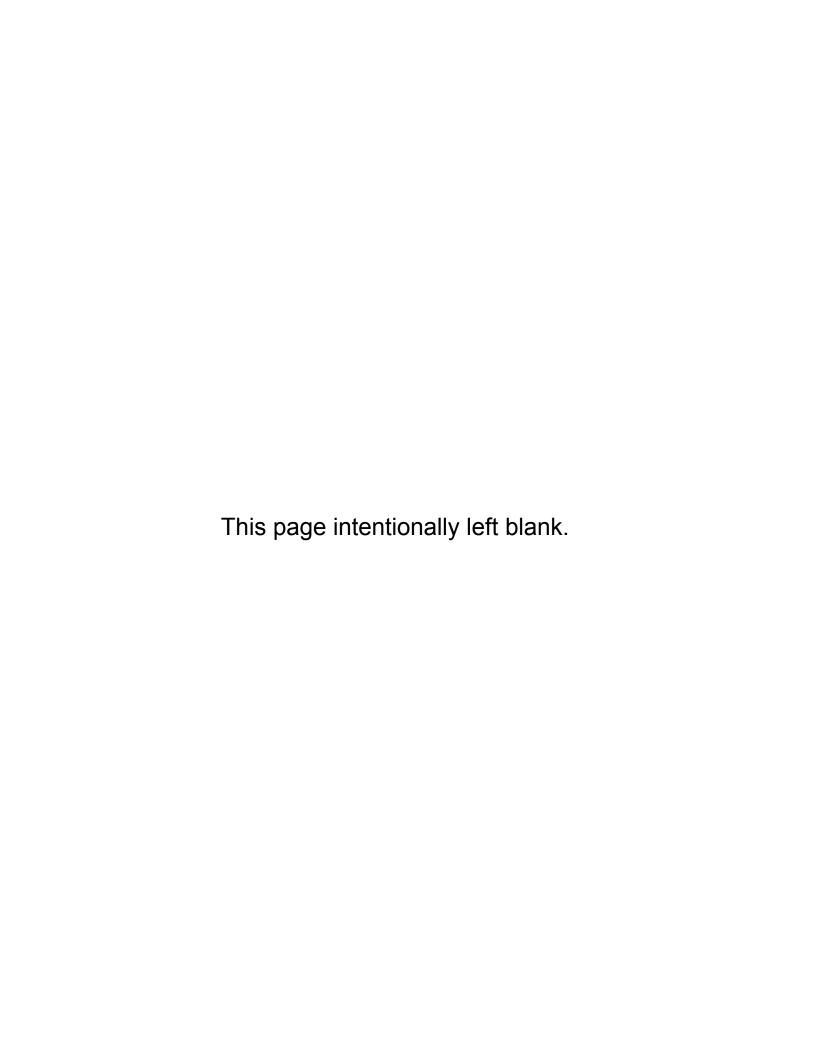
8. This resolution shall constitute the written decision of the Central Valley Flood Protection Board in the matter of Encroachment Permit Application No. 18528.

#### **Approval of Encroachment Permit No. 18528**

Secretary

- 9. Based on the foregoing, the Central Valley Flood Protection Board hereby approves Encroachment Permit Application No. 18528 in substantially the form provided as Attachment B of the Staff Report.
- 10. The Central Valley Flood Protection Board directs the Executive Officer to take the necessary actions to prepare and execute the permit and related documents for Encroachment Permit Application No. 18528.

PASSED AND ADOPTED by vote of the Board on	, 2011	
Benjamin F. Carter		
President		
Francis Hodgkins		



#### **DRAFT**

#### STATE OF CALIFORNIA THE RESOURCES AGENCY

#### THE CENTRAL VALLEY FLOOD PROTECTION BOARD

**PERMIT NO. 18528 BD** 

This Permit is issued to:

Gary Hubl 5750 Alfred Harrell Highway Bakersfield, California 93308

To authorize a 5,820-square-foot-residence partially encroached within the left (south) bank of the Kern River Designated Floodway. The project is located in Bakersfield at 5750 Alfred Harrell Highway (Section 2, T29S, R28E, MDB&M, Kern River, Kern County).

NOTE: Special Conditions have been incorporated herein which may place limitations on and/or require modification of your proposed project

as described above.

(SEAL)	
Dated:	
	Executive Officer

#### **GENERAL CONDITIONS:**

**ONE**: This permit is issued under the provisions of Sections 8700 – 8723 of the Water Code.

**TWO**: Only work described in the subject application is authorized hereby.

**THREE**: This permit does not grant a right to use or construct works on land owned by the Sacramento and San Joaquin Drainage District or on any other land.

**FOUR**: The approved work shall be accomplished under the direction and supervision of the State Department of Water Resources, and the permittee shall conform to all requirements of the Department and The Central Valley Flood Protection Board.

**FIVE**: Unless the work herein contemplated shall have been commenced within one year after issuance of this permit, the Board reserves the right to change any conditions in this permit as may be consistent with current flood control standards and policies of The Central Valley Flood Protection Board

SIX: This permit shall remain in effect until revoked. In the event any conditions in this permit are not complied with, it may be revoked on 15 days' notice.

**SEVEN**: It is understood and agreed to by the permittee that the start of any work under this permit shall constitute an acceptance of the conditions in this permit and an agreement to perform work in accordance therewith.

EIGHT: This permit does not establish any precedent with respect to any other application received by The Central Valley Flood Protection Board.

NINE: The permittee shall, when required by law, secure the written order or consent from all other public agencies having jurisdiction.

**TEN**: The permittee is responsible for all personal liability and property damage which may arise out of failure on the permittee's part to perform the obligations under this permit. If any claim of liability is made against the State of California, or any departments thereof, the United States of America, a local district or other maintaining agencies and the officers, agents or employees thereof, the permittee shall defend and shall hold each of them harmless from each claim.

**ELEVEN**: The permittee shall exercise reasonable care to operate and maintain any work authorized herein to preclude injury to or damage to any works necessary to any plan of flood control adopted by the Board or the Legislature, or interfere with the successful execution, functioning or operation of any plan of flood control adopted by the Board or the Legislature.

**TWELVE**: Should any of the work not conform to the conditions of this permit, the permittee, upon order of The Central Valley Flood Protection Board, shall in the manner prescribed by the Board be responsible for the cost and expense to remove, alter, relocate, or reconstruct all or any part of the work herein approved.

#### SPECIAL CONDITIONS FOR PERMIT NO. 18528 BD

THIRTEEN: This permit is not valid until the enclosed Agreement Establishing a Covenant Running with the Land has been signed, notarized, and returned to the Central Valley Flood Protection Board.

FOURTEEN: The permittee acknowledges that a portion of the herein permitted structure is located within the Kern River Designated Floodway and may be subject to flooding.

FIFTEEN: The dwelling shall be properly anchored to prevent floatation into the floodway in the event of high water.

SIXTEEN: No further work shall be done in the Kern River Designated Floodway without prior written approval of the Central Valley Flood Protection Board.

SEVENTEEN: The Central Valley Flood Protection Board, Department of Water Resources shall not be held liable for damages to the permitted encroachment(s) resulting from releases of water from reservoirs, flood fight, operation, maintenance, inspection, or emergency repair.

EIGHTEEN: The permittee shall maintain the herein permitted encroachment(s) and the project works within the utilized area in the manner required and as requested by the authorized representative of the Department of Water Resources or any other agency responsible for maintenance.

NINETEEN: If damage to the herein permitted dwelling within the Kern River Designated Floodway exceeds 50 percent of its market value within a 10-year period, the dwelling cannot be rebuilt or replaced without approval of the Central Valley Flood Protection Board. If the dwelling is not repaired or replaced, the remaining portion must be completely removed from the floodway prior to the next flood season.

TWENTY: If the herein permitted structure, or any portion thereof, is to be abandoned in the future, the permittee or successor shall abandon the project under direction of the Central Valley Flood Protection Board and Department of Water Resources, at the permittee's or successor's cost and

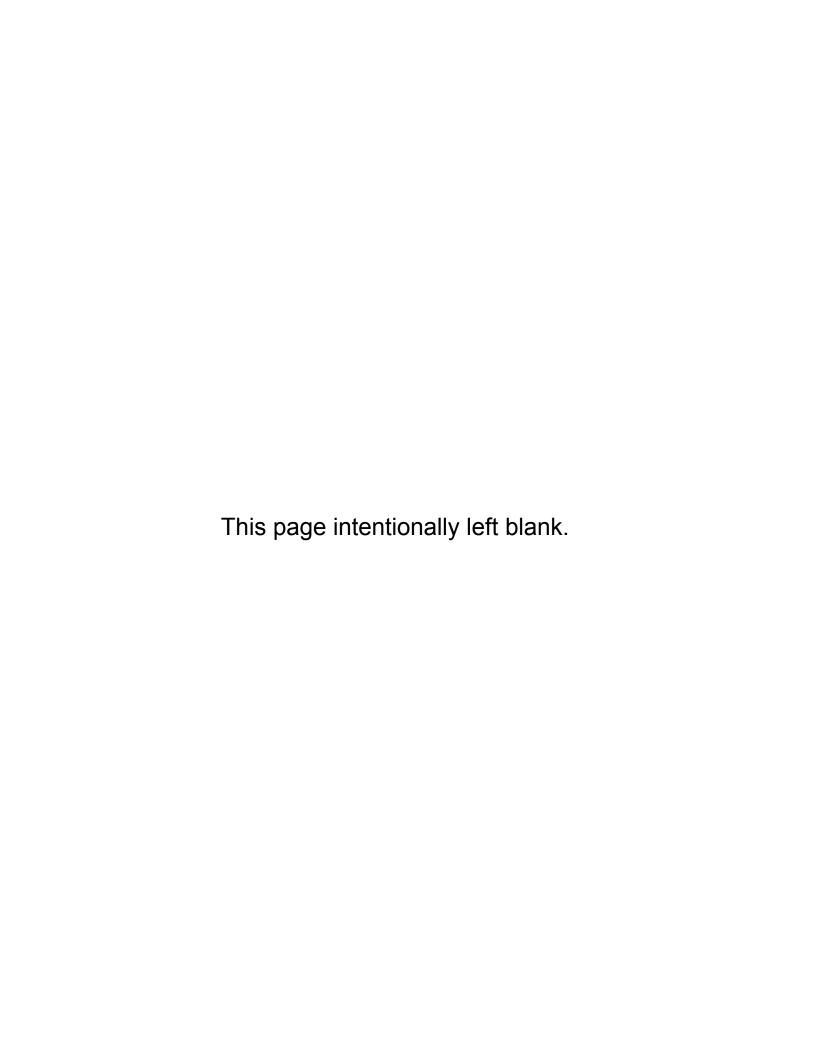
expense.

TWENTY-ONE: The permittee may be required, at permittee's cost and expense, to remove or alter all or any part of the herein permitted structure(s) if removal or alteration is necessary as part of or in conjunction with any present or future flood control plan or project or if damaged by any cause. If the permittee does not comply, the Central Valley Flood Protection Board may remove or modify the herein permitted structure(s) at the permittee's expense.

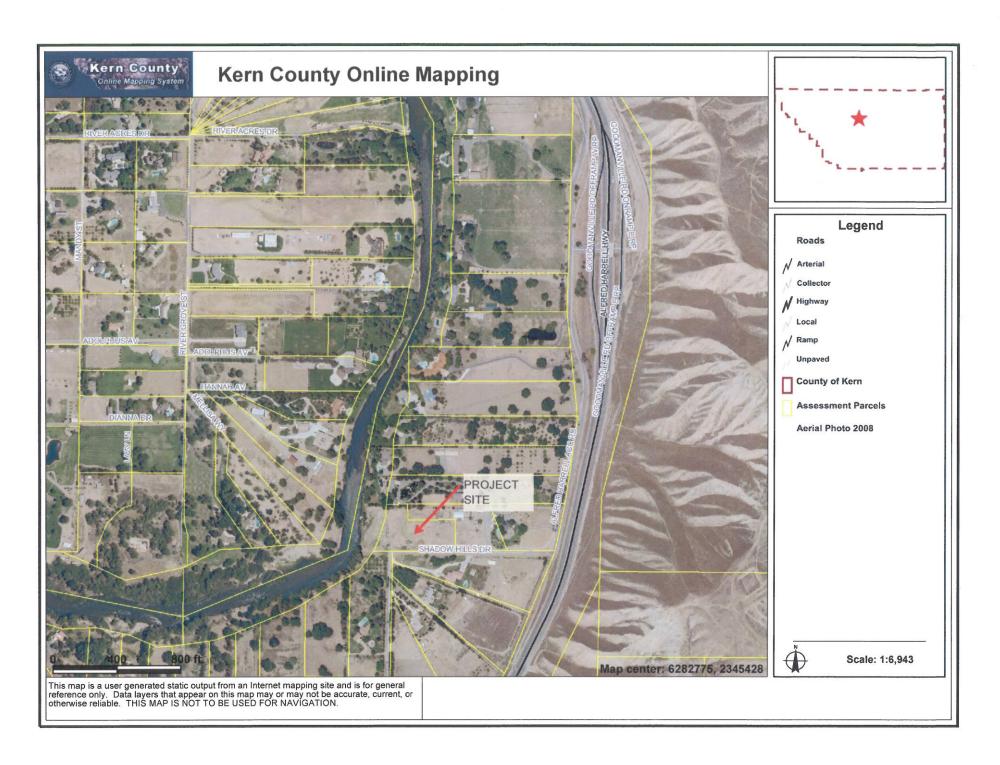
TWENTY-TWO: The permittee shall comply with the Kern County's ordinance requirement to mitigate the increase of the flood level to 0.00 feet.

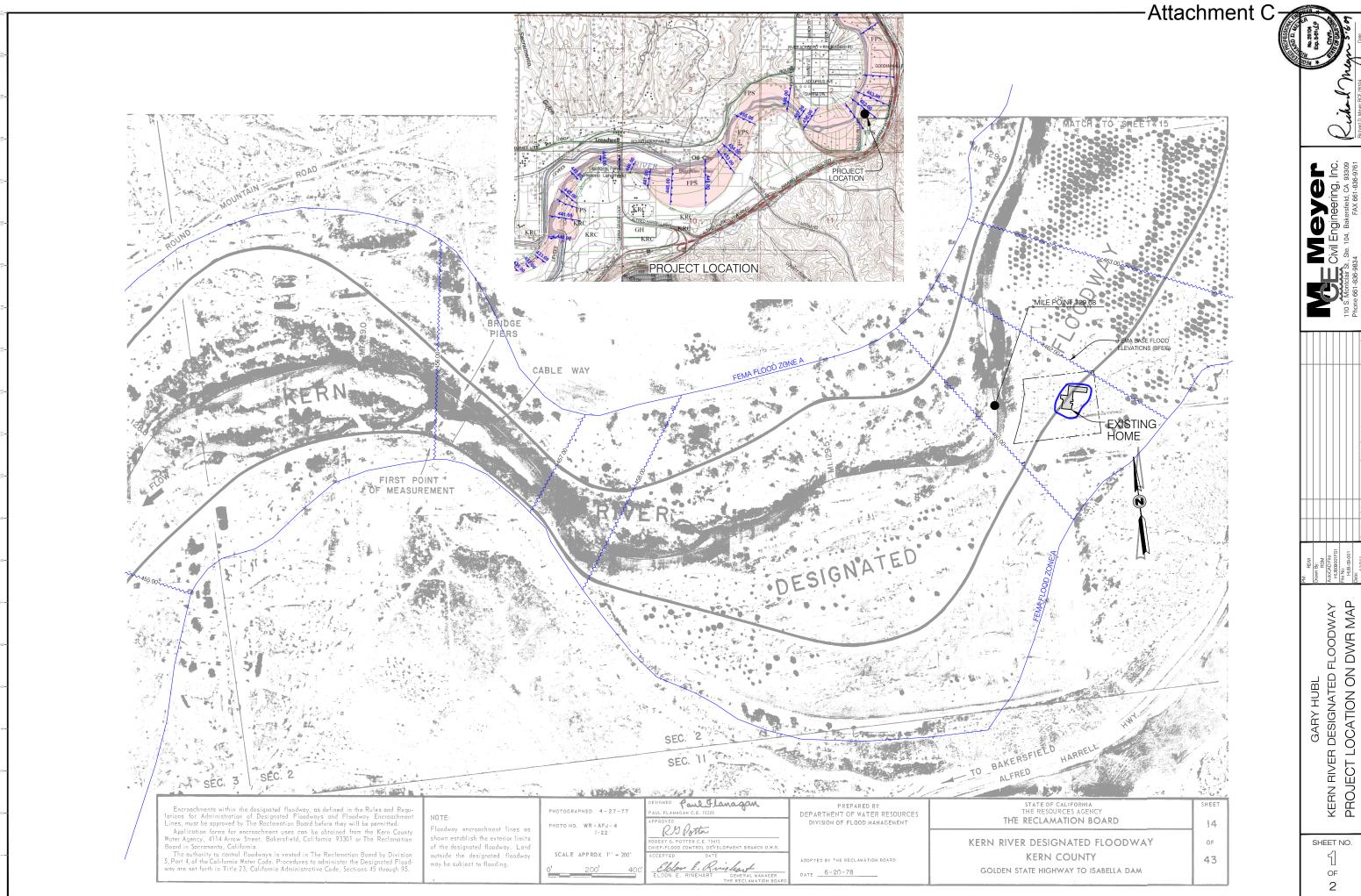
TWENTY-THREE: The permittee is responsible for all liability associated with construction, operation, and maintenance of the permitted facilities and shall defend, indemnify, and hold the Central Valley Flood Protection Board and the State of California; including its agencies, departments, boards, commissions, and their respective officers, agents, employees, successors and assigns (collectively, the "State"), safe and harmless, of and from all claims and damages arising from the project undertaken pursuant to this permit, all to the extent allowed by law. The State expressly reserves the right to supplement or take over its defense, in its sole discretion

TWENTY-FOUR: The permittee shall defend, indemnify, and hold the Central Valley Flood Protection Board and the State of California, including its agencies, departments, boards, commissions, and their respective officers, agents, employees, successors and assigns (collectively, the "State"), safe and harmless, of and from all claims and damages related to the Central Valley Flood Protection Board's approval of this permit, including but not limited to claims filed pursuant to the California Environmental Quality Act. The State expressly reserves the right to supplement or take over its defense, in its sole discretion.



### Attachment C





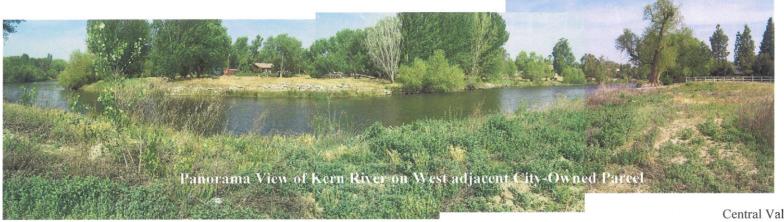
SHEET NO.

### Attachment C

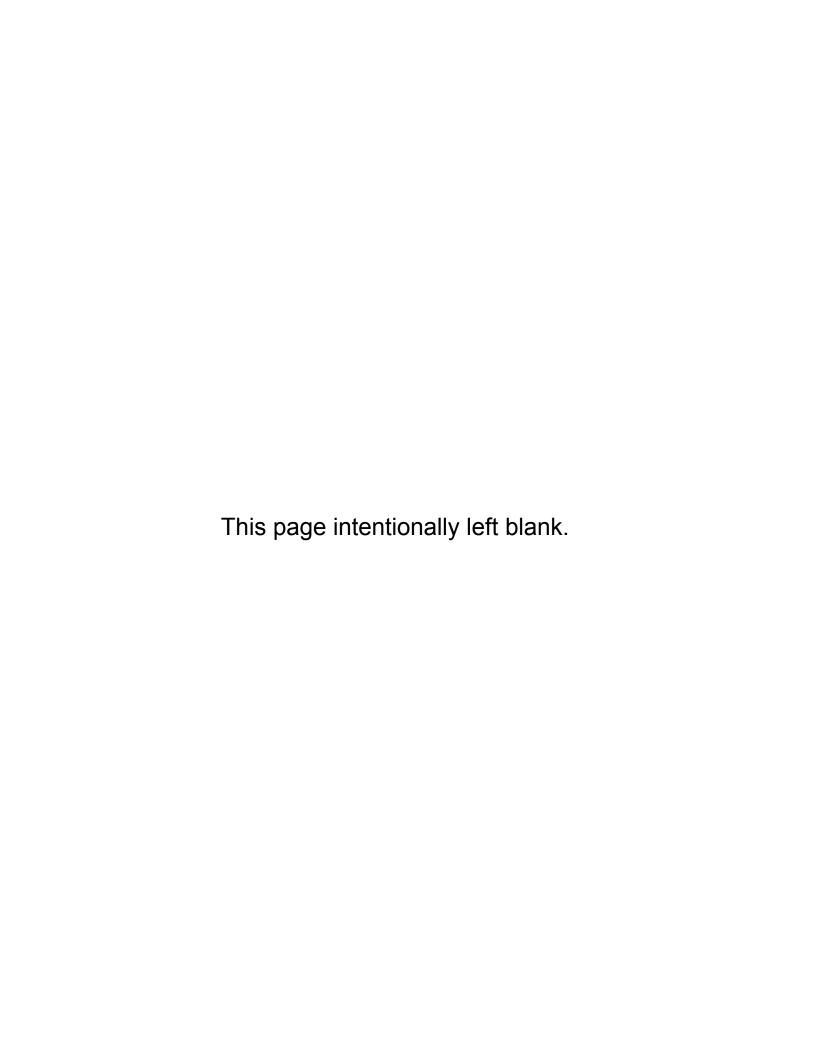


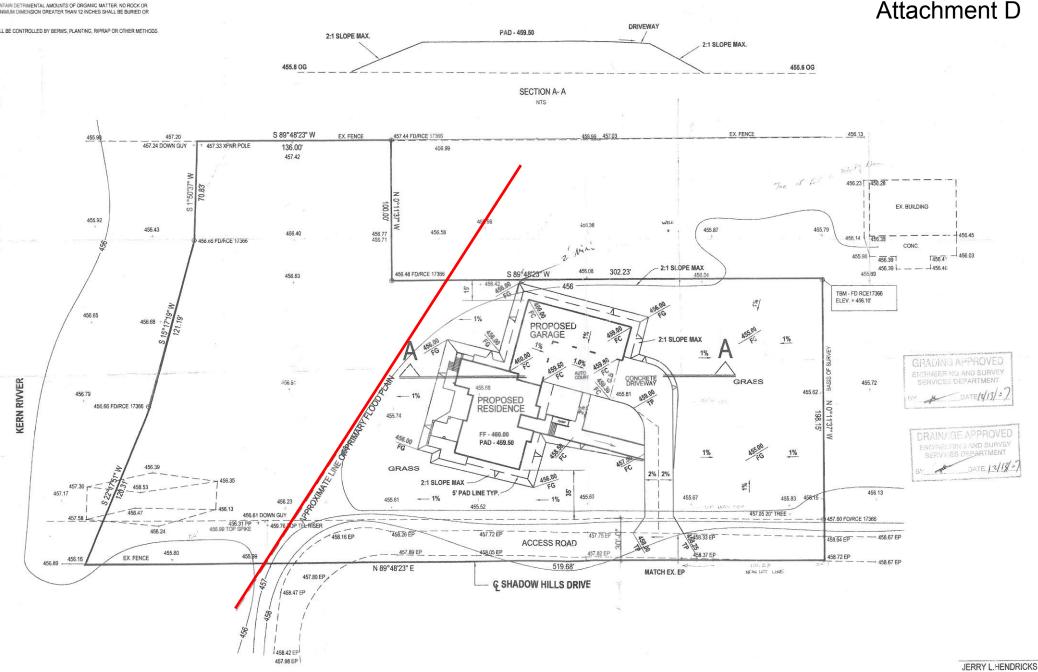


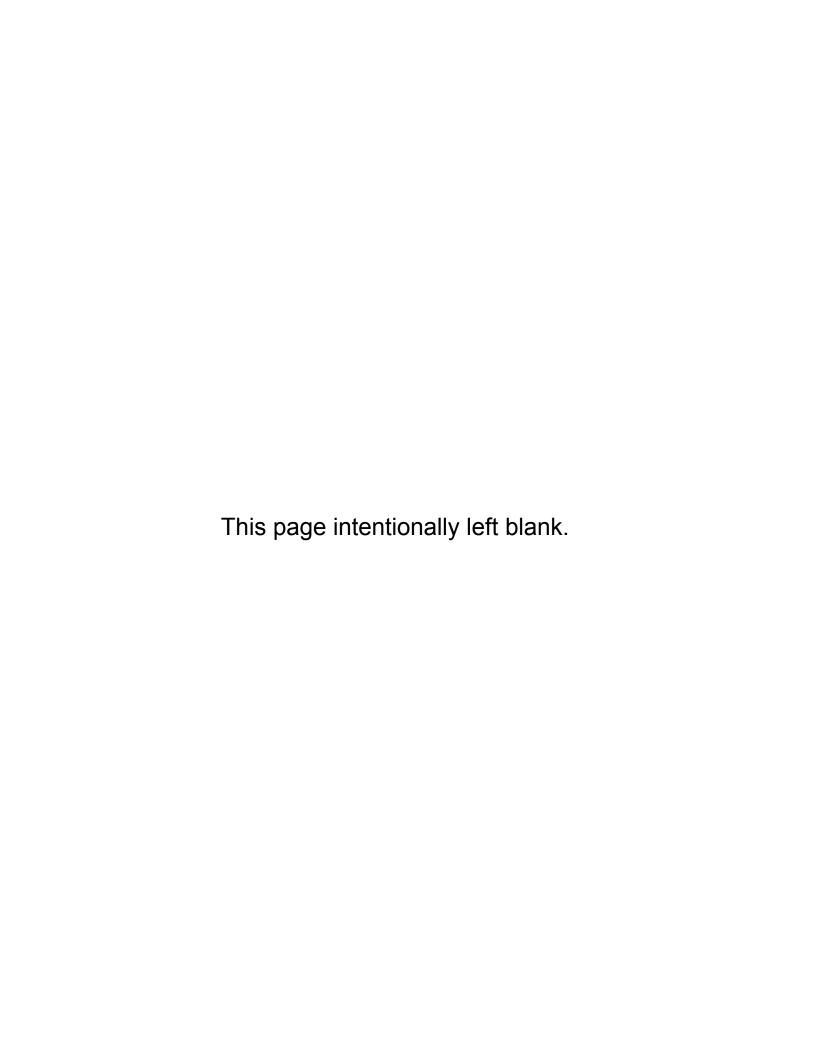




Gary Hubl Central Valley Flood Projection Board Encroachment Permit Application







## JOB CARD GRADING PERMIT

## KERN COUNTY DEPARTMENT OF ENGINEERING & SURVEY SERVICES BUILDING INSPECTION DIVISION

2700 "M" STREET, SUITE 570 BAKERSFIELD, CA 93301-2370

Telephone: (661) 862-8681

Website: http://www.co.kern.ca.us/bid

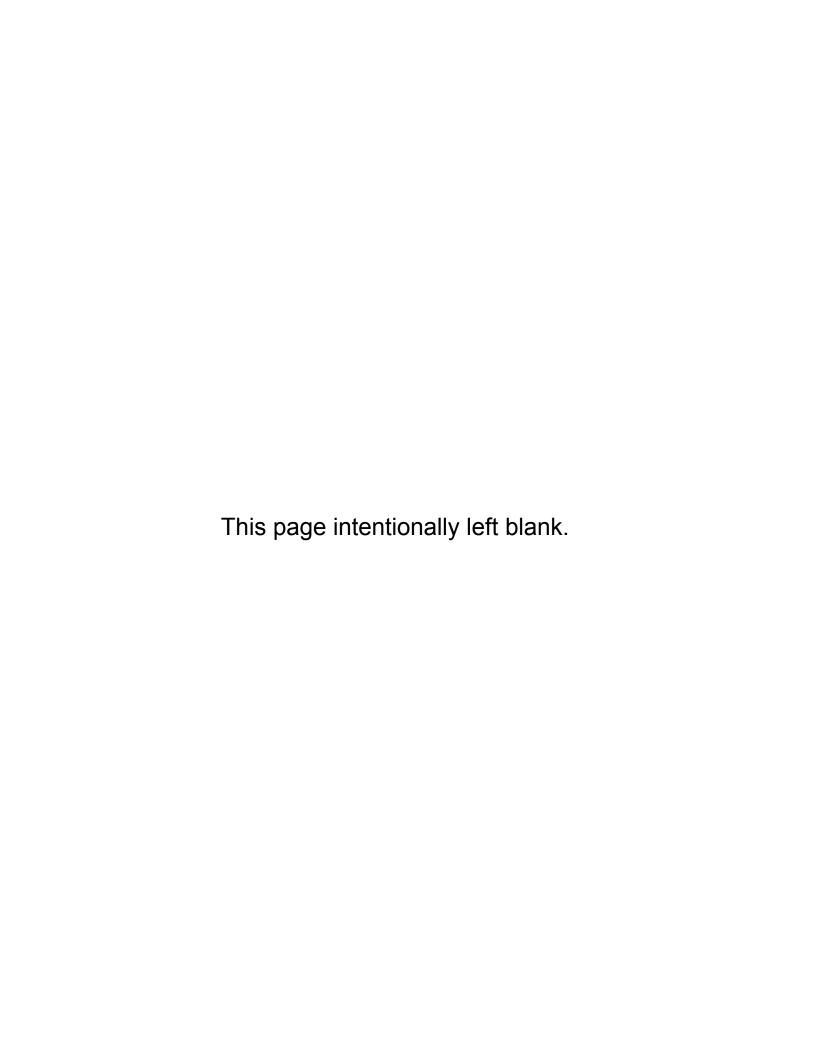
Email: permitsonline@co.kern.ca.us

**Total Payments:** 

Balance Due:

\$215.00 \$0.00

**PERMIT NO: K200701287** 5750 ALFRED HARRELL HW BAKE Project Address: Application Date: February 13, 2007 436-090-229 Project Parcel: Permit Issued Date: December 14, 2007 Inspector Area: 65 Permit Status: ISSUED RESGRD Subtype: Project Description: grading for future sfr 1491cy Zone Map: 103-02 Zoning: E(21/2)056-042 : Bakersfield City School District: Parcel #: Parcel Map: Lot: Tract-Phase: ATN-Book/Page/Lot: 43609022008 51.02 Census Tract: Owner.....: HUBL GARY L & JUDY ANDREA Phone: 8058727637 Address....: 5750 ALFRED HARRELL HW BAKERSFIELD CA 93308 Contractor...: License No: Phone: Address....: Architect.....: KEAUSSE JEFFREY Phone: 16613271311 Address....: 2798 ALTA VISTA DR BAKERSFIELD CA 93305 Fagineer ...: Phone: Address....: \$0.00 Total Value: Total Area: 0 Census Code: 750 Activity Date: December 14, 2007 Activity Code: BALDWINW Valuation Sq Feet Factor Occupancy Type \$0.00\* Totals... PERMIT FEES \$32.00 \$23.00 Plan Check Fee Application Fee Microfilm Fee \$20.00 \$0.00 Site Plan Review Fee \$2.50 Administration Fee \$0.00 Other Grading Fees Habitat Conservation \$0.00 \$137.50 Grading Permit Fee \$215.00 **Total Fees:** 



## JOB CARD

#### CONSTRUCTION PERMIT

KERN COUNTY DEPARTMENT OF ENGINEERING & SURVEY SERVICES, BUILDING INSPECTION DIVISION 2700 "M" STREET, SUITE 570 BAKERSFIELD, CA 93301-2370

Telephone: (661) 862-8681

Website: http://www.co.kern.ca.us/bid

Email: permitsonline@co.kern.ca.us

**Total Fees:** 

**Total Payments:** 

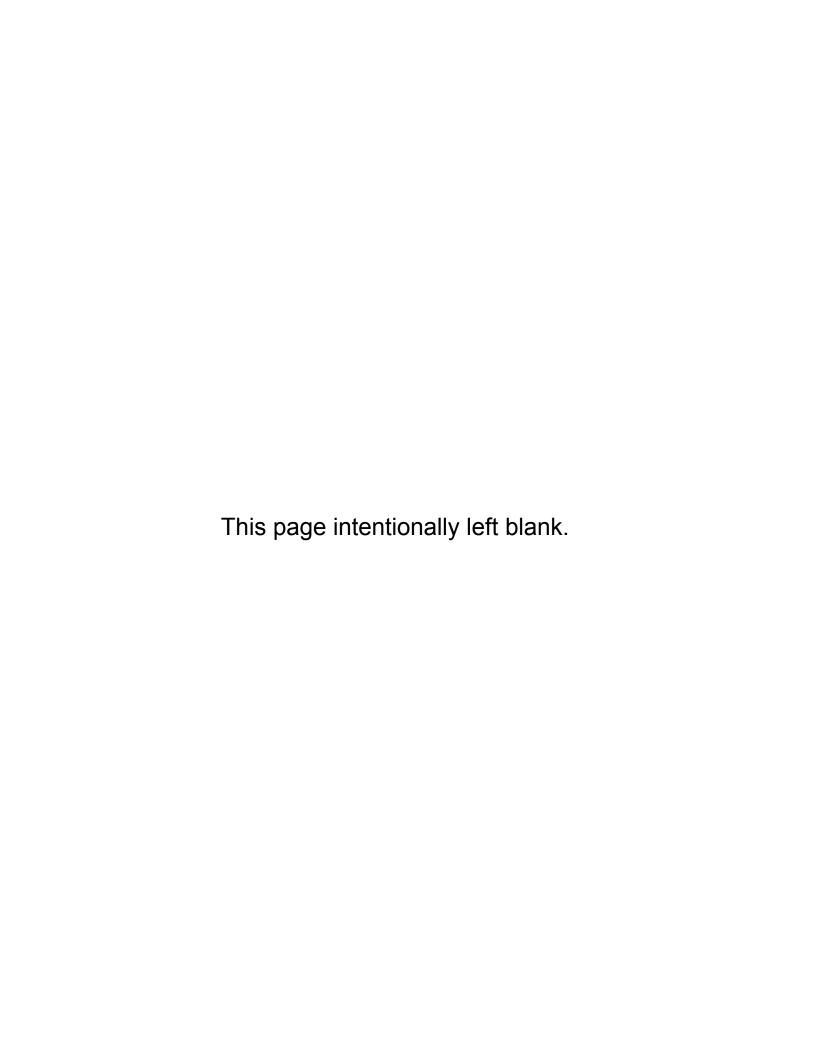
Balance Due:

\$18,274.36

\$18,274.36

\$0.00

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Project Addre	SSS: 5750 ALERED	HARRELL HW BAKE	4-1-27	PERMIT NO:	K200701288
Project Addre		HANCELL II W DI MEL		Application Date:	
Project Parce				Permit Issued Date:	
Inspector Are					
Subtype:	NEWSFD			Permit Status:	ISSUED
Project Desci	ription: constr sfr				
Zoning:	E (21/2)			Zone Map:	
School Distri				C.S.A. #:	n/a
Tract-Phase:	-	Lot:	Parcel Map:	Parcel #:	
Census Tract	: 51.02			ATN-Book/Page/Lot:	43609022008
Census Tract	. 31.02			Titit Books rager zov.	
(4)					
Owner:	HUBL GARY L & JUDY	ANDREA			
Address:		HW BAKERSFIELD CA	93308	Phone:	8058727637
Contractor:	5750 MDI MDD III MCCD			Hiring License	ed Contractor: N
License No:					
Address:				Phone:	
	ED ALIGOT: TEEEDIEV				
Architect:	KRAUSSE JEFFREY	ATTROPPED CA 02205		Phone:	16613271311
Address:	2798 ALTA VISTA DR BA	AKERSFIELD CA 93303		rnone.	10013271311
Engineer:				Phone:	
Address:				3 8 8 2	
Census Code:	101-3	Total Area:		Total Value:	\$359,072.46
Activity Code:	RAMIREZRE	Activity Date:			8
	Occupancy	Type Wood Frame w/Ac	Factor 56.23	Sq Feet Valuation 5,352 \$300,942.96	
	Dwellings Private Garages	Wood Frame W/AC	18.42	2,600 \$47,892.00	75 X
	Roof Only/Patio/Pord		12.50	819 \$10,237.50	
	1.002 0112//	Totals		8,771 \$359,072.46	*
curs - was a second		PERMI	T TTTC		
Application Fee	\$23.00	Flood Area Fee	\$600.00	Spa- sp	\$0.00
Application Fee Administrative Fe		Erosion Review	\$0.00	Spa- nsp	\$0.00
Microfilm Fee	\$0.00	EH Review Fee	\$45.00	Pool - sp	\$0.00
Building Fee	\$2,634.51	School:	\$6,838.00	Pool - nsp	\$0.00
Other Building Fe	e \$0.00	NBR&PD Park Fee	\$0.00	Pool - commercial	\$0.00
Plan Check Fee	\$1,315.28	Tehachapi Park Fee	\$0.00	Electrical - General F	
Other Plan Check	Fee \$0.00	Habitat Fee	\$0.00	Electrical - Other Fee	
S. M. I. P. Fee	\$35.91	Change of Occupancy	\$0.00	Mechanical - General	
Foundation Only	\$0.00	Mobile Home - County	\$0.00	Mechanical - Other F	
Address Fee	\$0.00	Mobile Home - State	\$0.00	C.S.A. Sewer Fee	\$0.00
Site Plan Review	\$0.00	Satellite Dish	\$0.00	C.S.A. Connection	\$0.00
Demolition Fee	\$0.00	Sign - Wallmount	\$0.00	C.S.A. P.R. Sewer Fe	
Sewer Fee	\$44.00	Sign - monument .	\$0.00	K.S.A. Connection	\$0.00
Fraffic: BAK-NC-		Sign - single pole	\$0.00	K.S.A. Sewer	\$0.00
Fire Dept Com Pla	n \$0.00	Sign - double pole	\$0.00	Sewer Con./Tax Roll	\$0.00
Fire Dept UWIA	\$135.00	C.S.A. Septic System	\$0.00	Plumbing - General F	
Gen. Plan Surchar		Commercial Coach	\$0.00	Plumbing - Other Fee	\$ \$0.00
On Call Inspection	\$0.00			Total Fees:	\$18,274.36
				TOTAL PEES:	010,4/9.00



### Attachment G

